THE

Law-Lexicon

OR

DICTIONARY OF JURISPRUDENCE:

EXPLAINING

THE TECHNICAL WORDS AND PHRASES

EMPLOYED IN

The several Departments of English Law;

INCLUDING THE VARIOUS

LEGAL TERMS USED IN COMMERCIAL BUSINESS;

TOGETHER WITH AN

EXPLANATORY AS WELL AS LITERAL TRANSLATION

OF THE

LATIN MAXIMS

CONTAINED IN

THE WRITINGS OF THE ANCIENT AND MODERN COMMENTATORS.

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THIRD EDITION.

LONDON:

V. & R. STEVENS, SONS, & HAYNES,

Law Booksellers and Publishers,

26 BELL YARD, LINCOLN'S INN.

1864.

ADVERTISEMENT TO THE THIRD EDITION.

THE AUTHOR submits a Third Edition of the Lexicon to the profession and the public. Several additions have been made, the text has been revised, the alterations in the law since the last edition have been noted, and the references to statutes have been brought down as nearly as possible to the date of publication, Hilary Term, 1864. In preparing this edition, the Author has been assisted by G. H. COOPER Esq. of the Inner Temple, and R. SEARLE Esq. of the Middle Temple.

ADVERTISEMENT TO THE SECOND EDITION.

THE TEXT of the previous edition has been revised, the citations verified, and the law, in all its branches, exhibited to the best of the Author's ability in accordance with the most recent Statutes, Cases, Rules, and Orders. Many articles have been rewritten, others inserted, and all emended. A great number of terms and phrases has been added, more especially those which relate to Civil, Mercantile, and International Jurisprudence, and to the Hindu and Mussulman juridical systems, as administered in India; as well as those which have been invented to supply the exigencies of modern developments. The size of the book is therefore enlarged, but it is hoped not uselessly, as the purpose has been to preserve a due medium between a scanty vocabulary of mere words, and a prolix cyclopædia of exhaustive discussions, that the work may render concise information upon the given subject, and become a servicable auxiliary to further knowledge by indicating the locality of its sources.

Should this purpose have been even approximately attained (for perfection in such an undertaking is impracticable), every care and labor, every anxiety and fatigue, will have been gratifyingly rewarded.

PREFACE TO THE FIRST EDITION.

It is not without very considerable diffidence that this Lexicon is submitted to the indulgence of the Profession and the Public, for no man can be more conscious of the difficulties besetting such a subject—of the many requisites of the task—and above all, of the great discrepancy usually exhibited between what a book *ought to be*, and what it *is*—than the Author of the present undertaking. Knowing, however, from his own experience, the want of a Dictionary especially adapted to ready reference, which should contain the modern law and alterations, as also the terminology comprehended in our varied and intricate jurisprudence, was the inducement to commence, continue, and complete this work. The aims attempted, throughout its arrangement, have been compression, avoiding obscurity, and yielding information easily and effectually. A word-book, when it obviates tediousness of search by giving a concise answer to one consulting it, possesses a peculiar virtue; for irksome is the process of turning out a word, where, instead of finding its explanation, there is a reference to another part of the book; but should the place referred to again direct the inquirer elsewhere, or, perchance, disclose neither notice nor interpretation, nor, in fact, anything concerning it, then patience becomes exhausted, and perseverance indeed hopeless.

Often has disappointment ensued, when, after reading up a given point of practice or theory, the Author has referred to the Dictionaries extant, in order to learn the precise force of the words and phrases that he had met with in his researches: for frequently they have not even been noticed, or being noticed, their interpretation has involved more confusion, since for the most part the very imperfect impression which was entertained before concerning them, often became obliterated by the utterly obscure manner in which the lexicographer had treated them. Some of these works handle a subject in a mass; for instance, under the head 'Bills of Exchange,' an immethodical essay is written, in which are explained, after a fashion, the several characters of acceptor, drawer, indorsee, payee, and the several subjects of acceptance, presentment, notice of dishonor, protest, and so on; for instead of breaking up the whole subject, and distributing the elements under their appropriate heads, the inquirer searching for acceptor, &c. is referred to Bills of Exchange, where he must wade through the greater part of a long and rambling statement before he comes to the precise point

he wants. A Dictionary is not consulted for an essay or treatise on a particular theme, but to answer a sudden doubt, or explain a present difficulty, as to the proper meaning of a certain technicality. 'In considering any complex matter,' writes Burke,* 'we ought to examine every distinct ingredient in the composition, one by one, and reduce everything to the utmost simplicity; since the condition of our nature binds us to a strict law and very narrow limits. We ought afterwards to re-examine the principles by the effect of the composition, as well as the composition by that of the principles. We ought to compare our subject with things of a similar nature, and even with things of a contrary nature; for discoveries may be, and often are, made by the contrast, which would escape us on the single view. The greater number of the comparisons we make, the more general and the more certain our knowledge is like to prove, as built upon a more extensive and perfect induction.'

The constituents of the great subjects have been distributed under their proper letters, with a view to prevent as much reference to other parts of the book as possible; and when a phrase or technicality belongs in common to several departments of our laws, an analysis has been made, in order to keep separate the details of the particulars and distinctions. Occasional passages from the Jewish, Greek, and Roman antiquities have been quoted, either to illustrate a doctrine or to indicate an analogy; but of this, sparing use has been made, as their too frequent insertion would have increased bulk, without perhaps augmenting value. The authorities relied upon are referred to for examination, in order that the subject may be more fully studied by those who desire to acquire a fuller knowledge of historical jurisprudence or the polity of the ancients. Method has been attended to, as the main design of a Dictionary is immediate use.

> Thus useful arms in magazines we place,
> All rang'd in order, and disposed with grace:
> Nor thus alone the curious eye to please,
> But to be found, when need requires, with ease.†

Whether the work is successful or not, in attaining its avowed purpose, cannot here be determined; its real value—its suitableness as a Lexicon—will be tested by experience, which neither a persuasive preface nor an unfavorable review can influence. The Author craves pardon for any trivial error or misprint, as the greater part of the book was written, and the proofs corrected, during his academical studies; and he will be grateful for any suggestions, which, supplying the defects and elucidating the obscurities of this edition, would increase the utility of a second, should a second be called for.

* Preface to the Enquiry into the Origin of our Ideas of the Sublime and Beautiful.

† Pope's Essay on Criticism.

A LIST OF THE PRINCIPAL BOOKS

RELIED UPON IN THE COMPOSITION OF THE LEXICON.

[*This is not a complete Catalogue; the Reports and many Works quoted occasionally are omitted.*]

Abbott's (Lord Tenterden) Treatise of the Law relative to Merchant Ships and Seamen
Adams's Treatise on the Principles and Practice of the Action of Ejectment, and the resulting Action of Mesne Profits
Allen's Enquiry of the Royal Prerogative of England
Amos and Ferard's Treatise on the Law of Fixtures
Ancient Laws and Institutes of England
Ancient Laws and Institutes of Wales
Antiquities of Ireland
Antiquities of Exeter (Izacke)
Archbold's Q. B. Prac., by Prentice, 1862
Archbold's Bankruptcy, 1862
Archbold's Criminal Pleading (Welsby)
Archbold's Practice of the Crown Office
Arnold's (Dr.) Rome
Arnould on Insurance, 1857
Aurelius Victor
Ayckbourn's Chancery Practice
Ayliffe

Bacon's Abridgement
Bacon's (Lord) History of Henry VII.
Bagley's Common Law Practice
Barrington on the Statutes
Bayley on Bills of Exchange
Beames on *Ne exeat regno*
Beccaria on Crimes and Punishments
Beck's Medical Jurisprudence
Bell on Husband and Wife
Bird's Law respecting Masters, Servants, Journeymen and Apprentices
Bishop on Marriage and Divorce
Bisset on Life-Estates
Black Book
Blackstone's Commentaries (original text)
Blount's Law Glossary
Bracton de Legibus et Consuetudinibus Angliæ
Brady's Clavis Calendaria
Brady's History of England
Britton (Kelham)
Brook's Abridgment
Brougham's (Lord) Political Philosophy
Brown's Dictionary of the Bible
Browne's Actions at Law
Browne's Compendious View of the Civil Law
Burge's Colonial and Foreign Law
Burnet on the Articles
Burn's Ecclesiastical Law
Burn's Justice of the Peace
Burn's Midwifery
Burton's Compendium of Real Property (Cooper)
Butler's Horæ Subsecivæ
Byles on Bills of Exchange

Campbell's (Lord) Lives of the Chancellors
Chamberlayne's Magnæ Britanniæ Notitia, or the Present State of Great Britain
Chambers's Dictionary
Chambers on Estates
Chance on Powers
Chaucer (Speight)
Chitty's Archbold's Common Law Practice (Prentice)
Chitty on Bills of Exchange (Russell and Maclachlan)
Chitty's Commercial Lawyer
Chitty on Contracts
Chitty's Equity Index (Macaulay)
Chitty's General Practice
Chitty's Law of Apprentices

Chitty on Pleading
Chitty's Prerogative of the Crown
Chitty's Statutes (Welsby and Beavan)
Chronicles of England
Clark's Colonial Law
Classical Dictionaries (Lempriere and Smith)
Coke upon Littleton
Coke's Second, Third, and Fourth Parts of the Institutes
Code of Commerce of France
Collyer on Partnership
Colquhoun's Roman Civil Law
Comyn's Digest
Cowel's Interpreter
Cooper's Equity Pleading
Coote's Landlord and Tenant
Coote's Mortgages
Coryton on Patents
Cruise's Digest
Cumin's Manual of Civil Law
Cunningham's Dictionary

Daniell's Practice in Chancery
Dart's Vendors and Purchasers
De Lolme on the Constitution
Dickinson's Quarter Sessions
Dionysius Harlicarnassensis
Dod's Parliamentary Companion
Domesday Book
Droit Ecclésiastique
Du Cange, Glossarium
Du Fresne's Glossary
Dunglison's Medical Dictionary
Dwarris on the Statutes
Dyche's Dictionary
Dyer's Restoration, &c.

East's Pleas of the Crown
Eden on Injunctions
Elliot's Asiatic Researches
Elmer's Lunacy Practice
Encyclopædia Americana
Encyclopædia Londinensis

Fearne's Contingent Remainders
Fearne's Reading on the Statute of Enrolments
Finch's Law, or a Discourse thereof
Fleta
F. N. B. i. e. Fitzherbert's Natura Brevium
Fonblanque on Equity
Fortescue de Laudibus Legum Angliæ
Foster's Four Discourses on Crown-Law

Gerve Doroberen
Gibbon's Rome
Gibson's Britannia
Gilbart's Principles of Banking
Gilbert on Uses
Gilbert's Replevin
Gilbert's Tenures
Glanville de Legibus
Glossary of Heraldry (Oxford)
Godson on Patents
Gow on Partnership
Graves on the Pentateuch
Greaves' Criminal Law Acts of 1861
Guy's Forensic Medicine

Hale's History of the Common Law
Hale's Pleas of the Crown
Hallifax's Analysis of the Civil Law (Geldart)
Hallam's Constitutional History
Hallam's Literary History of Europe
Hallam's Middle Ages
Hare on Discovery
Hargrave on Accumulation
Harrison's Digest
Hawkins's Pleas of the Crown
Hayes's Introduction to Conveyancing
Hodges on Railways
Hody's Treatise on Convocations
Hooker's Ecclesiastical Polity
Hovenden on Frauds
Hume's History of England

Impey on the Writ of Mandamus
Inwood's Tables
Irving's Introduction to the Study of the Civil Law.

Jahn's Biblical Antiquities (Upham)
Jarman on Wills
Jeremy's Law of Carriers
Jeremy's Equity Jurisdiction
Jervis on Coroners
Jones on Bailments
Justinian (Sandars)

Kames's Law Tracts
Kendall's Argument on Trial by Battel
Kennett's Parochial Antiquities
Kelly's Cambist
Kemble's Cod. Diplom.
Kent's Commentaries
Knight's London
Koch's History of Europe

Law French Dictionary
Leges Athelstan apud Lambard
Leges Canuti
Le Grand Coustumier
Lewin on Trusts
Lewis on Perpetuities
Leyden's Complaynt of Scotland
Ley's Antiquities
Lex Mercatoria
Livy
Locke on Government
Lowndes on Coins

Lumley's Parliamentary Practice
Lush's Common Law Practice (Stephen)

Mac Arthur on Courts Martial
Macbride's Diatessaron
Mackintosh's History of England
Macnaghten's Moohummudan Law
Maddox's Exchequer
Maddock's Principles and Practice in Chancery
Manwood's Forest Laws
Martin's Conveyancing
Marshall on Insurance
Maude and Pollock on Shipping
Matthæi Westmonastereinsis Flores Historiarum
May's Imperial Parliament
May's Parliamentary Practice
McCulloch's Commercial Dictionary
Merrifield's Law of Attornies
Meyer's Esprit des Institutions Judiciaires
Mills's Catalogue of Honours
Mills's History of India
Mill's Logic
Mill's Political Economy
Mirehouse on Advowsons
Mitford's Equity Pleading
Monasticon Anglicanum (Dugdale)
Montagu and Ayrton's Bankruptcy
Montesquieu's Spirit of Laws
Morgan's Chancery Acts and Order

Nicolas on Adulterine Bastardy
Niebuhr's Roman History
N. N. B. New Natura Brevium

Oldendorp's Geschichte der Mission
O. N. B. Old Natura Brevium

Paley's Principal and Agent
Paley's Political Philosophy
Park on Insurance
Parochial Antiquities
Percival's Essays
Phillipps on Evidence
Platt on Covenants
Platt on Leases
Planche's Persuivant of Arms
Plowden's Jura Anglorum
Pothier on Contracts (Evans)
Powell on Mortgages
Preston on Abstracts
Preston on Conveyancing
Preston on Estates
Prideaux's Churchwardens' Guide
Puffendorff

Ram on Assets
Ray's Medical Jurisprudence of Insanity
Rastall's Antiquities
Reeves's History of the English Law
Robert's Indian Glossary
Roberts on Fraudulent Conveyances
Robinson on Gavelkind
Rogers on Elections
Roper's Husband and Wife
Roper on Legacies
Roscoe's Criminal Evidence
Roscoe on Real Actions
Rubric
Runnington's Ejectment
Rushworth's Historical Collections
Russell on Arbitration
Russell on Crimes
Rymer's Fœdera

Sandars's Justinian
Sanders on Uses and Trusts
Saunders's Reports
Sayer on Damages
Scriven on Copyholds
Selden's History of Tithes
Selden's Titles of Honor
Selwyn's Nisi Prius (Power)
Seton on Decrees and Orders
Shelford on Charities
Shelford on Lunacy
Sheppard's Touchstone
Simmons on Courts Martial
Skene's Scottish Antiquities
Smith's Chancery Practice
Smith's Dictionary of Greek and Roman Antiquities
Smith's Handbook of Chancery Practice
Smith's Leading Cases
Smith's Mercantile Law
Smith's Wealth of Nations
Spelman's Glossary
Spence on the Equity Jurisdiction of Chancery
Spencer's State of Ireland
Squire on the Anglo-Saxon Government
Stamp's Index to the Statutes
Starkie on Evidence
Starkie on Slander
Staundford's Prerogative
Stephen's Commentaries
Stephen on Pleading
Stone's Building Societies
Story on Agency
Story on Bailments
Story on Bills of Exchange
Story on Conflict of Laws
Story on Contracts
Story on Equity Jurisprudence
Story on Equity Pleading
Story on Partnership
Story on Promissory Notes
Stow's Annals
Sugden (Lord St. Leonards) on Powers

Sugden (Lord St. Leonards) on Vendors and Purchasers

Tate's Modern Cambist
Tayler's History of Gavelkind
Taylor on Evidence
Taylor's Elements of the Civil Law
Taylor's Medical Jurisprudence
Terason, Hist. de la Jurisp. Romaine
Termes de la Ley
Thorn's Chronicle
Thring's Criminal Law of the Navy
Thring's Law of Joint Stock Companies
Tidd's Practice
Toller's Law of Executors
Tooke's *ἔπεα πτερόεντα*, or Diversions of Purley
Tudor's Leading Cases in Conveyancing
Turner's Anglo-Saxons

Uwins on Mental Disorders

Vattel's Law of Nations, by Chitty
Verstegan's Restitution of Decayed Intelligence
Vieusseau's Napoleon
Viner's Abridgment
Vom. Beruf. (Code)

Warton's English Poetry
Watkins on Conveyancing
Watkins on Copyholds
Watson on Arbitration
Watson on Partnership
Wedgwood's English Etymology
Welford on Equity Pleading
Wentworth's Executors
Wharton's Anglia Sacra
Whately's Logic
Whately's Lectures on Political Economy
Whately's Rhetoric
Wheatley on the Common Prayer
Wheaton's Elements of International Law
White and Tudor's Leading Cases in Equity
Wigram on Discovery
Wilkinson's Law of the Public Funds
Williams on Executors
Williams on Replevin
Wood's Institutes
Woodfall's Landlord and Tenant, 1863
Wordsworth's Law of Elections
Wordsworth's Law of Joint-Stock Companies
Wordsworth's Law of Railway Companies
Wright's Tenures

THE

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OR

DICTIONARY OF JURISPRUDENCE.

A—ABA

A. This letter is frequently used as an abbreviation or as a mark of reference, for the purpose of identification. It was inscribed upon a ballot, and stood for '*antiquo*,' I vote against. It was used by the Romans who voted against a candidate for office. See *U. R.*

A ballot or waxen tablet, similarly inscribed, was also used in their Courts of Judicature, being the initial letter of '*absolvo*,' I acquit (not guilty). Cicero calls A, *literam salutarem*, a comfortable letter, because it was a note of Absolution; but C, *literam tristem*, a sorrowful letter, because it denoted Condemnation. See *C.* and *N. L. Taylor's Civil Law*, 191; *Juv. Sat.* xiii. 3.

A 1. An expression signifying a first-class vessel excellently built—*Shipping term.*

Ab [fr. *abba*, Syr., father]. The eleventh month of the Jewish civil year, and the fifth of the sacred. It answers to the moon that begins in July, and consists of thirty days. On the 24th is observed a feast in memory of the abolishment of the Sadducean law, which required sons and daughters to be equal heirs and heiresses of their parents' estate.—*Brown's Dict. of Bible; Jahn's Bib. Antiq.*

Ab, at the beginning of English-Saxon names of places, is generally a contraction of *Abbot* or *Abbey*; whence it is inferred, that those places once had an abbey, or belonged to one elsewhere, as Abingdon in Berkshire. *Blount's Law Gloss.*

Abacinare, a punishment described by historians of the middle ages. The criminal was blinded by the means of red-hot irons held before his eyes.—*Encyc. Lond.*

Abacist, or **Abacista,** a caster of accounts, an arithmetician.—*Blount; Cowel's Interp.*

Abacot, the royal cap of state formerly worn by the Sovereigns of England. It was made in the shape of two crowns.—*Chron. Angl.* 1463.

Abaction, a carrying away by violence.

Abactor [fr. *abigo*, Lat.], a stealer and driver away of cattle or beasts by herds or in great numbers at once, as distinguished from *fur*, a person who steals a single beast only.—*Encyc. Lond.*

Abacus [fr. ἄβαξ, Gk., a board], arithmetic, from the *Abacus*, an ancient instrument for facilitating calculations by means of counters. Its form is various, but that chiefly used in Europe is made by drawing parallel lines distant from each other at least twice the diameter of a counter, which, placed on the lowest line, signifies 1; on the second, 10; on the third, 100; on the fourth, 1,000; and so on. In the intermediate spaces, the same counters are estimated at one half of the value of the line immediately superior. There were also other inventions similarly denominated; viz. *Abacus Pythagoricus*, a multiplication table invented by Pythagoras; *Abacus Logisticus*, a rectangled triangle, whose sides forming the right angle contain all the numbers from 1 to 60, and its area the products of each two of the opposite numbers; it is also called a canon of *sexagesimals*; and the *Abacus*, or table strewed with dust, upon which the ancient mathematicians drew their schemes.—*Dyche's Dict.; Encyc. Lond.*

Abalienate, to make over to another.—*Civ. Law.*

Abalienation [fr. *abalieno*, Lat.], a making over of realty, goods, or chattels, to another, by due course of law.—*Ib.*

Aballaba, the ancient name of Appleby in Westmoreland.

Abandonee, one to whom anything is relinquished.

Abandon, to relinquish, to desert.

Abandoner, one who relinquishes anything.

Abandonment [fr. *abandonner*, Fr.; fr. *bandon*, command, order, dominion], the relinquishment of an interest or claim; the desertion of

a husband or wife or child (24 & 25 Vict. c. 100, s. 27); also the relinquishment by an assured person to the assurers of his right to what is saved out of a wreck, when the thing insured has, by some of the usual perils of the sea, become practically valueless. Upon abandonment, the assured is entitled to call upon the assurers to pay the full amount of the insurance, as in the case of a total loss. The loss is in such case called a constructive total loss.—2 *Selw. N.P.* 976. The damage to a *cargo* must exceed half its value, to entitle the assured to abandon, and recover as for a total loss, and to justify the abandonment of a *ship*, the particular injuries must be such, that no repairs would render her seaworthy for the remainder of the voyage, or that the cost of making her seaworthy would exceed her value when repaired. The assured must give notice of his intention to abandon and claim as for a total loss to the underwriters, or their agents, within a reasonable time after he has received intelligence of the casualty, otherwise it will be taken that he intends to claim for a partial loss only. Abandonment very frequently takes place in cases of capture: the loss is then total, and no question can arise in respect of it. Where, however, a ship and cargo are re-captured *within such a time that the object of the voyage is not lost*, the assured is not entitled to abandon. The mere *stranding* of a ship is not deemed of itself such a loss as will justify an abandonment. If by some fortunate accident, by the exertions of the crew, or by any borrowed assistance, the ship be got off and rendered capable of continuing her voyage, the assurers are only liable for the expenses occasioned by the stranding. It is only where the stranding is followed by *shipwreck*, or the ship is in any other way rendered incapable of prosecuting her voyage, that the assured can abandon. Consult *Arnould*, *Marshall* or *Park on Marine Insurance.*

Also the surrender of his property by a debtor for the benefit of his creditors.

The Civil Law permitted a master who was sued for his slave's tort, or the owner of an animal who was sued for an injury done by it, to abandon the slave or animal to the person injured, and thus relieve himself from further liability.

Abandun or **Abandum**, any thing sequestered, proscribed, or abandoned. *Abandon*, i. e. *in bannum res missa*, a thing banned or denounced as forfeited or lost, whence to *abandon*, *desert*, or *forsake*, as lost and gone. *Cowel.* Pasquier thinks it a coalition of *à ban donner*, to give up to a proscription, in which sense it signified the ban of the empire. *Ban*, in the old dialect, signifies a curse; and to *abandon*, if considered as compounded of French and Saxon, is exactly equivalent to *diris devovere.*

Abannition, a banishment of one or two years for manslaughter.—*Obsolete.*

Abarnare [fr. *abarian*, Ang.-Sax., *denudo*, *detego*, Lat.], to lay bare, discover, detect. Hence *æbere theof*, a detected or convicted thief; *æbere morth*, a detected homicide. Also to detect and discover any secret crime to a magistrate.—*Ancient Laws and Institutes of England; Leg. Canuti*, c. 104.

Abarstick [fr. *a* priv. and *berstan*, Sax., *disrumpo*, Lat.], insatiable.—*Cowel.*

Ab assuetis non fit injuria. Jenk. Cent. Rep. (From things to which we are accustomed, no legal wrong results.)

If a person neglect to insist on his right he is deemed to have abandoned it. 'A Court of Equity,' said Lord Camden, 'which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, where a party has slept upon his right, and acquiesced for a great length of time. Nothing can call forth this Court into activity but conscience, good faith and reasonable diligence: where these are wanting the Court is passive, and does nothing. Laches and neglect are always discouraged; and, therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this Court.' *Smith* v. *Clay*, *Ambl.* 645; 3 *Bro. C. C.* 639.

Abatamentum, Abatement, an entry by interposition.—1 *Inst.* 277.

Abate [fr. *abbattre*, Fr.], to prostrate, break down, remove, or destroy; also, to let down or cheapen the price in buying or selling. *Encyc. Lond.*

Abatement, a making less, used in seven senses:—

(1) Abatement of *Freehold.*—Where a person dies seised of an inheritance, and, before the heir or devisee enters, a stranger, having no right, makes a wrongful entry and gets possession of it. Such an entry is technically called an abatement, and the stranger an abator. It is, in fact, a figurative expression, denoting that the rightful possession or freehold of the heir or devisee is overthrown by the unlawful intervention of a stranger. *Abatement* differs from *intrusion*, in that it is always to the prejudice of the *heir* or immediate *devisee*, whereas the latter is to the prejudice of the *reversioner* or *remainder-man*: and a *disseisin* differs from them both, for to *disseise*, is to put forcibly or fraudulently a person seised of the freehold out of possession.—1 *Inst.* 277*a*; *Finch L.* 12[illegible]; 3 *Bl. Com.* 167. See OUSTER.

(2) Abatement or removal of *Nuisances.*—A remedy allowed by law to the party injured by a nuisance to abate, destroy, remove, or put an end to the same by his own act. Whatever unlawfully annoys or damages another is

a nuisance, which may be abated, i. e. taken away or removed by the aggrieved party, so that he commit no riot in the doing of it. This seems to be the primitive sense of the term abatement. The reason why the law allows this summary method of doing one's self justice, is because injuries of this kind require an immediate remedy, and cannot wait for the slow progress of the ordinary forms of justice. It is also used in a privative sense, in *Statute, Westm.* 1, 3 *Edw. I.* c. 17, where mention is made of abating a castle or fortress, clearly signifying to pull it down and level it even with the ground.

(3) *Plea* in abatement.—A defence by which a defendant shows cause to the Court why he should not be impleaded or sued, or, if impleaded or sued, not in the manner and form adopted by the plaintiff, and praying that the action or suit may abate, i.e. cease.

A plea in abatement at *Common Law* is a species of the class dilatory, and states some fact for quashing or abating the original writ in a real, or the declaration in a personal, action, on account of an informality, or offers an exception to the personal competency of the parties sueing or sued. This plea must be delivered to the plaintiff in four days after receiving the declaration, and cannot be resorted to afterwards. It must be accompanied by an affidavit of its truth, unless the mistake is plainly apparent on the record, otherwise the plaintiff may treat it as a nullity, and sign judgment by default.—4 *Anne*, c. 16, s. 11.

A defendant may plead in abatement to part of a declaration, and upon the merits as to the residue.

When this defence succeeds on the trial, the particular action is defeated, but the right of action subsists, since the plea does not involve the merits by denying the cause of action itself, but only impeaches the technical frame of the proceedings. Therefore upon amending the tenor of the proceedings and removing the disability, a new action can be maintained for the same right. With a view to this privilege, the plea must correct the mistake so as to enable the plaintiff to avoid the same objection in framing his new action.

The plaintiff may demur to this plea without going to trial, and then should the Court *in banco* decide against the plea, the judgment will be *respondeat ouster* (let the defendant answer over) without regard to any defect in the declaration, for which purpose he has four days after judgment on the demurrer signed, or as the Court shall otherwise direct.

If a plaintiff find that he cannot successfully resist the plea, he should abandon the action and enter a *cassetur breve* as a matter of course; he will not then be liable to pay any costs.

The Judges discourage these pleas, for they favour cunning and frivolity, avoid the substantial merits of an action, create vexation and accumulate costs. See *Chitty* or *Stephen on Pleading*, and 2 *Chit. Arch. Prac.* by *Pren.* 865–874. See MISNOMER, NONJOINDER, PLEA and PLEADING.

In *Equity*, declinatory pleas to the jurisdiction, and dilatory to the person, are in the nature of pleas in abatement, for they question the propriety of the particular remedy or suit, whilst they tacitly admit the existence of a cause of suit. No practical consequence, however, results from their being so deemed; it is only an attempt to render pleas in Equity analogous to those at law, that the assimilation has been indulged in by the text-writers. 1 *Dan. Prac. by Head*, 512.

In *Criminal* proceedings, a plea in abatement might have been given in writing by a prisoner or defendant on account of misnomer, wrongful or no addition, annexing thereto an affidavit of its truth. But this plea is now obsolete, since by 7 Geo. IV. c. 64, s. 19, in case of misnomer the Judge may amend the indictment or information, and call upon the prisoner or defendant to plead in bar to the merits; and by 14 & 15 Vict. c. 100, s. 1, no indictment or information shall be held insufficient for want of or imperfection in the addition of any defendant.

(4) Abatement of *Debts and Legacies*.—In Equity, when equitable assets are insufficient to satisfy fully all the creditors, their debts must abate in proportion, and they must be content with a dividend for *æquitas est quasi æqualitas*.

So in the case of legacies upon a deficiency of assets after payment of the debts, they abate proportionably, unless a priority is specially given to any particular legacy. A testator is always presumed to intend that the legacies shall be equally paid unless he express in his will a contrary intention. But a widow's legacy in lieu of dower has the priority, and very properly so, since she gives up a legal right for it.

When there are specific and pecuniary legacies, and the assets are not sufficient to pay both, the specific have the preference, and only abate proportionably amongst themselves, unless one of them is payable out of a particular fund, and others out of other funds, for then each must bear the loss arising from any deficiency of the particular fund.

(5) Abatement of *Litigation*.—The *Common Law* Procedure Act (1852) provides, that the death of a plaintiff or defendant shall not abate an action; that the death of one or more of several plaintiffs or defendants, if the cause of action survive to or against the survivors, shall not abate the action, but the death being

suggested upon the record, the action may proceed; that in case of the death of a sole or surviving plaintiff, his legal representative may, with leave, enter a suggestion of the death and of his being the legal representative, and proceed with the action, and if the suggestion be made before trial, its truth shall be tried thereat, together with the deceased's title, and the person making the suggestion is to be treated as if he were originally the plaintiff; that in case of the death of a sole or surviving defendant, the action surviving, the plaintiff may make a suggestion in any of the pleadings before issue, or in a copy of the issue, after joining issue, of the death, and that a person named therein is the executor or administrator of the deceased, who may then be served with a copy of the writ and suggestion, and with a notice requiring him to appear within eight days afterwards, or in default the plaintiff may sign judgment and proceed in the ordinary way; and where no pleadings have taken place before the death, the declaration with the suggestion forming part thereof may be served together, the new defendant pleading thereto at the same time; and if the plaintiff have declared, but the deceased did not plead before his death, the new defendant must plead at the same time to the declaration and suggestion, and if the deceased did plead before death, the new defendant can only plead to the suggestion by way of denial, or as may be necessary by reason of his representative character, unless by leave he is permitted to plead fresh matter to the declaration; and if the deceased did plead before death, but the pleadings have not arrived at issue, the new defendant, besides pleading to the suggestion, must continue the pleadings in the same manner as the deceased might have done, and the pleadings upon the declaration and suggestion shall be tried together, and if the plaintiff recover, he shall be entitled to the like judgment, as in an action originally commenced against an executor or administrator; that the death of either party between verdict and judgment shall no longer be alleged for error, provided the judgment be entered within two terms after the verdict; that if a plaintiff die after interlocutory and before final judgment, the action abates not, if his executors or administrators might have maintained it; and so if a defendant thus die, if such action might have been maintained against his executors or administrators, but the plaintiff or his executor or administrator may issue a writ of revivor against the defendant or his executor or administrator to show cause why damages should not be assessed and recovered by him or them, and if no sufficient matter be shown at the return of the writ, in arrest of final judgment, or there be a default, a writ of inquiry of damages is awarded, or the amount is referred to a master to be ascertained, whereupon final judgment is given. ss. 135–140.

The Act also provides that the marriage of a woman, plaintiff, or defendant, shall not abate an action, which may notwithstanding proceed to judgment, and this may be executed against the wife alone, or, by suggestion or writ of revivor, judgment may be obtained against husband and wife, and execution issue thereon; and on a judgment for a wife, execution may issue thereon by the husband's authority, without a writ of revivor or suggestion, and if a wife have sued, or defended, by attorney appointed when she was sole, he may continue to act, unless the husband countermand his authority, and change him in the ordinary manner.—s. 141.

The bankruptcy or insolvency of a plaintiff, in an action which his assignees might maintain, cannot be pleaded in bar, unless they decline to continue and give security for costs within such time as a judge may order, proceedings being stayed until an election made by them; if the assignees neglect or refuse, the defendants may within eight days afterwards plead the bankruptcy.—s. 142.

With regard to proceedings in error—the death of a plaintiff in error, after service of the note of the receipt of the memorandum alleging error, with a statement of the grounds of error, operates no abatement; but if one of several plaintiffs in error die, a suggestion of it, which is not traversable, yet can, of course, be set aside if untrue, may be made, and the proceedings continued by the surviving plaintiffs. If a sole plaintiff, or all the plaintiffs in error die, the legal representative of such sole plaintiff, or of the surviving plaintiffs, may, with leave, enter a non-traversable suggestion of the death and of his being the legal representative, and the proceedings are thereupon continued; but if no such suggestion be made, the defendant in error may affirm the judgment, or take such other proceedings as he may be entitled to.

The death of a defendant in error does not abate the proceedings, but if one of several defendants die, a non-traversable suggestion of it may be made, and the proceedings continued against the surviving defendants. If a sole defendant, or all the defendants in error die, the plaintiff in error may proceed, upon giving ten days' notice of the proceedings and of his intention to continue them, to the representatives, or if such notice cannot be given, then upon such notice as the Court or a judge may direct.

The marriage of a woman, plaintiff or defendant, does not abate proceedings in error, but they may be continued in like manner, as the action below under similar

circumstances as already detailed.—ss. 161–167.

Bankruptcy does not abate proceedings in error, which may be carried on in the bankrupt's name by the assignees.—1 *T. R.* 463.

In the mixed action of ejectment the death of a claimant or defendant shall not abate the action. If a deceased claimant's right survive to another claimant, a non-traversable suggestion of the death may be made, and the action may proceed at the suit of the surviving claimant; if such a suggestion be made before trial, then the claimant shall have a verdict and judgment upon its appearing that he was entitled to bring the action either separately or jointly with the deceased claimant. If one of several claimants die before trial, whose right does not survive to the survivors, then, where his legal representative shall not become a party to the action, a non-traversable suggestion of the death may be made, and the survivors may go on with the action for their share of the property.

Upon the death before execution executed, of one of several claimants, who have obtained a verdict, the survivors may, whether the legal right to the property survive or not, suggest the death, and proceed to judgment and execution to recover the entire possession of the property and costs, without affecting the right of the legal representative of the deceased claimant, or the liability of the survivors to him, and the entry and possession of the survivors shall be considered that of such legal representative as to his share, and the Court may direct possession to be delivered accordingly. If a sole claimant, or, before trial, one of several claimants, whose rights do not survive, die, his legal representative may, with leave, enter a suggestion of the death, and of his being the legal representative, upon which the action proceeds; if the suggestion be made before trial, its truth is triable thereat together with the deceased's title; and if it be made in the case of a sole claimant, after trial and before execution executed, and it be denied by the defendant within eight days after notice of it, or such further time as shall be allowed, then such suggestion shall be tried; if a verdict pass for the plaintiff he shall recover possession, and all costs occasioned thereby; if for the defendant he shall be entitled to judgment for his costs. If one of several defendants, defending jointly, die before or after judgment, a non-traversable suggestion of it may be made, and the action proceeds against the survivors. If a sole defendant, or all of them when more than one, die before trial, a non-traversable suggestion of it may be made, and the claimants shall be entitled to judgment, unless some person appear and defend within the time fixed by order of the Court or judge, and the Court or judge may order that the claimants may sign judgment within a given time, unless the person then in possession, by himself or tenant, or the legal representative of the deceased defendant, shall within such time appear and defend; the order may be served like the writ. But if the death or deaths happen after verdict, the claimant may still sign judgment and issue execution, without suggestion or revivor, against the legal representatives. If one of several defendants, defending separately for a part of the property, die before trial, the same proceedings may be taken as to such portion as in the case of a sole defendant's death, or the claimant may proceed against the survivors as to the other portions. If one of several defendants, defending separately as to property for which the survivors also defend, die before trial, the Court, or a judge, may allow the person then in possession of the property, or the legal representative of the deceased, to appear and defend on reasonable terms, and if no such leave be applied for, the claimant suggesting the death may proceed against the survivors to judgment and execution.—s. 190–199; 2 *Chit. Arch. Prac. by Pren.* 1075, *et seq.* See REVIVOR, WRIT OF.

A suit in *Chancery* altogether abates by the death of a sole plaintiff. Whereupon the defendant may make a special motion to the Court for an order that the legal representative revive the suit within a limited time, or that the bill be dismissed. 63*rd Order of May*, 1845. It also abates upon the death of one of several co-plaintiffs; in which case the defendant can perhaps obtain an order for the surviving plaintiffs to revive the suit, or submit to have the bill dismissed with costs. *Smi. Ch. Pr.* 726, *et seq.*

A suit abates by the death of a defendant *quoad* his interest; and his personal representative may move that the plaintiff revive the suit against him, or the bill stand dismissed as against such deceased defendant.

A suit by a corporation aggregate in their corporate capacity does not abate by the death of some of the members, though they are mentioned by their names; but the death of a corporation sole operates an abatement.

When a relator claims an interest, and the suit is instituted by bill and information in which he appears as a plaintiff as well as a relator, his death abates the proceedings; but not so where the suit is by information alone. Upon the death of a sole relator, or of all the co-relators, the Attorney-General applies for leave to name a new relator.

If during a suit instituted by a husband and wife, touching her personalty, the husband die, it does not abate the suit, but she may either continue it or stay it without being liable to costs;

if, however, the wife die, the suit abates and the widower must administer, and then revive the suit if he desire to continue it. And should he die before the suit is wound up, the next of kin of the wife would be entitled, upon administering, to proceed with the suit as trustees for the husband's representatives.

A suit instituted against a husband and wife is not abated by the husband's death; but if the wife thereby acquire a new interest she may put in another defence, if there have been already one, touching such new interest. If the wife dies the suit abates.

It is not, however, the death of every party to a suit that will cause its abatement; for if the deceased's interest then determines and becomes non-transmissible, as in the case of a life-tenancy and temporary contingent or defeasible interests, the suit may still be proceeded with against the survivors. But if the deceased was a sole party the suit is at an end, the subject of litigation having determined. And if the whole interest of a deceased party survive to another party, as in the case of joint-tenancy, or trustees or executors, the deceased not having acted or possessed any of the trust-property, no abatement occurs, since no claim can be sustained by or against the representatives. Also where a surviving party can continue the suit, as in the case of several creditors, &c., no abatement arises, for the deceased's representatives may come in under the decree; but if an original plaintiff in such a suit die after decree, his personal representatives may, if they choose, revive the suit.—*Burney* v. *Morgan*, 1 *S.* and *S.* 358.

The marriage of a *feme* sole plaintiff abates a suit; and it would appear that the defendant may move that the husband revive within a short time or that the bill be dismissed with costs.

The marriage of a *feme* defendant does not abate a suit, but her husband should be named in all the subsequent proceedings.

An infant-plaintiff attaining his majority does not abate a suit, but he may elect whether he will carry on the suit or not.

While the bankruptcy or insolvency of a sole plaintiff does not strictly abate a suit, yet it renders it as defective as if it did, since the bankrupt-plaintiff cannot prosecute it. The defendant may obtain, after notice to the assignees and upon special motion, an order that the bill be dismissed without costs within a limited time, if the assignees do not in the meantime revive it. If one of several co-plaintiffs become a bankrupt, the defendant may obtain an order without giving notice to the assignees, that the solvent plaintiffs revive within a given time or submit to the dismissal of the bill.

The bankruptcy or insolvency of a defendant does not abate a suit; but the plaintiff has his election either to continue the suit, making the assignees parties, or stay and go in under the bankruptcy; and such defendant may move, at the proper time, to dismiss the bill for want of prosecution, but without costs. See Revivor, Order of.

Bankruptcy proceedings abate altogether only where the bankrupt dies before adjudication. 12 & 13 Vict. c. 106, s. 116.

Actions at law or suits in equity commenced by assignees do not abate by their death or removal; but upon a suggestion of the fact made, the proceedings go on in the substituted name of the surviving or new assignee.—*Ib.* s. 157. This provision includes official assignees. The Insolvent Act, 1 & 2 Vict. c. 110, s. 53, provided the like in cases of insolvency; but proceedings in insolvency are now abolished by 24 & 25 Vict. c. 134. These enactments do not apply when the assignees are defendants.

(6) Abatement or *rebate in commerce*, an allowance or discount made for prompt payment.—*Lex Merc.* It is sometimes used to express the deduction that is occasionally made at the Custom-House from the duties chargeable upon such goods as are damaged, and for a loss in warehouses, regulated by 3 & 4 Wm. IV. c. 52, s. 32.

(7) A *badge* in coat-armour, indicating dishonour of some kind. It is also called *rebatement*.

Abator or **Abater,** one who prostrates a nuisance or enters into a house or land vacant by the death of the former possessor, and not yet taken possession of by his heir or devisee. *Cowel.* Also an agent or cause by which an abatement is procured.

Abatuda, or **abatude,** anything diminished. *Moneta abatuda* is money clipped or diminished in value.—*Du Fresne's Glos.* Used in old records.

Abavia, a great grandmother's mother.

Abavus [fr. *avusavus*, *avavus*, Lat.], a great grandfather's father.

Abawed [fr. *echalier*, Fr., *attonitum reddere*, Lat.], terrified.—*Blount.*

Abbacy [fr. *abbatia*, or *abbathia*, Lat.], the government of a religious house and the revenues thereof, subject to an abbot, as a bishopric is to a bishop.—*Cowel.* The rights and privileges of an abbot.

Abbandunum, abbendoma, abbendonia, Abingdon in Berkshire, which took its present name soon after Cissa, King of the West Saxons, had founded the abbey there. It was also, as some say, called Sewsham and Cloveshoe.

Abbas [fr. *æstuarium*, Lat.], Humber in Yorkshire.

Abbatis, an avener or steward of the stables, an ostler.—*Spelm.*

Abbe, the old Norman-French word for Abbott.—Vide *Bro. Abr.* '*Abbe.*'

Abbey, or **Abby** [fr. *abbatia*, Lat.], a place or house for religious retirement, governed by

an abbess where nuns are, and by an abbot where monks reside. Formerly in England great privileges were, and now on the continent are, granted to them, such as being exempted from the bishop's visitation, and as a sanctuary for persons escaping from the penalties of an infringed law, even although they be murderers. No less than 190 abbeys were dissolved by Henry VIII., whose yearly revenue amounted to 2,853,000*l. per annum* (an almost incredible sum considering the value of money in those days), a great part of which went to Rome, the governors and governesses of several of the richest among them being foreigners resident in Italy. Certain abbots and priors in England, in right of their monasteries, held lands of the crown, for which they owed military service, and on that account obtained the title of *Lords*, and were summoned as Barons to parliament. For a like reason the Bishops of the present day have the same honour, and are denominated Spiritual Peers.—1 *Hall. Const. Hist.* c. ii. p. 74; *Monasticon Anglicanum ;* 2 *Steph. Bl.* 343.

Abbot, or **Abbat** [fr. *abbas*, Lat.; *abbé*, Fr.; *abbud*, Sax.: others derive it from *abba*, Syr., father.] A spiritual lord or governor, who had the rule of a religious house. An abbot, with the monks of the same house, were called the *convent*, and made a corporation.—*Termes de la Ley.* Henry VIII., as is well known, dissolved the monasteries. See *Du Cange*, and *Carpenter's Supp.*

Abbot of Misrule, the master of the revels who directed the diversions, called in Scotland the *abbot of unreason.*

Abbrevatio Placitorum is an abstract of ancient pleadings prior to the year-books. See it cited in *Stephens on Pleading*, App. p. xvii.

Abbreviate of adjudication, an abstract of adjudication.—*Scotch Law.*

Adjudication is that diligence of the law by which the heritage of a debtor is adjudged to belong to his creditor in payment of a debt; and the abbreviate of the adjudication is an abridgment of the record, containing the names of the creditor, debtor and lands, with the amount of the debt; it is signed by the Judge who pronounced the decree in the process of adjudication, and must be recorded in the register of abbreviates.—*Ib.*

Abbreviation, an abridging or contraction. The 4 Geo. II. c. 26, provided that all law proceedings should be in the English language, written legibly, and in words at length, and not abbreviated; but the 6 Geo. II. c. 14, permitted numbers to be expressed in figures, and such abbreviations as are commonly used. In 9 Co. 48, is this maxim, *Abbreviationum, ille numerus et sensus accipiendus est, ut concessio non sit inanis.* (In abbreviations, such number and sense is to be taken, that the grant be not made void.)

Abbreviators, officers who assist in drawing up the Pope's briefs, and reducing petitions into proper form, for their conversion into Papal Bulls.

Abbreviature, a short draft.

Abbroch, to monopolise goods or forestall a market.

Abbrochment, or **Abroachment** [fr. *ab*, Lat., and *broche*, Fr., a spit.] The forestalling of a market or fair.—*MS. Antiq.* Forestalling is abolished by 7 & 8 Vict. c. 24, by which Act are repealed many statutes in restraint of trade. This act extends to Scotland and Ireland.

Abbuttals, or **Abuttals** [fr. *abutter* or *aboutir*, Fr., to limit or bound; or perhaps fr. to *butt* or strike.—*Wedgw.*] The buttings and boundings of land, east, west, north, and south, with respect to the places by which they are limited and bounded. The *sides* of the land are properly said to be *adjoining* to, and the *ends abutting* on, the land contiguous.—*Termes de la Ley.* The 2 & 3 Wm. IV. c. 64, settled the divisions of counties and the limits of cities and boroughs within England and Wales. The Enclosure Acts empower commissioners to settle boundaries of parishes and manors, hamlets and districts between lands to be enclosed, and adjoining lands. See *Reg. Gen. H. T.* 1853, s. 18.

Abdicant, giving up, renouncing.

Abdicate [fr. *abdico*, Lat.], to renounce or refuse anything. *Termes de la Ley*; to disinherit in the civil law.

Abdication, where a magistrate or person in office voluntarily renounces or gives it up before the time of service has expired. It differs from resignation, in that *abdication* is done purely and simply, whereas *resignation* is in favour of some other person. It is said to be a renunciation, quitting, and relinquishing, so as to have nothing further to do with a thing, or the doing of such actions as are inconsistent with the holding of it.—*Chamb. Dict.* On King James II.'s leaving this kingdom, and *abdicating* the crown, the Lords would have had the word '*desertion*' made use of, but the Commons thought it was not comprehensive enough, for that the king might then have liberty of returning. The Scots called it a forefalture (*forfeiture*) of the crown, from the verb *forisfacio.* This was fully canvassed in the then *Parliamentary Debates.* Involuntary resignations are also termed abdications, as Napoleon's abdication at Fontainebleau.

Abditorium [fr. *abditus*, Lat.], an abditory or hiding-place to conceal and preserve goods, plate, or money, or a chest in which reliques are kept, as mentioned in the inventory of the church of York.—*Dugdale's Monasticon Anglicanum*, p. 173.

Abduction, the forcible or fraudulent taking away of women or children, especially girls. This criminal offence is of three kinds—viz. (1) Kidnapping; (2) Carrying away infant females under sixteen; and (3) Stealing heiresses.—*See these treated of under their respective heads*, and 24 & 25 Vict. c. 100, ss. 53, 54, 55. There may also be abduction of a *ward* or of a wife. See title GUARDIAN and WIFE; and see 3 *Bl. Com.* iii. 552.

In logic, a particular form of argument, by the Greeks called *ἀπαγωγή*, wherein the greater extreme is evidently contained in the medium, but the medium not so evidently in the less extreme as not to require some further medium or proof to make it appear.—*Encyc. Lond.*

Abearance, carriage or behaviour. A recognizance to be of good *abearance* means to be of good behaviour.—4 *Bl. Com.* 251, 256.

Abeched [fr. *abecher*, Fr.], to be satisfied. *Cowel.*

Aberemurder [fr. *abere*, apparent, notorious, and *mord*, murder, Sax.] Plain or downright murder as distinguished from the less heinous crime of manslaughter or chance medley. It was declared a capital offence, without fine or commutation, by the laws of Canute, c. 93, and of Henry I. c. 13.—*Spelm.*

Aberfraw [*aber-fraw*, Welsh, efflux of the Fraw]. The princely seat of Venedotia (North Wales) was situated where the brook Fraw flows into the sea. Here was erected the Supreme Court of Law for the administration of justice in that part of the Principality.—*Ancient Laws and Institutes of Wales.*

Abessed [fr. *abaisser*, Fr.], humbled, depressed, abased.—*Blount.*

Abet [fr. *abettare*, from *a* (*ad* vel *usque*), and *bedan* or *beteren*, to stir up or excite, Sax.; or *boutli*, Fr., *impello*, *excito*, Lat.], to maintain or patronise; to encourage or set on, the substantive *abetment* signifying the same.

Abettor, or **Abettator,** an instigator or setter on, one who promotes or procures a crime to be committed.—*Old Nat. Br.* 21. Treason is the only crime in which abettors are excluded by law, every one concerned being a principal. See ACCESSARY.

Abettors in misdemeanors are punishable as principal offenders. See 24 & 25 Vict. c. 94, s. 8; as also are abettors in offences punishable on summary conviction under the 'Larceny Act,' 24 & 25 Vict. c. 96, s. 99; and the 'Malicious Injuries to Property Act,' 24 & 25 Vict. c. 97, s. 63.

Abeyance, or **Abbayance** [fr. *abayer*, Fr., to expect, to look at anything with open mouth]. In expectation, remembrance, and contemplation of law.—*Cowel.* The word *abeyance* has been compared to what the civilians call *hereditas jacens*; for, as the civilians say lands and goods *jacent*, so the common lawyers say that things in a similar condition are in abeyance, as the logicians term it *in posse*, or in understanding. Thus in the case of a parson, who has an estate for life only, the fee simple of his glebe is in abeyance; and when the parsonage is void, the freehold, until a successor be appointed, is in abeyance.—1 *Steph. Bl.* 241: Abeyance *in gremio legis*, or *in nubibus*, means in consideration of law.—*Plowd. Rep.* 547. The strict interpretation of this word as to freehold interests has puzzled eminent lawyers, but is rather a matter of curiosity than practical importance.

Abgetoria, the alphabet.—*Matt. Westm.* The Irish call the alphabet *abghitten.*

Abib (green ears of corn or fresh fruits, sometimes called *Nisan*, a Babylonish name), the first sacred, and seventh civil, month of the Jewish year. It contained thirty days, and answers to part of our March and April. *Brown's Dict. of Bible; Jahn's Bib. Antiq.*

Abiding-by, where a deed or document is challenged as forged, the party founding on the deed or document must appear in Court and abide by it. This is done by his signing a declaration that he abides by the deed or document quarrelled or challenged, *sub periculo falsi*, which has the effect of pledging him to stand to the consequences of founding on a forged instrument. The abiding-by is usually qualified thus:—in the case of a bill of exchange, the holder states that it came fairly into his hands in the course of business, and he will abide by it under that protestation and qualification, and as in no shape accessory to the alleged forgery.—*Scotch Term.*

Abigeat, the crime of stealing cattle by droves or herds. It was severely punished, the delinquent being often condemned to the mines, banishment, or death. Also a miscarriage procured by art.—*Ash.*

Abigeus [fr. *abigo*, Lat.] a stealer of cattle, the same as abactor.—*Cowel; Civil Law.*

Ab initio [Lat.] (*from the beginning*). A person who abuses an authority given him by law becomes a trespasser *ab initio*, i. e. is liable as a trespasser from the beginning. See the *Six Carpenters' case*, 8 *Rep.* 146; 1 *Smith's L. C.* 128.

Abintestate, inheriting from a person who died without having made a will.

Ab irato [Lat.] (*by a man in anger*).—*Civil Law.*

Abishering, or **abishersing,** quit of amercements. It originally signified a forfeiture or amercement, and is more properly *mishering. mishersing*, or *miskering*, according to Spelman. It has since been termed a liberty or freedom, because, wherever this word is used in a grant or charter, the persons to whom the grant is made have the forfeitures and amercements of all others, and are themselves free from the

control of any within their fee.—*Rastal's Abr.*

Abjudicate, to give away or transfer by judgment.—*Obs.*

Abjuration [fr. *abjuro*, Lat.], a forswearing or renouncing by oath. In the old law it signified a sworn banishment, or an oath taken by a person claiming sanctuary, to forsake the realm for ever, now abolished by 21 Jac. I. c. 28. *The oath of abjuration* (introduced by 13 Wm. III. c. 16, and altered by 6 Geo. III. c. 53) was to be taken by every person entering upon any public office or trust. By this he renounced the Pretender, and recognised the right of Her Majesty, under the act of settlement, engaging to support her, and promising to disclose all treasons and traitorous conspiracies against her. *Stamford's Pl. C.* b. 2, c. 40. Another oath is now substituted for this by 21 & 22 Vict. c. 48. See QUAKERS and ROMAN CATHOLICS.

Abjure, to retract, to recant, or abnegate a position upon oath.

Abladium, cut corn.—*Old Records.*

Ablato-Bulgio, Bulness, or Bolness, in Cumberland.

Ablegate [fr. *ablego*, Lat.], to send abroad a person on some public business or embassy.

Ablegati, Papal ambassadors of the second rank, who are sent to a country where there is not a nuncio with a less extensive commission than that of a nuncio.

Ablocation, a letting out to hire for money.

Abnepos, the grandson of a grandson or granddaughter.

Abneptis, the granddaughter of a grandson or granddaughter.

Abo, a carcase of an animal killed by a wolf or other beast of prey.—*Ancient Laws and Inst. of Wales.*

Abode, habitation or place of residence; stay or continuance. In law it is used in different senses, to denote the place of a man's residence or business, temporary or permanent. For some purposes, in law a man may be deemed to have an 'abode' where he has a place of business, *even* although he *reside* elsewhere, or where he has a *temporary* residence, although his permanent residence is elsewhere, or even abroad. But 'abode' or residence are quite distinct from *domicil*, which means much more than even a place of permanent residence (see that word, *post*); whereas, it would seem that 'abode' does not even necessarily imply *that*. 'Abode' seems larger and looser in its import than the word 'residence,' which in strictness means the place where a man lives, i. e. where he sleeps or is at home.

Abolition [fr. *abolir*, Fr.; fr. *aboleo*, Lat.], to erase or annul], a destroying, effacing, or putting out of memory; also, the leave given by the Sovereign or judges to a criminal accuser to desist from further prosecution.—25 *H. VIII.* c. 21.

Abone [*Abonis*, Lat.], Avington or Aventon, in Gloucestershire.

Aborigines [fr. *ab*, from, and *origo*, Lat.], a name given to the original or first inhabitants of any country, but more particularly used for the ancient inhabitants of *Latium*, who lived there when Æneas and the Trojans arrived in Italy. It is frequently employed in the sense of *Autochthones*, i.*e.* people coeval with the land which they inherit.—*Clas. Dict.; Dion Halicar.; Livy; Aurelius Victor.*

Abortion [fr. *ab*, which in composition signifies defect, according to Martinius, and *orior*, Lat., to arise], a miscarriage, or the premature expulsion of the contents of the gravid uterus, before the term of gestation is completed.

Our law does not recognise the distinction adopted by medical commentators on the subject, who consider miscarriages during the first six months as abortions, and those during the last three as premature labours; but applies the term abortion to the throwing off of the fœtus at any period of the pregnancy. Medical science divides the causes which induce women to abort into (1) natural or habitual, and (2) violent or artificial. Natural or habitual, it sub-divides into predisposing and occasional or exciting; and violent or artificial into accidental, and premeditated or intentional. The law deals only with premeditated or intentional abortion, which is now more appropriately denominated fœticide.

To kill an infant in its mother's womb is not murder in legal contemplation; because to constitute this crime the individual slain must be a reasonable creature, in being, and under the queen's peace, at its perpetration. A child *en ventre sa mère*, and not actually born, does not fall within this predicament.

The 24 & 25 Vict. c. 100, s. 58, enacts, that 'every woman being with child who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever, with the like intent, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding three years.' By s. 59, 'Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any

instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.'

It is no excuse that the woman consented to, or even solicited, the perpetration of the offence; for this would be to set the law at naught, inasmuch as the crime is seldom attempted but with the woman's approval.

It should never be forgotten by those engaged in judicial investigations of this offence, that abortions from natural, habitual, and non-criminal causes are of frequent occurrence: so frequent, that medical experience indicates that one in three of all conceptions in London terminate in abortion.

Connected with this subject is this very serious question:—Is it, under any circumstances, morally and legally justifiable for a medical man to induce premature delivery? See *Guy's For. Med.* 117, and *Taylor's Med. Jurisp.* 518; *Greave's Crim. Acts*, 82, *et seq.*

Abortion [fr. *abortus*, Lat.], the fruit of an abortion incapable of life.

Above, higher in place; the superior court.

Above-cited or mentioned, quoted before. A figurative expression taken from the ancient manner of writing books on scrolls, where, whatever is cited or mentioned before in the same roll must be *above.*—*Encyc. Lond.*

Abrenunciation, absolute denial.—*Seldom used.*

Abrevicum, Berwick-upon-Tweed.

Abridge [fr. *abréger*, Fr., *abbreviare*, Lat.], to make shorter in words, but still retaining the sense and substance. Also the making a declaration or count shorter by substracting or severing some of the substance therefrom, e.g. a man is said to abridge his plaint in assize, and a woman her demand in action of dower, where any land is put into the plaint or demand which is not in the tenure of the defendant; for if the defendant plead, non-tenure, joint-tenancy, or the like, in abatement of the writ as to part of the lands, the plaintiff may leave out those lands, and pray that the tenant may answer to the rest.—*Brook.* tit. *Abridgement.*

Abridgement [fr. *abbreviamentum*, Lat], a large work contracted into a narrow compass; a summary, epitome, or compendium.

Abridgement of Damages, the right of the Court to reduce the damages in certain cases. Vide *Bro. Abr. Abridgement.*

Abridgements or Digests of the Law, of ancient authority. See 1 *Steph. Bl.* 53. The principal of these are *Brooke's, Fitzherbert's,* and *Rolle's and Comyns's Digest.* Besides these there are *Viner's and Bacon's Abridgements*, and *Harrison's and Chitty's Digests*, of later date.

Abrogate, to disannul or take away anything; to abrogate a law is to lay aside or repeal it.—*Cowel.* The maxim is *Leges posteriores priores contrarias abrogant.* 11 Co. 626. (Subsequent laws repeal prior contrary laws.)

Abrogation, stands opposed to *rogation*; it is distinguished from *derogation*, which implies the taking away only some part of a law; from *subrogation*, which denotes the adding a clause to it; from *obrogation*, which implies the limiting or restraining it; from *dispensation*, which only sets it aside in a particular instance; and from *antiquation*, which is the refusing to pass a law.—*Encyc. Lond.*

Abscond, to go out of the jurisdiction of the Courts, or to lie concealed in order to avoid any of their processes.

Absconding Debtor's Arrest Act, 1851. 14 & 15 Vict. c. 42.

Absconding Shareholder, Arrest of. See 20 & 21 Vict. c. 14, ss. 11, 12.

Absence, want of appearance. A decree is said to be in absence where the defender does not appear; every Scotchman within the kingdom is liable to be called in an action before the Court of Session, in which action decree may be given against the defender, although he do not appear. Even a foreigner, though not within the kingdom, provided he possess an estate in it, or goods, which have been attached for the purpose of founding jurisdiction, may be exposed to a decree in absence.—*Scotch Law.*

Absence, generally, is of a fivefold kind or species:—(1) A *necessary absence*, as in banished or transported persons; this is entirely necessary. (2) *Necessary and voluntary*, as upon the account of the commonwealth, or in the service of the church. (3) A *probable absence*, according to the civilians, as that of students on the score of study. (4) *Entirely voluntary*, on account of trade, merchandise, and the like. (5) *Absence cum dolo et culpâ*, as not appearing to a writ, *subpœna*, citation, &c., or to delay or defeat creditors, or avoiding arrest, either on civil or criminal process. *Ayliffe.*

Absence of Husband or Wife for Seven Years is, under certain circumstances, a defence in an indictment for bigamy. By 24 & 25 Vict. c. 100, s. 57, 'Any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years last past, and shall not have been known by such person to be living within that time,' is exempted from the penal consequences of bigamy.—*Greave's Crim. Law Consolid. Edn.* 1862, p. 82; *Roscoe's Crim. Law*, p. 650.

Absentee, a person who is away from his usual place of residence.

Absentees, or *des absentees*. A parliament so called was held at Dublin, 10th May, 8 Hen. VIII. It is mentioned in letters-patent dated 29 Hen. VIII.

Absentia ejus qui reipublicæ causâ abest, neque ei, neque alii damnosa esse debet.—(The absence of any person who is abroad in the service of the state ought to be detrimental neither to him nor to another.)

Absolve, to acquit of a crime, to pardon or set free from excommunication. See ASSOILE.

Absoluta sententia expositore non indiget, 2 *Inst.* 533.—(A positive decree is not in need of any interpreter.)

Absolute, complete, unconditional, not relative, as a rule—*absolute*, which can be forthwith enforced in contradistinction to a rule *nisi*, which is incomplete until cause be shown, or the opposite party make default in appearing. There are some rules which are absolute in the first instance.—2 *Arch. Pr.* 1184.

Absolute Covenant, an unlimited convention, including every person and thing

Absolute Law, the true and proper law of nature, for it is immutable in the abstract or in principle; in theory, but not in application. For very often the object, the reason, situation, and other circumstances, may vary its exercise and obligation.—1 *Steph. Bl.* s. 2.

Thus, *neminem lædere* is always a reasonable and natural duty in itself, universally true, the voice of nature, and founded upon the fairest principles. But a person can suppose himself in such a situation, where the voice of nature would direct the quite contrary; that is, if he be unjustly attacked; for there it would prescribe self-defence, which possibly may not be procured *sine læsione alterius*. Here the rule holds good *in thesi*, but not *in hypothesi*. The subject-matter becoming differently circumstanced, there is occasion for another rule of nature to come into the consideration. This is an exception, which confirms the general precept, not a contradiction, which defeats it. And it may be concluded that the everlasting principle *de neminem lædendo* still maintains its absolute verity; but in this particular case it must be interpreted or limited, *quoad hoc*, by a more important law of the same nature. Whence comes a rule of law—*quotiescunque duo præcepta juris concurrunt, et utrumque servari non potest, toties standum fortiori. Taylor's Civ. L.* 143.

Absolute Warrandice, absolute right, a warrant against all mankind.—*Scotch Phrase.*

Absolution, a dispensation; a remission of sins; an acquittal by sentence of law.—*Ayliffe.*

Absoniare, to shun or avoid, used by the English-Saxons in the oath of fealty.—*Somner.*

Absque hoc [Lat.] (*without this*). The technical words of exception made use of in a *special* traverse; as, the defendant pleads that such a thing was done at B., &c., *without this* (*absque hoc*), that it was done at, &c. 1 *Saund.* 22; abolished *C. L. P. Act*, 1852, s. 65.

Absque impetitione vasti [Lat.] (*without impeachment of waste*). A reservation frequently made to a tenant for life, that no man shall *impetere* or sue him for waste committed. This reservation only excuses from *permissive* waste, but is never extended to allow malicious waste to the very destruction of the estate itself.—2 *Ch. C.* 32.

Absque tali causa [Lat.] (*without such cause*): formal words in the now obsolete replication *de injuriâ.—Stephens on Plead.*, 191.

Abstention, keeping an heir from possession; also, the tacit renunciation of a succession by an heir.—*French Law.*

Abstinence, a forbearing from the unlawful taking of another's goods.

Abstract [fr. *abstrahere*, *abstractus*; fr. *trahere*, Lat., to draw], an abridgement or epitome; also a purloining.

Abstract of title, an epitome of the evidences of ownership.

Such an abstract should show the soundness of a person's right to a given estate, together with any charges or circumstances in anywise affecting it. A perfect abstract discloses that the owner has both the legal and equitable estates at his own disposal perfectly unincumbered.

Upon a sale or mortgage, the solicitor of the owner usually prepares the abstract at his client's expense (except on sales to a railway company, when it must be borne by the company, unless it be stipulated otherwise, 7 & 8 Vict. c. 18, s. 22), and delivers it to the solicitor of the proposed purchaser or mortgagee, who compares it with the original title-deeds, and makes requisitions (when necessary) in order to ascertain any important but undisclosed facts, to remedy any defects, or to dissipate any doubts or ambiguities. He then should lay all the papers before counsel, for his opinion as to the safety of the title, and the propriety of his client's embarking his capital in the transaction.

Should the abstract be long and voluminous, a list of the dates and nature of the deeds and muniments, chronologically arranged, with references to the pages of the abstract in which they are to be found, facilitates perusal.

The object of every abstract is to enable the purchaser or mortgagee, or his counsel, to judge of the evidence deducing, and of the incumbrances affecting, the title.

Every title involves the question of legal and equitable ownership; for as it is in vain that

there is a good title at law, if that title be bad or defective in equity, so it is not sufficient that there is a good title to the legal estate or to the equitable estate if it be incumbered with judgments, legacies, debts to the crown, or other charges, because in proportion to the extent of such incumbrances there must be a reduction in the actual value of the vendor's interest.

Every abstract, then, should describe whatever will tend to enable a purchaser or mortgagee, or his counsel, to form an opinion of the precise state of the title at law and in equity, together with all chances of eviction or even of adverse claims.

All these points should therefore be kept in mind in preparing the abstract of title, and also in comparing the same with the original documents or muniments of the title.

An abstract showing a clear and good root of title for sixty years to a freehold estate is sufficient, although the owner have title-deeds relating to a much earlier period; while these, however, need not be abstracted, yet the purchaser or mortgagee has a right to inspect them, in order to see that they do not disclose any defects, or lead to any dangerous consequences, and a vendor would not be justified in withholding them.

A simple abstract relating to one estate only should set forth chronologically a clear statement of the material parts of the deeds, wills, writings, records, and private acts of parliament, which at all affect or concern the title to be deduced, together with such matters *in pais*, as births, majorities, marriages, deaths, survivorships, pedigrees, descents, and successions, as connect the several transactions, or in anywise vary the title; and these facts should be authenticated by such legal evidence as would be deemed satisfactory and conclusive in an action to try the title. Judgments, crown-debts, charges, and incumbrances, should be fairly and unreservedly stated.

But a complex or compound abstract is not susceptible of a chronological arrangement; as when the title relates to different parcels of land or different interests, or the property belongs to joint tenants, tenants in common, or coparceners, who have entered into a partition, and there is a different title to their shares; it would then be better to arrange the documents relating to one portion under a distinct heading, so as to keep the title to each part in a connected series, and sometimes separate abstracts, for the different titles would simplify the business and avoid an embarrassing confusion, especially if the several properties be distinct, or the title is compounded of both freehold and copyhold estates. Should the distinct titles to the several parts of the property afterwards become united, then there should be a deduction of the title to each part separately up to the point of junction.

As soon as practicable, after the abstract of title is delivered to the vendee's solicitor, he should himself diligently compare it with the original documents, since he is answerable for the consequences of any negligence. For this purpose they are usually produced at the chambers of the vendor's solicitor, or at the vendor's residence. If they are in town, the solicitor's agent should be instructed to undertake the comparison; but if they are in a distant part of the country, then the journey of the vendee's solicitor occasioned thereby will be at the vendor's expense if there be no stipulation to the contrary.

Should the title-deeds be lost by fire or otherwise after their examination by the purchaser's solicitor, but before the title has been accepted, the vendor must prove the contents of the deeds and documents and their due execution.

Should the vendor have a covenant for the production of the title-deeds, he himself must obtain them for the vendee's inspection, since the holder might legally refuse to produce them to the vendee or his solicitor.

The points to which the attention of the solicitor should be most particularly directed in comparing the muniments with the abstract are the stamps upon the deeds, the dates of the different assurances (he should not depend upon the indorsement for this purpose); the names and additions of the parties, and the characters in which they respectively act, as whether trustee, executor, or heir-at-law; that no important recitals are omitted, and that those that are abstracted are faithfully given. The receipt-clause should be attended to, to see that there is no unusual or special matter contained in it relative to the purchase-money, which may affect the purchaser. The amount of the consideration, the names of the grantors and grantees, and particularly the identity of the parcels, and that there are no exceptions therein. The words of the different limitations of uses and trusts must be cautiously made to agree, and any deficiency therein must be supplied by the necessary alteration in the abstract; the covenants for quiet enjoyment and freedom from incumbrances should be scrutinised, for if there be any collateral right of enjoyment or lurking incumbrance, it will most probably make its appearance there, so all burdensome covenants in leases must be looked into. The interest which tenants in possession have in the lands must also be enquired after, for the purchaser will be bound thereby; but in nothing is caution more necessary than in attending to the execution and attestation of the different deeds, to see that they are executed by all the parties, or that

the abstract notices those who have not done so; and when the execution and attestation are under a power which directs a particular mode of execution, there is still greater necessity to be satisfied that the precise terms of the power have been complied with; and, in the case of wills, that the law requiring two witnesses has been observed, and that the attestation expresses that the testator signed in their presence; that the receipt for the consideration money is endorsed on the deed and witnessed. It is generally witnessed by the same party who attests the execution of the deed. And, lastly, where the deed has been enrolled or registered, or livery of seisin has been requisite, the indorsement of these different acts upon the deed should be noticed.

Whenever the deeds are in the possession of third parties, they should be informed of the negotiation to purchase the estate to which they relate, and an inquiry should be made of them respecting their particular interests therein. Such an inquiry should also be made of tenants or persons in possession, when the leases under which they hold cannot be inspected. If the property be vested in trustees, inquiries should be made of them as to any incumbrances, and they should have notice of the intended purchase, in order to exclude a subsequent purchaser or incumbrancer, since priority of notice gives priority of equity.

Of coarse those persons to whom these questions are put will be bound by their answers; but an incumbrancer need not satisfy any inquiry relative to his security in the absence of an offer to satisfy him his claim. See TITLE.

Absurdum est affirmare (*re judicatâ*) *credendum esse non judici*, 12 *Co.* 25.—(It is absurd after judgment to assert that the judge is not trustworthy.)

Abundans cautela non nocet, 11 *Co.* 6. (Extreme care does no mischief.)

Abuse, a thing established by usage, though contrary to rule or good order.

Abuse of authority. Vide AB INITIO.

Abuse of distress, using an animal or chattel distrained, which makes the distrainer liable as for a conversion.

Abusing children, having carnal intercourse with young girls with their consent. If the girl be under the age of ten years, the offence is a felony, punishable with penal servitude for life, or not less than three years, or imprisonment (with or without hard labour) for not more than two years; if the girl be above the age of ten and under twelve, the offence is a misdemeanor, punishable by penal servitude for three years, or imprisonment, with or without hard labour, to the extent of two years. An attempt to have carnal intercourse with a girl under twelve years, even with her consent, is an offence punishable by a like imprisonment. See 24 & 25 Vict. c. 100, ss. 50, 51, 52. See RAVISHMENT.

Abut [fr. *aboutir*, Fr., to touch at the end], to border upon or approach.—*Encyc. Lond.*

Abuttals. See ABBUTTALS.

Accapitare, to pay relief to lords of manors. *Capitali domino accapitare*, i. e. to pay a relief, homage, or obedience to the chief lord on becoming his vassal.—*Fleta*, l. 2, c. 50.

Accapitum, money paid by a vassal upon his admission to a feud; the relief due to the chief lord.—*Encyc. Lond.*

Accedas ad curiam [Lat.] (*that you go to the Court.*) An original writ to the sheriff, issued out of Chancery, where a man has received false judgment in a Hundred Court or Court Baron, or justice has been delayed. If a plaint in replevin be therein levied, it is removed by this writ, which is in every respect the same as the *recordari facias loquelam*, excepting that it directs the sheriff to go to the Lord's Court, and there cause the plaint to be recorded, and so to return it to the Court above, being one of the Superior Courts of Common Law at Westminster.—*F.N.B.* 71 *D.*

Accedas ad vicecomitem [Lat.] (*that you go to the sheriff.*) Where the sheriff has a writ called *pone* delivered to him, but suppresses it, this writ is sent to the coroner, commanding him to deliver a writ to the sheriff.—*Reg. Orig.* 83.

Acceleration, the shortening of the time for the vesting in possession of an expectant interest.

Acceptance, the taking and receiving of anything in good part, and as it were a tacit agreement to a preceding act, which might have been defeated or avoided if such acceptance had not been made.—*Blount Bro. Abr.*

Acceptance, in commercial language, an engagement to pay a bill of exchange according to the tenor of such acceptance, which may be either absolute or conditional. In the case of English and Irish bills of exchange, the acceptance might have been in writing on the bill, but Scotch and foreign bills of exchange might have been accepted verbally, or by letter or other collateral memorandum, 1 & 2 Geo. IV. c. 78. But by 19 & 20 Vict. c. 97, s. 6, no acceptance of any bill of exchange, whether inland or foreign, made after the 31st day of December, 1856, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or, if there be more than one part of such bill, on one of the said parts, and signed by the acceptor, or some person duly authorised by him. An absolute acceptance is either general or qualified, and is usually written across the face of the bill of exchange

thus, 'Accepted, payable at Messrs. ——, Bankers, London;' if it is to be qualified, the words 'and not otherwise or elsewhere' are added, and then follows the signature of the person accepting. If the acceptance be qualified, non-presentation of the bill of exchange at the specified place, and in proper time, would exonerate the person who accepted it, and all the other parties, but the person who accepted it would not be so exonerated if the acceptance were general. It may be conditional, as 'It will not be accepted until the ship with the wheat arrives,' or 'cannot accept till stores are paid for,' these are undertakings to accept when the ship with the wheat arrives, or the stores are paid for. *Acceptance supra protest for honour* (called in France, *acceptation par intervention*), is sometimes resorted to in the case of foreign bills of exchange; where the person upon whom the bill is drawn cannot be found or refuses to accept, some friend after the bill has been protested for non-acceptance accepts thus, 'Accepted, supra protest, for the honour of Messrs. —— A. B.' The bill must still be presented to the person on whom it was originally drawn, and after refusal and protest for non-payment, resort must be had to the person accepting for honour.—6 & 7 *Wm. IV.* c. 58. Consult *Story*, *Chitty*, *Byles* or *Bayley on Bills of Exchange*. See AU BESOIN.

Acceptilatio, the verbal extinction of a verbal contract, with a declaration that the debt has been paid when it has not, or the acceptance of something merely imaginary in satisfaction of a verbal contract.—*Scotch Law; Smith's Dict. of Antiq.; Sand. Just.* 493. See STIPULATION.

Acceptor, or **Accepter**, a person who accepts a bill of exchange drawn upon him; he is called a *drawee* before acceptance; he is the first and principal party liable to pay the amount of the bill.

Access, approach, or the means of approaching.

Accessary, or **Accessory** [*particeps criminis quasi accedens ad culpam*, Lat., as though assenting to the offence]. He who is not a chief actor in a felony, nor present at its perpetration, but yet is in some way concerned therein, either before or after the fact committed. An accessary *before* the fact is one, who being absent at the time of the commission of the felony, yet procures, counsels, or commands another to commit a crime. Absence is necessary to make him an accessary, for if he be present, he becomes a principal. An accessary *after* the fact may be, where a person knowing a felony to have been committed, receives, relieves, comforts or assists the felon. To make an accessary *ex post facto*, it is in the first place requisite that he knows that the felony has been committed; in the next place, he must receive, relieve, comfort, or assist the felon, and generally, any assistance whatever given to hinder the apprehension, trial, or punishment of the felon, makes the assister an accessary. In treason, and misdemeanours, there are no accessaries, either before or after the offence, every person implicated being a principal. In manslaughter there cannot be an accessary *before* the fact, for it is by judgment of law an unpremeditated offence. As to the trial and punishment of accessaries:—By 24 & 25 Vict. c. 94, the 'Accessories and Abettors' Act, ss. 1, 2, 3, an accessory before the fact to any felony may be indicted, tried, convicted, and punished in all respects as if he were a principal felon, and any accessory, either before or after the fact, may be indicted and convicted either as such accessory, together with the principal felon, or after his conviction, or may be indicted and convicted of a substantive felony, whether the principal felon shall have been convicted or not, or shall or shall not be amenable to justice, and may thereupon be punished as an accessory before or after the fact (if convicted as an accessory), may respectively be punished. An accessory after the fact is in general punishable with imprisonment for any term not exceeding two years (with or without hard labour), and may also be required to find security to keep the peace, or in default to suffer an additional imprisonment to the extent of one year. 24 & 25 Vict. c. 94, s. 4.; but an accessory after the fact to murder is punishable by penal servitude for life, or not less than three years, or by imprisonment (with or without hard labour) to the extent of two years. (24 & 25 Vict. c. 100, s. 97.) See also *Greave's Criminal Law*; *Roscoe's Digest of the Law of Evidence in Criminal Cases*.

Accession [fr. *accedo*, Lat.], addition, arriving at, the commencement of a sovereign's reign. Also the absolute or conditional acceptance by a nation of a treaty already concluded between other countries.

Accession, *property by*. The doctrine of property arising from *accession* is grounded on the right of occupancy, and derived from the Roman law; thus, if any given corporeal substance receive an accession, either by natural or artificial means, as by the growth of vegetables, the pregnancy of animals, the embroidering of cloth, or the conversion of wood or metal into utensils, the original owner of the thing was entitled by his right of possession to the property of it under its improved state; but if the thing itself, by such operation, was changed into a different species, as by making wine, oil, or bread out of another's grapes, olives, or wheat, it belonged to the new ope-

rator, who only made a satisfaction to the former proprietor for the materials so converted. The brood of tame and domestic animals belongs to the owner of the dam or mother, the English law agreeing with the civil, that *partus sequitur ventrem* (the offspring follows the mother); and in accordance with the Roman law principle, *si equam meam equus tuus prægnantem fecerit non est tuum sed meum quod natum est* (if your horse get my mare with foal, the foal is not your property, but mine). But this maxim is for the most part disallowed in the human species.—*Bracton*, l. 2, c. 2, s. 3; *Puff. De Jur. Nat. et G.* l. 4, c. 7. The rule of the Roman law was expressed thus: *Accessio cedit principali.* Commentators have used the word *accessio* not only for the increase itself, but also for the mode in which the increase becomes one's property. *Sand. Justin.* 185; *Dig.* 34, l. 2, c. 19, s. 13.

Accessorium non ducit, sed sequitur suum principale, Co. Litt. 152.—(That which is accessary does not lead but follows its principal.)

Accessorius sequitur naturam sui principalis, 3 *Inst.* 139.—(An accessary follows the nature of his principal.)

Accessory to Adultery, a phrase used in the law of divorce, and derived from the criminal law. It implies more than connivance, which is merely knowledge with consent. A conniver abstains from interference, an accessory directly commands, advises, or procures the adultery. (*Macqueen on the Law of Divorce*, p. 78.) A husband or wife who has been accessory to the adultery of the other party to the marriage, cannot obtain a divorce on the ground of such adultery.—20 & 21 *Vict.* c. 85, ss. 29 & 31.

Accident, an extraordinary incident; something not expected. It is also a head of Equitable jurisdiction, concurrent with that of the Courts of Law.

The meaning to be attached to the word 'accident,' in relation to equitable relief, is any unforeseen and undesigned event, productive of disadvantage. Against such an accident, Equity will relieve, should the Common Law remedy be inadequate, and the suitor be entitled to redress.

It is material to remark, that Courts of Law now entertain cases of accident, which in times past they would not have recognised; and that new statutes are constantly conferring upon them remedial equitable powers. Now it is a fundamental rule, that if originally the jurisdiction have properly attached to Equity, on account of the defective remedy at Law, such jurisdiction is not ousted by reason of the Courts of Law affording relief, which they formerly withheld, since that would be to place the powers of the Court of Chancery at the caprice of the Common Law tribunals. 'Upon what principle,' observed Lord Eldon (*Kemp v. Pryor*, 7 Ves. 249, 1802), 'can it be said the ancient jurisdiction of this Court is destroyed because Courts of Law now, very properly, perhaps, exercise that jurisdiction which they did not exercise forty years ago? Demands have been frequently recovered in Equity, which now would be without difficulty recovered at Law. I cannot hold that the jurisdiction is gone merely because the Courts of Law have exercised an Equitable jurisdiction, more especially in the action for money had and received.' The inquiry then to be made as to the adequacy of the legal remedy is, whether the Common Law would have granted suitable relief originally, for it may have acquired subsequently a concurrent, but certainly not an exclusive, remedial authority.

To illustrate this position, take the case of a lost bond or a negotiable security. Equity still retains, upon an affidavit of the loss, the jurisdiction of enforcing a compulsive discovery and payment, besides decreeing an indemnity, protecting the defendant from being liable to any after-demand in respect of such lost instrument, although *profert* of a bond or other deed has been abolished at Common Law (15 & 16 Vict. c. 76, s. 55), which will now give adequate relief if a proper bond of indemnity be offered; and although the Common Law Procedure Act, 1854 (s. 87), enacts that in case of any action founded upon a bill of exchange or other negotiable instrument, it shall be lawful for the Court or a Judge to order that the loss of such instrument shall not be set up, provided that an indemnity is given to the satisfaction of the Court or a Judge, or a Master, against the claims of any other person upon such negotiable instrument.

Where title-deeds are lost, the defect occasioned by such an accident will be supplied; thus a mortgage-deed being stolen, the mortgagor or purchaser of the property will be compelled to pay the loan or consideration-money upon the mortgagee's reconveyance, and indemnity against such loss. If, after a contract for sale of an estate, and before the title is accepted, the title-deeds are destroyed by fire, Equity will compel the specific performance of the contract, provided the vendor can furnish the purchaser with the means of showing what were the contents of the destroyed deeds, and of proving that such deeds were duly executed and delivered.

A purchaser being deemed the equitable owner of the purchased estate from the signing of the contract for sale, he will be compelled to complete the purchase, although the property be destroyed during the negotiation; but a bidder at a sale under the authority of the Court of Chancery not being deemed the purchaser until the certificate that he is the highest

bidder has been confirmed, he is not liable to any loss by fire or otherwise which may happen to the property in the meantime; he would however have to pay the purchase-money if the estate were merely a life-interest, and the *cestui que vie* should die immediately after the acceptance of his bid.

It is upon the principle of relieving against the prejudicial consequences of accident by loss of deeds, that grants are often presumed: thus the payment of rent for twenty years raises the presumption that there has been a grant; the enclosure of a common for thirty years raises the presumption that the enclosure was properly made; and when a person has been in possession of property for a great length of time without interruption, Equity will not allow such possession to be disturbed.

A commission will be granted to ascertain the boundaries of estates, or to distinguish copyhold from freehold property in cases of confusion or accident requiring the Court's assistance and in the absence of adverse title; but a commission will not be granted to ascertain the boundaries of manors or parishes.

Although it is a delicate function to restrain the exercise of a legal right, yet Equity relieves against penalties and forfeitures on the ground of accident, provided an adequate compensation can be given, or the thing can be done afterwards without damaging the interests of other parties. Thus, in the case of a bond for the payment of money at a given time under a penalty, if the money is not paid, Equity will relieve against the penalty on the ground that it would be unjust for the obligee to avail himself of the penalty when an offer of full indemnity, by the payment of the sum due with interest, is offered Where an estate is sold by auction, and there is a condition that the deposit shall be forfeited on the non-completion of the contract by a certain day, Equity invariably relieves against the lapse of time. The Court also allows a redemption of a mortgage (although the estate is forfeited at Law), because the contract is simply a security, and time is not of its essence; therefore to insist upon taking the land for the money would be unconscionable. Again, in the administration of assets, if an executor or administrator pay the legacies and certain debts, upon the reliance of the sufficiency of the assets, and it afterwards turns out that from subsequently discovered liabilities or unforeseen occurrences the assets become insufficient, Equity will relieve, provided the executor or administrator have acted faithfully and cautiously, and this on the ground that otherwise he would be innocently subjected to an unjust loss arising from pure accident. If the master of an apprentice die before the term has expired, a return of part of the *premium* will be ordered, on account of the failure of the contract from accident. If a penalty be inserted in a bond or instrument to secure the enjoyment of a given thing, this is deemed the main intent, and the penalty is treated as accessional and as a mere security and collateral guard for the damage really incurred; if then the penalty be sued for at Law, Equity will stay the proceedings and direct an issue *quantum damnificatus*, in order to ascertain the actual damage sustained. If instead of a penalty specific compensation is provided for the breach of a contract, then Equity will not interfere; for the specific compensation is not a penalty, but a liquidated, stipulated, or ascertained damage. Where the condition of a bond or deed is to pay a higher rate of interest, if it be not satisfied by a given day, it is in the nature of a penalty, and will be relieved against. Equity relieves against forfeitures incurred by permissive, but not wilful, waste, though the latter may admit of compensation; but forfeitures under the provisions of an Act of Parliament, or conditions in Law which do not admit of compensation, or forfeitures which may be considered as limitations of an estate, and which determine it when they happen, cannot be relieved against.

The construction of covenants must be the same in Equity as at Law, that is to say, every covenant is to be expounded with regard to its context; the exposition must be *ex antecedentibus et consequentibus* and according to the reasonable sense and construction of the words; but their performance materially differs at Law and in Equity; for in the former Courts they must be strictly and literally performed; but in the latter substantially, according to the true and practical intent of the covenanters; and if, by unavoidable accident, fraud or ignorance not wilful, a literal execution be prevented, Equity will relieve upon compensation.

Though Equity will relieve against the consequences of a breach of covenant by the non-payment of rent, yet it will not assist a tenant who has assigned without the stipulated license, or protect him from the payment of rent, or obligation to repair, if the demised premises have been burned down, for he ought to have secured himself from such a catastrophe by a special stipulation.

By 22 & 23 Vict. c. 35, a Court of Equity shall have power to relieve against a forfeiture for breach of covenant or condition to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach has, in the opinion of the Court, been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the Court in conformity with

the covenant to insure, upon such terms as to the Court may seem fit.—(s. 4.)

The Court, where relief shall be granted, shall direct a record of such relief having been granted to be made by indorsement on the lease or otherwise.—(s. 5.)

The Court shall not have power under this Act to relieve the same person more than once in respect of the same covenant or condition; nor shall it have power to grant any relief under this Act where a forfeiture under the covenant in respect of which relief is sought shall have been already waived out of Court in favour of the person seeking the relief. (s. 6.)

The preceding provisions shall be applicable to leases for a term of years absolute, or determinable on a life or lives or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons. (s. 9.)

'Upon the general result of the authorities,' writes Maddock (1 Prin. and Prac. Chan. 51), 'the rule perhaps may be stated thus:—that in all cases of breach of covenant, except by non-payment of rent, Equity will only give relief, provided the omission and consequent forfeiture are the effect of inevitable accident, and the injury or inconvenience occasioned thereby is capable of complete compensation; but that, wherever the transgression is wilful, or the compensation impracticable, Equity will refuse to interfere.' A further qualification of this proposition must of course be admitted wherever the forfeiture can be shown to have arisen from the misconduct, or to have been waived by the *laches* or subsequent dealings of the party who seeks to take advantage of it.

A condition precedent (i.e. one to be performed before an estate or interest can vest) must be, as a general rule, literally fulfilled, for Equity cannot relieve so as to give an estate which never vested; but in the case of a condition subsequent (i.e. one upon the breach or performance of which the continuance of an estate depends) it will prevent the devesting of an estate, if a proper compensation can be made.

'Upon a general survey of the grounds of equitable jurisdiction in cases of accident,' observes Story (Eq. Jur. c. 4, *ad fin.*), 'it will be found that they resolve themselves into the following results:—that the party seeking relief has a clear right, which cannot otherwise be enforced in a suitable manner; or that he will be subjected to an unjustifiable loss, without any blame or misconduct on his own part; or that he has a superior equity to the party from whom he seeks the relief.'

Courts of Common Law have also now jurisdiction to relieve in certain cases against 'accident,' for by the Common Law Procedure Act, 1854, 17 & 18 Vict. c. 125, s. 83, 'it shall be lawful for the defendant or plaintiff in replevin in any cause in any of the superior courts in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence; and the said courts are hereby empowered to receive such defence by way of plea,' &c.; and by s. 85, a plaintiff may reply facts which avoid such plea on equitable grounds. Under these sections it has been held that a plea on equitable grounds can only be sustained in cases where a Court of Equity would have granted unconditional relief, and that where a Court of Equity would only grant relief on imposing certain terms, a Court of Common Law—as it has no power to make decrees imposing terms—will not interfere. See *Day's C. L. Proced. Acts*, p. 241.

Moreover, by the Common Law Procedure Act, 1860, 23 & 24 Vict. c. 126, s. 1, in the case of any ejectment for a forfeiture brought for non-payment of rent, the Court or a Judge shall have power upon rule or summons to give relief in a summary manner, but subject to appeal as hereinafter mentioned, at, to, and within the like time after execution, executed and subject to the same terms and conditions in all respects as to payment of rent, costs, and otherwise, as in the Court of Chancery; and if the lessee, his executors, administrators, or assigns shall, upon such proceeding, be relieved, he and they shall hold the demised lands according to the lease thereof made without any new lease. By s. 2, in the case of an ejectment for a forfeiture for breach of a covenant to insure against loss or damage by fire, the Court or a Judge shall have power upon rule or summons to give relief in a summary manner, but subject to such appeal as hereinafter mentioned in all cases in which such relief may now be obtained in the Court of Chancery under the provisions of 22 & 23 Vict. c. 35 (above set out), and upon such terms as would be imposed in such Court.

By s. 4, an order of a Judge is subject to an appeal to the Court.

Accidental Fire. By 14 Geo. III. c. 78, s. 86, no action shall be prosecuted against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire shall *accidentally* begin; but nothing therein contained shall defeat any contract or agreement made between landlord and tenant. The statute will not protect tenants from the consequences of fires caused by their negligence. *Woodf. Land. and Ten. by Horn*, 462; 4 *Step. Com.* 173.

Accite, to summon.—*Obs.*

Accola, a husbandman who comes from some other country to till the land, and is thus

distinguished from *incola*, viz. accola *non propriam, propriam colit* incola *terram* (Accola is one who does not till his own land, Incola one who does).—*Du Fresne.*

Accolade [fr. *accoler*, Fr., *collum amplecti*, Lat.], a ceremony anciently used in knighthood, by the king putting his hand upon the knight's neck.—*Cowel.* Greg. de Tours writes, that the kings of France, in conferring the gilt shoulder-belt, kissed the knight on the left cheek. The *accollé*, or blow, John of Salisbury assures us, was in use among the Normans; by this William the Conqueror conferred the honour of knighthood upon his son Henry. It was first given with the naked fist, but afterwards with the flat of a sword.

Accomenda, a contract whereby a person entrusts property to the master of a vessel, to be sold for their joint profit.—*Italy, mar. law.*

Accommodation, a friendly agreement; an amicable composition between persons at variance. *An accommodation Bill of Exchange* is where one person accepts a bill for another, there being no consideration between them, for the purpose of raising money upon it for the present necessity of one or both of them. Lord Eldon thus observed upon this subject: 'The pernicious effects of a fabricated credit, by the undue use of such instruments, drawn out of the ordinary course of trade, have been too much felt to require any observation: the use of them where there is no real demand subsisting between the different parties is injurious to the public as well as to the parties concerned in the negotiation' (*Ex parte Wilson*, 11 Ves. 411). Unless, perhaps, in cases where, from some sudden and unexpected event, a particular branch of commerce may be affected, or the trader unable to bring his commodities to a fair market in time to meet the payments for which he has to provide, then, by the temporary assistance of friends, through the medium of '*accommodation paper*' (to use the commercial phrase applicable to such transactions), his credit may be saved, and he may be enabled to hold his goods till some fair opportunity of sale presents itself.—*Chitty on Bills*, 204. See 2 *Mill's Pol. Econ.* 41–46.

Accommodation Lands, land bought by a builder or speculator, who erects houses thereon, and then leases portions thereof upon an improved ground-rent.—*Builder's Term.*

Accommodation Works, works which a railway company is required to make and maintain for the accommodation of the owners or occupiers of land adjoining the railway, e. g. gates, bridges, culverts, fences, &c., &c.—8 & 9 *Vict.* c. 20, s. 68.

Accomplice [fr. *complice*, Fr., *complex*, Lat., bound up with one in a project, but always in a bad sense], one concerned with another or others in the commission of a crime.—*Hawk. P. C.* 87.

Accord [fr. *accorder*, Fr., to agree], is an agreement between two persons, one of whom has a right of action against the other, that the latter should do or give, and the former accept, something in satisfaction of the right of action. When the agreement is executed, and satisfaction has been made, it is called *accord and satisfaction.* Accord and satisfaction bars the right of acting, accord without satisfaction does not. In the case of an ascertained debt, the acceptance of a smaller sum is no satisfaction, e. g. payment of £50 is no answer to an action for a debt of £100; though if anything other than money, e. g. a negotiable instrument for a smaller amount or a peppercorn, had been accepted in satisfaction, the action would have been barred. See 3 *Steph. Com.*, 433; 1 *Smith's L. C., 5th Ed.*, 288; *Bullen's Precedents of Pleadings*, p. 281 n.

Accouchment, the giving birth to a child.

Account, or **Accompt** [fr. *compte*, Fr., *computo*, Lat.], a registry of debts, credits, and charges, or a detailed statement of a series of receipts (credits) and disbursements (debits) of money, which have taken place between two or more persons. Accounts are either—(1) open, where the balance is not struck, or it is not accepted by all the parties; (2) stated, where it has been expressly or impliedly acknowledged to be correct by all the parties; and (3) settled, where it has been accepted and discharged.

There is at the Common Law a very ancient, but now obsolete, action of account, to compel parties to render a true statement of monetary transactions that have arisen between them; but in consequence of the inconvenience and expense of passing accounts before arbitrators or auditors, to whom the Court of Law delegates its jurisdiction, and who are merely appointed *pro hâc vice* in such an action, and the superior advantages afforded by a Court of Equity, not only from the great and accurate knowledge of the intricacies of accounts possessed by its officers, consequent upon their extensive practice in such matters, but also from its more efficacious power to purge the defendant upon oath as to the truth of his representations and other advantages, suitors now invariably resort to the Equity Courts for relief in most dealings involving accounts. And Equity has extended its remedy to many cases of implied and constructive trusts, as well as to matters of fraudulent contrivance and tortious misconduct, which the action at Common Law could never have reached. See as to the action of Account, *Steph. Com.*, vol. 2, 103 n., and vol. 3, 548.

Equity entertains suits for accounts when they are mutual, i.e. where there exists a series of expenditures on one side, and of payments on the other, and not merely one payment and one receipt, and also where the account is on one side only, but is of so complicated and intricate a nature that it cannot be satisfactorily disposed of at law, and a discovery is wanted which is material to the right of relief. But for a mere matter of set-off at law a suit in Equity will not be the remedy.

The usual cases of accounts arising from contracts or *quasi* contracts, which are investigated in Equity, are the following:—Agency, Apportionment, General Average and Contribution, Waste, and Winding-up of Companies.

In suits for accounts, both parties are deemed plaintiffs (*actores*) when the cause is before the Court upon its merits; a defendant may, therefore, have an order for a *ne exeat regno* even against a co-defendant, and if a balance is ultimately found for the defendant, he is entitled to a decree against the plaintiff for its amount, since it is implied, if not expressed in the decree to account, that the balance shall be paid to the party entitled thereto. If the plaintiff die after an interlocutory decree to account, the defendant can revive the suit against his personal representatives, and if the defendant die, his personal representatives can revive the suit against those of the plaintiff. If the legal right be doubtful, an issue at law is directed; and if the right be there sustained an account follows. After the Court has decreed an account, an action at law cannot be brought for the same cause, and the party persisting in bringing it would be attached.

The Statute of Limitations cannot be pleaded in bar to an open account, unless all accounts have ceased above six years. By 'The Mercantile Law Amendment Act, 1856,' 19 & 20 Vict. c. 97, s. 9, 'All actions of accounts or for not accounting, and suits for such accounts, as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued *within six years* after the cause of such actions or suits, or when such cause has already arisen, then within six years after the passing of this act (29 July, 1856), and no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit.' In the case of a legal demand, Equity acts in obedience, and not merely by analogy, to the Statute of Limitations; but as to an equitable demand, Equity acts in analogy thereto or refuses to interfere after a considerable lapse of time.

These are the general principles which govern Equity in decreeing an account when such is the main object of the suit; but, it must be recollected, that in very many proceedings instituted for other kinds of redress, an account is frequently incident to the relief sought; and it may be laid down as a broad rule, that whenever the relationship of trustee and *cestui que trust* is established between the parties, the *cestui que trust* has always the right to an account from his trustee, since without it he would probably lose the full benefit and proper protection of his interests.—1 *Chit. Eq. Ind. by Mac.* 3–36; *Story, Eq. Jurisp.* By the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125, ss. 3 & 5), power is given to the Court or a Judge before or at the trial to refer to arbitration matters of mere account which cannot be conveniently tried in Court.

Account current, a running or open account between two or more persons or firms.

Account stated, a common count in a declaration upon a contract under which the plaintiff may prove an absolute acknowledgment of his claim by the defendant. It may be joined with any other count for a money demand, though it may not be intended to establish a distinct subject-matter of complaint in respect of each of such counts.

Accountable Receipt, a written acknowledgment of the receipt of money or goods to be accounted for by the receiver. It differs from an ordinary receipt, or acquittance, in this that the latter imports merely that money has been paid. See *Clark* v. *Newsam*, 1 *Excheq.* 131. By 24 & 25 Vict. c. 98, s. 23, the forgery of an accountable receipt, or any indorsement on, or assignment of, it, with intent to defraud, is a felony punishable by penal servitude for life, or not less than three years, or imprisonment not exceeding three years, with or without hard labour, and with or without solitary confinement. — *Greave's Criminal Law Acts*, 284; *Roscoe's Crim. Law*, 503, 504.

Accountant, or **Accomptant,** one whose business it is to compute, adjust, and range in due order accounts.

Accountant in Bankruptcy, an officer who has the control and management of the proceeds of bankrupts' estates. Upon the first vacancy the office is to be abolished, and its duties discharged by the Chief Registrar. See 12 & 13 Vict. c. 106, ss. 31–35, 55; and 24 & 25 Vict. c. 134, ss. 12, 67, 127, 181, 183.

Accountant-General, or **Accomptant-General,** an officer of the Court of Chancery, appointed by Act of Parliament to receive all money lodged in Court, and to place the same in the Bank of England for security. (12 Geo. I. c. 32; 1 Geo. IV. c. 35; 15 & 16 Vict. c. 87,

ss. 18–22, & 39. Smi. Ch. Pr. 18.) There is a similar officer in the Court of Chancery in Ireland.

Accouple, to marry.

Accredit, to give credit to. To accredit a diplomatic agent is to receive him in his public character and give him credit and rank accordingly.

Accredulitare, to purge an offence by an oath.—*Blount.*

Accretion [fr. *accresco,* or *adcresco,* Lat.], the act of growing to a thing.

Accretion of land, land gained from the sea. It is of two kinds: by *alluvion,* i. e. by the washing up of sand or soil, so as to form firm ground; or by *dereliction,* as when the sea shrinks below the usual water-mark. If this accretion of land be by small and imperceptible degrees, it belongs to the owner of the land immediately adjacent to it, in accordance with the maxim *De minimis non curat Lex* (the Law cares not about trifles), but if it be sudden and considerable it belongs to the Crown.—4 *Hale, De Jure Maris,* p. 14; 1 *Steph. Com.* 457.

Accrimination, accusation.—*Obs.*

Accroaching, attempting to exercise royal power.

Accroche [fr. *accrocher,* Fr.], to hook or grapple unto, to encroach. The French use it for delay, as *accrocher un procès,* to stay proceedings in a suit.—*Cowel.*

Accrue [fr. *accroitre, accru* Fr., fr. *crescere* Lat. to grow], to grow to, or to arise.

Accruing costs, expenses incurred after judgment.

Accumulation, a gathering together, heaping up, or amassing. The dominion over property, and its rents, issues, and profits, is restrained by our law as regards perpetuity and accumulation. The rules against perpetuities and accumulations bound the proprietary right on every side, and limit that species of vanity, which, in the language of Lord Nottingham, 'fights against God, by affecting a stability which human providence can never attain to.'—2 *Swanst.* 460. See PERPETUITY.

It being deemed expedient by the legislature that all dispositions of real or personal estates, whereby their profits or produce are directed to be accumulated, and their beneficial enjoyment postponed, should be restricted, and 'posthumous avarice' put an end to, the 39 & 40 Geo. III. c. 98, was passed. This statute is sometimes quoted as Lord Loughborough's Act, from the circumstance that Lord Loughborough, L. C., introduced the Bill into the House of Lords, but it is more commonly called 'The Thellusson Act,' because the case of Thellusson *v.* Woodford (4 Ves. 227–343, 1798, and 11 Ves. 112–151, 1805) was the occasion of its enactment. It is a restraining, remedial statute, and declares, that no person or persons shall by any deed, surrender, will, codicil, or otherwise howsoever, settle or dispose of any real or personal property, so and in such manner that the rents, issues, profits, or produce thereof shall be wholly or partially accumulated for any longer term than—

(1) The life or lives of any such grantor or grantors, settlor or settlors; *or*

(2) The term of twenty-one years from the death of any such grantor, settlor, devisor or testator; *or*

(3) During the minority or respective minorities of any person or persons who shall be living or *en ventre sa mère* at the time of the death of such grantor, devisor, or testator; *or*

(4) During the minority or respective minorities only, of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurance, directing such accumulations, would for the time being, if of full age, be entitled unto the rents, issues, and profits, or the interest, dividends, or annual produce so directed to be accumulated; and in every case where any accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void; and the rents, issues, profits, and produce of such property so directed to be accumulated, shall so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto if such accumulation had not been directed.—(s. 1.)

Nothing in this act contained shall extend—

(1) To any provision for payment of debts of any grantor, settlor, or devisor, or other person or persons; *or*

(2) To any provision for raising portions for any child or children of any grantor, settlor, or devisor, or any child or children of any person taking any interest under such conveyance, settlement, or devise; *or*

(3) To any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions and directions shall and may be made and given as if the act had not been passed.—(s. 2.) By s. 3 it is provided that the act shall not extend to any disposition respecting heritable property in Scotland; and by s. 4, that the act shall not affect wills made before the passing of the act, unless the testator shall have been living and of sound mind for twelve months after the passing of this act. Consult *Hargrave on Accumulation,* for a full exposition of this statute.

The statute operates as a restraint upon those trusts for accumulation, which aim at a duration beyond the statutory limits, simply by causing them to cease and become of no effect immediately upon the twenty-first anniversary of the death of the settlor or testator, and until

that date, leaves them as valid and effectual in all respects as if the act had not passed. In Griffiths *v.* Vere (9 Ves. 132), Lord Eldon said the object of those who introduced this bill was simply to declare the limitations void, and to make the rents and profits go, not to those claiming by the disposition, but (by the effect of the act striking out the direction for accumulation) to those who would have been entitled in cases of intestacy. Thus, if a testator directed what the act authorises him to direct, that for the first twenty-one years after his death there should be accumulation, at the end of that time there might be a very long period, during which the rents and profits would go to no one by the disposition, but in the case of real estate would belong to the heir-at-law, and in the case of personal estate (unless there was an express disposition of what was not disposed of), to the next of kin. So that the effect of the statutory vacating of the accumulating trust is not to accelerate the title of the person to whom the property is limited at the termination of the trust, but merely to produce an intestacy *pro tanto.*

It has been thought that under cover of the second exception of the act the restraints of the act may be altogether evaded. For instance, there seems to be no objection to a trust for accumulating the rents and profits of a testator's real estate, or the interest and dividends of personalty, within the rule against perpetuities relating to the *corpus* of property, in order to raise any specific sum as a portion for the child, who shall be then living, of a person taking an interest under the same will. If so, Mr. Thellusson's will would become a valid precedent under the present state of the law, if the testator limit the amount, which he thinks sufficient to give as a portion or portions to his remote descendants, and direct his trustees to pay any small annuity to all and every of his descendants, whose children shall be presumptively entitled to such portions.

Accumulative Judgment. If a person already under sentence for a crime be convicted of another offence, the Court is empowered to pass a second sentence, to commence after the expiration of the first.

Accusare nemo se debet, nisi coram Deo: Hard. 139.—(No one is bound to accuse himself, unless in the presence of God.)

Accusation, the formal charging of any person with a crime.

Accusator post rationabile tempus non est audiendus, nisi se bene de omissione excusaverit. Moor, 817.—(An accuser ought not to be heard after the expiration of a reasonable time, unless he can account satisfactorily for the delay.)

Accused, a person charged with an offence, accusing of crime.

Ace [fr. *as*, Lat. and Fr., *asso*, It., a single one] **of Hearts,** an unlawful game.—4 *Steph. Com.* 353.

Acemannes-ceaster [*Acemanni Castra*, Lat.] Bath.

Acephali, the levellers in the reign of Hen. I., who acknowledged no head or superior. *Leges H.* 1. Also certain ancient heretics who asserted that there was but one substance in Christ and one nature.

Ac etiam billæ (*and also to a bill*). A clause which was formerly inserted in a writ where the action required bail. *Now no longer used.*

Achat [Fr.], a purchase or bargain. *Cowel.*

Achators, or **Achetors,** purveyors, because they frequently bargain; also purchasers. *Chaucer.*

Achelanda, Auchelandia, Auklandia, Auckland, in the Bishopric of Durham.

Acherset, a measure of corn, conjectured to have been the same with our quarter or eight bushels.—*Cowel.*

Achwre [*Ach-gwre*, near belt], an enclosure of wattles or thorns surrounding a building, at such a distance as to prevent cattle reaching and damaging the thatch.—*Anc. Inst. Wales.*

Acknowledgment-money, a sum paid in some parts of England by copyhold-tenants on the death of their lords, as a recognition of their new lords, in like manner as money is usually paid on the attornment of tenants. *Cowel.*

Acknowledgment of a wife's assurance. Numerous and elaborate formalities must be observed in order that a married woman may legally convey her estate, or extinguish her rights or powers in realty, or money directed to be laid out in realty. These are prescribed by the 3 & 4 Wm. IV. c. 74, ss. 77–91, and the rules of Hilary and Trinity Terms, 1834, framed by the Court of Common Pleas; and see 17 & 18 Vict. c. 75. As to Personalty in Reversion, see 20 & 21 Vict. c. 57, s. 2.

A married woman not being a tenant-in-tail, may by an ordinary deed dispose of her lands of any tenure, and money subject to be invested in the purchase of lands, and also may dispose of, release, surrender, or extinguish any estate which she alone, or she and her husband in her right, may have in any lands of any tenure, or in any money to be laid out in land, and also may release or extinguish any power vested in, or limited, or reserved, to her in regard to any lands of any tenure, or any such money, or in regard to any estate in any lands of any tenure, or in any such money, and also may convey her contingent, executory, and future interests, and possibilities, coupled with an interest, and also rights of entry as fully and

effectually as she could do if she were a *feme sole*, but such disposition will not be valid and effectual unless her husband concur in the deed by which the same is to be effected, nor unless the deed be produced and acknowledged by her (except it be such a deed as may be executed by her in the character of protector, for the sole purpose of giving her consent to the disposition of a tenant-in-tail), upon her executing it, or afterwards, as her act and deed, before a judge of one of the superior courts at Westminster, or before two of the perpetual commissioners, or two special commissioners, or the judge of a county court, under 19 & 20 Vict. c. 108, ss. 26 & 73; but before such acknowledgment can be received, he or they must examine her apart from her husband, touching her knowledge of such deed, and shall ascertain whether she freely and voluntarily consent to such deed, and unless she freely and voluntarily consent, he or they cannot permit her to acknowledge it; and then the deed will, so far as relates to her execution of it, be void.

The certificates and affidavits verifying the same must, within one lunar month from the making of the acknowledgment, be delivered to the proper officer of the Common Pleas, who shall not after that time receive the same without the direction of the court or a judge.

The above statute excepts the case of a married woman being a tenant-in-tail. "Where she is such a tenant, and desires to bar the entail, the deed must be enrolled in Chancery, according to the directions of the act: and should such deed operate as a transfer of her beneficial interest, it must also be duly acknowledged by her as just explained. So that enrolment and acknowledgment are both requisite in such a case. See 11 & 12 Vict. c. 70; and 17 & 18 Vict. c. 75; and 25 & 26 Vict. c. 97.

Aclea [fr. *ac*, an oak, and *leag*, place, Sax.], a field where oaks grow.—*Cunningham's Abr.*

A communi observantiâ non est recedendum; et minimè mutandæ sunt quæ certam interpretationem habent. Co. Litt. 365.—(From common usage there should not be any departure, and things which have an ascertained meaning are to be least changed.)

Acolyte [fr. ἀκόλουθος, Gk.] one of the minor orders in the Romish Church, whose office it is, next under the sub-deacon, to follow or wait on the priests or deacons, and perform the meaner offices of lighting the candles, carrying the bread and wine, and paying other servile attendance. This officer was in our old English called a *colet*, from which the family of Dean Colet, the founder of St. Paul's School, derived its name.—*Cowel.*

Acquest, or **Acquet,** property obtained by purchase or donation.—*Encyc. Lond.; Civil Law.*

Acquiescence, consent, either express or implied.

Acquietandis Plegiis, an obsolete writ, lying for a surety against the creditor who refuses to acquit him after the debt is satisfied. *Reg. Writs*, 158.

Acquietantia de shiris et hundredis, freedom from suits and services in shires and hundreds.—*Cowel.*

Acquietare [fr. *quietum reddere*, Lat.], to acquit, absolve.—*Blount.*

Acquisition, the act of procuring property.

Acquittal [fr. *acquitter*, Fr.; *quitte*, *quietus*, Lat. to free, acquit, or discharge], a deliverance and setting free of a person from the suspicion or guilt of an offence; also to be free from entries and molestations by a superior lord, for services issuing out of lands. *Cowel.* Acquittal is of two kinds—(1) *Acquittal in deed*, as when a person is cleared by verdict; and (2) *Acquittal in law*, as if two be indicted for a felony, the one as principal and the other as accessory, and the jury acquit the principal, by law the accessory is also acquitted. 2 *Inst.* 384.

Acquittal contracts, a discharge from an obligation, which is either by deed, prescription, or tenure.—*Co. Litt.* 100 *a.*

Acquittance, a release or written discharge of a sum of money or debt due, as where a man is bound to pay money on a bond, rent reserved upon a lease, &c., and the party to whom it is due, on receipt thereof, gives a writing under his hand witnessing that he is paid, this will be such a discharge in law that he cannot demand and recover the sum or duty again, if the acquittance be produced. *Termes de la Ley*, 15.

Acre [fr. αγρος, Gr.; *ager*, Lat.; *akrs*, Goth.; *acker*, Germ.], a measure of land. The imperial or standard English acre contains four roods, each rood forty poles or perches, each pole 272¼ square feet, and consequently each acre =43,560 square feet.—5 *Geo. IV.* c. 74; 6 *Geo. IV.* c. 12, and 5 & 6 *Wm. IV.* c. 63. The French acre, *arpent*, contains 1¼ English acre, or 54,450 square English feet. The Strasburg acre is about ½ an English acre. The Welsh acre contains commonly two English acres. The Irish acre is equal to 1 acre, 2 roods, and 19 perches $\frac{37}{121}$ English. The Scotch, 6,150⅔ square yards, the Roman, 3,200, and the Egyptian *aroura*, 3,698⅘.

Acre, or **Acre-fight,** an obsolete kind of duel fought by single combatants, English and Scotch, between the frontiers of their kingdoms, with sword and lance. It was also called *camp-fight*, and the combatants, *cham-*

pions, from the open field that was the place of trial.

Acroisa, or **Acrucia**, blindness.—*Du Fresne.*

Act, the doing of a thing, a decision. It is either an act of God, or of Law, or of an individual.

Act before answer, when the Lords ordain probation to be led before they determine the relevancy, and then take both at once under their determination.—*Scotch Law.*

Act of bankruptcy, an act, the commission of which by a debtor renders him liable to be adjudged a bankrupt. Before 'The Bankruptcy Act, 1861,' 24 & 25 Vict. c. 134, a man was not liable to be made a bankrupt unless he was a trader, and had committed an act of bankruptcy as defined by the statutes in force.

By the recent Act, two important alterations have been made in the law of bankruptcy. 1. A non-trader is now in certain cases liable to be made a bankrupt, and 2. A debtor may be made a bankrupt in several cases, although he may not have committed any act which in terms is declared by any statute to be an act of bankruptcy. The cases in which a man may now be adjudged bankrupt are specified in 'The Bankrupt Law Consolidation Act, 1849,' 12 & 13 Vict. c. 106, and 'The Bankruptcy Act, 1861,' 24 & 25 Vict. c. 134.

These are acts of bankruptcy under 12 & 13 Vict. c. 106. By sect. 67: If a trader shall depart this realm, or shall remain abroad, or shall depart from his dwelling-house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested or taken in execution for a debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested or taken in execution; or his goods or money to be attached, sequestered, or taken in execution; or make or cause to be made any fraudulent grant or conveyance of any of his lands or goods, or any fraudulent surrender of any of his copyhold lands, or any fraudulent gift, delivery, or transfer of any of his goods (sect. 68) provided that no conveyance or assignment by deed of all the estate and effects of a trader, shall be an act of bankruptcy, if made in trust for the benefit of all his creditors, unless a petition for adjudication be filed within three months, if such deed be executed by all the trustees within fifteen days of its execution by the trader, and its execution be attested by an attorney or solicitor, and notice thereof be given in the *Gazette*.

Sect. 71. When a trader, after a petition for adjudication has been filed against him, shall pay or deliver to the petitioning creditor any satisfaction or security whereby the petitioning creditor shall receive more in the pound than the other creditors.

Sect. 77. If a creditor of a trader having privilege of Parliament to an amount sufficient to support a petition for adjudication, shall file an affidavit in any Court of Record at Westminster that such debt is justly due, and that the debtor is such trader, and shall sue out of this same Court and personally serve a writ of summons, and such trader shall not, within one month after service, pay, secure, or compound for the debt or enter into a bond with sureties to pay such sum as shall be recovered with costs, and cause an appearance to be entered in such action, he shall be deemed to have committed an act of bankruptcy from the time of the service of the summons.

Sect. 78. A creditor of a trader may file an affidavit of his debt in the Court in the district in which the trader resides, and of the service on the trader of the particulars of his demand requiring immediate payment. The Court may issue a summons calling upon the trader to appear, and if he shall not appear, or shall appear and shall refuse to admit the demand, and shall not depose that he has a good defence upon the merits, and (if required) shall not enter into a bond with sureties to pay such sum as shall be recovered with costs, he shall be deemed to have committed an act of bankruptcy on the eighth day after service of the summons, provided a petition for adjudication be filed within two months from the filing such affidavit (ss. 79 & 80). If he shall admit the demand, and shall not pay or satisfy, or give security for it within seven days after his admission, he shall, on the eighth day, be deemed to have committed an act of bankruptcy if a petition for adjudication be filed within two months after filing the affidavit (s. 81).

Sect. 82. If he admit part, and shall not depose that he has a good defence on the merits to the residue, and, if required, enter into bond to pay the sum that may be recovered by action and costs, if within seven days after his filing such admission he shall not pay or offer to pay, or secure or compound for the sum admitted, and as to residue shall not pay, secure, or compound for the same, he shall, on the eighth day after service of the summons, be deemed to have committed an act of bankruptcy, provided a petition for adjudication be filed within two months from the filing of the affidavit, provided he shall not be liable to be made a bankrupt on any such act of bankruptcy, unless a petition for adjudication be filed within twelve months.

As to acts of bankruptcy under 24 & 25 Vict. c. 134:

The following acts of a non-trader are acts of bankruptcy. Sect. 70: If any person, not being a trader, shall, with intent to defeat or delay his creditors, depart this realm, or being out of this realm shall with

such intent remain abroad, or shall with such intent make any fraudulent conveyance, gift, delivery, or transfer of his real or personal estate, or any part thereof respectively, such person shall be deemed to have thereby committed an act of bankruptcy: provided always, that before any adjudication in bankruptcy shall be made against the debtor under this section the following rules shall be observed: (1) A copy of the petition for adjudication shall be served personally on the debtor, either within the jurisdiction, or in such place or country, or within such limits abroad, as the Court shall, upon application for that purpose, direct. (2) The copy of the petition shall have endorsed thereon a memorandum, in a form to be settled by a general order, specifying the time within which the debtor is to appear on such petition; and such time shall, when the service is to be made abroad, be the time which the Court shall think reasonable, having regard to the place or country where the service is to be made. (3) In no case shall the time for appearance be less than thirty days after service. (4) If such personal service has not been effected, the Court must be satisfied that every reasonable effort was made to effect the same, and that the attempts to serve such petition came to the knowledge of the debtor and were defeated by his conduct. (5) If at the expiration of the time limited for appearance the Court shall, on the hearing of such petition, be satisfied that an act of bankruptcy has been committed within the meaning of this section, it may adjudge such debtor to be a bankrupt. Provided always that no non-trader, who shall be abroad at the time of the passing of this act, shall be deemed to remain abroad with intent to defeat or delay his creditors until the expiration of six months after the passing of this act.

Sect. 71. If any debtor, whether a trader or not, having been arrested or committed to prison for debt, or on any attachment for nonpayment of money, shall, upon such or any other arrest or commitment for debt or nonpayment of money, or upon any detention for debt, lie in prison, being a trader, for fourteen days, or, not being a trader, for two calendar months, or having been arrested for any cause, shall lie in prison as aforesaid, after any detainer for debt lodged against him, and not discharged, every such debtor shall thereby be deemed to have committed an act of bankruptcy; or if any such debtor, having been arrested, committed, or detained for debt, shall escape out of prison or custody, every such debtor shall be deemed to have thereby committed an act of bankruptcy from the time of such arrest, commitment, or detention: but no debtor shall be adjudged bankrupt on the ground of having lain in prison as aforesaid, unless having been summoned he shall not offer such security for the debt or debts in respect of which he is imprisoned or detained, as the commissioner or registrar whose duty it would otherwise be to adjudicate shall deem reasonably sufficient.

Sect. 72. If any debtor, whether a trader or not, shall file in the office of the chief registrar, or with the registrar of a district court of bankruptcy, or of a county court having jurisdiction in bankruptcy, a declaration in writing, in such form as general orders shall direct, signed by such debtor, and attested by a registrar of the Court, or by an attorney or solicitor, that he is unable to meet his engagements, every such debtor shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a petition for adjudication of bankruptcy shall be filed by or against him within two months from the filing of such declaration.

Sect. 73. If any execution shall be levied by seizure and sale of any of the goods of a trader and debtor upon any judgment in any action personal for recovery of a money demand exceeding £50, such debtor shall be deemed to have committed an act of bankruptcy from the date of the seizure.

Sect. 75. The filing of a petition by or against a debtor, whether a trader or not, in any court having jurisdiction for the relief of insolvent debtors in insolvency or bankruptcy in any of her Majesty's dominions, colonies, or dependencies, and the adjudication of an act of insolvency or bankruptcy on such petition, shall, for the purposes of this act, be accounted and adjudged conclusive evidence of an act of bankruptcy committed by such debtor at the time of filing such petition, or of the filing the petition on which the adjudication of an act of insolvency or bankruptcy shall have been made; and any creditor or creditors of such debtor whose debt or debts shall be of sufficient amount to enable him or them to petition for adjudication of bankruptcy under this act, may, at any time within two months after notice of such adjudication shall have been given in the *London Gazette*, petition for adjudication of bankruptcy under this act against such debtor, and under such petition all such proceedings may be had and taken as are authorised and directed by this act.

The compulsive and involuntary act of bankruptcy by nonpayment, &c., after summons, is effected thus:—By 24 & 25 Vict. c. 134, s. 75:

Every judgment creditor who is or shall be entitled to sue out against a debtor a writ of *capias ad satisfaciendum*, or to charge the debtor in execution, in respect of any debt amounting to £50, exclusive of costs, shall be entitled, at the end of one week from

the signing of judgment, to sue out against the debtor if a trader, or not being a trader at the end of one calendar month, and whether he be in custody or not, a summons, to be called a judgment debtor summons, requiring him to appear and be examined respecting his ability to satisfy the debt. By s. 90, the debt must be contracted after the passing of the act.

Sect. 77. Where, after the commencement of this act, a decree or order of a court of equity, or an order in bankruptcy or insolvency or lunacy, directing the payment of money, is disobeyed by the debtor, the same having been duly served on him, and the person entitled to receive the money or interested in enforcing payment of it has obtained a peremptory order of the competent jurisdiction, fixing a day for payment, and the debtor does not, being a trader, within seven days, or, not being a trader, within two calendar months, after service on him of the peremptory order, or, such order having been duly served, within seven days after the day fixed by the peremptory order for payment (which shall last happen), pay the money, or secure, or tender or compound for it, to the satisfaction of the creditor, the creditor shall be entitled at the end of those seven days to sue out against the debtor a judgment debtor summons.

Sect. 78. The judgment debtor summons shall, unless the court shall in any case otherwise direct, issue according to the following rules:—Where the debtor is in England, then out of the court of bankruptcy for the district in which the debtor usually lives, or at the time of the issuing of the summons happens to be. Where the debtor is not in England, then out of the court of bankruptcy for the district in which is the debtor's usual or last known place of abode in England.

Sect. 79. It must be served, if the debtor is in England, personally, unless the Court otherwise direct, or if he is out of England, in such manner as the Court shall deem fit.

Sect. 83. If after service of such summons, or due notice thereof, the debtor shall not pay the debt and costs, or secure or compound for the same to the satisfaction of the creditor, the Court may on the appearance of the debtor, or on his non-appearance having no lawful impediment, adjudge him bankrupt without the presentation of a petition for adjudication or other proceeding.

Sect. 86. Any debtor may petition for adjudication of bankruptcy against himself, and the filing of such petition shall be an act of bankruptcy, without any previous declaration of insolvency by such debtor.

Sect. 98. A debtor, whether trader or not, imprisoned for any debt, may petition for an adjudication of bankruptcy against himself in *formâ pauperis*, and if not previously discharged by a Registrar of the Court of Bankruptcy under s. 101, he may be brought up to the County Court of the district, and shall be examined by that Court and adjudged bankrupt.—Sect. 100. The gaoler of every prison in England and Wales is to make monthly returns of persons in his custody for debt to the London Court, the District Court, or County Court within the jurisdiction of which the gaol is situated.—Sect. 102. The Court which has jurisdiction is to order its Registrar to attend at the prison; and he, having given notice to the creditors, is directed to examine every prisoner included in the return who, if a trader, has been in prison fourteen days, and if a non-trader has been in prison two months, touching his estate, &c., and shall have power to make an order of adjudication in bankruptcy against each, and to grant protection, to order his release, and to direct in what Court the adjudication shall be prosecuted.

A notice of an act of bankruptcy to accredited agents of public companies is sufficient, 12 & 13 Vict. c. 106, ss. 87 & 88. All the members of a firm must have committed an act of bankruptcy to sustain a joint petition against them.—*Arch. Bank.* 40, 1863.

Act of Curatory, an act extracted by the clerk upon any one's acceptance of the office of curator.—*Scotch Law.*

Act of Grace, the Act so termed in Scotland was passed in 1696; it provides maintenance for debtors imprisoned by their creditors. It is usually applied in England to insolvent acts and to general pardons granted at the beginning of a new reign or on other great occasions.—*Encyc. Lond.*

Act in Pais [*Pais*, Law Fr. country], a thing done out of court, and not a matter of record.

Act of Parliament, a statute, law, or edict, made by the Queen, with the advice and consent of the Lords spiritual and temporal, and the Commons, in Parliament assembled. Acts of parliament form the *leges scriptæ*, i. e. the written laws of the kingdom. The oldest now extant is *Magna Charta*, and the earliest statute of which any record exists is that of *Gloster*, 6 Edw. I. The statutes from *Magna Charta* down to the end of the reign of Edw. II., including also some which (because it is doubtful to which of the three reigns of Hen. III., Edw I. or II. we should assign them) are termed *incerti temporis*, compose what have been called the *vetera statuta*; those from the beginning of the reign of Edward III. being contradistinguished by the appellation of the *nova statuta*. An act of parliament cannot be altered, amended, dispensed with, suspended or repealed, but by the same authority of parliament which created it, the maxim being,

that it requires the same power to dissolve as to create an obligation.

Statutes are either public or private, general or special. The distinction between public and private acts was first made in the reign of Richard III. A public or general act is a universal rule applied to the whole community, which the Courts must notice judicially and *ex officio*, although not formally set forth by a party claiming an advantage under it. But special or private acts are rather exceptions than rules, since they only operate upon particular persons and private concerns, and the Courts are not bound to take notice of them if they are not formally pleaded, unless an express clause is inserted in them, that they shall be deemed public acts, and shall be judicially taken notice of as such, without being specially pleaded; which provision is now usually introduced. For convenience of reference, the printed Statute Book of a parliamentary session is classed thus:—(1) public general acts; (2) local and personal acts, declared public, and to be judicially noticed; (3) private acts, printed by the Queen's printer, and whereof the printed copies may be given in evidence; (4) private acts, not printed. For a chronological table of Public Statutes from *Magna Charta* to 16 & 17 Vict. c. 137, see 4 Chit. Stat. 365–384, 2nd edit.

With regard to the different nature of their objects or provisions, public general acts are sometimes described as declaratory, penal, or remedial; *declaratory*, make plain what the Common Law is or has ever been, when it has almost fallen into disuse, or has become disputable by its obscurity; *penal*, impose punishments for offences committed; and *remedial*, supply defects or redress abuses in the existing law. They are also distinguished into *enlarging* or *restraining*, *enabling* or *disabling acts*.

The principal rules for the interpretation of acts of parliament are the following:—(1) that a statute begins to operate from the time when it receives the royal assent, unless otherwise provided. But where an act expires before a bill continuing it has received the royal assent, the latter act takes effect from the expiration of the former, unless otherwise provided, and except as to any penalty (48 Geo. III. c. 106); (2) it is to be construed equitably, not according to its mere letter, but the intent and object with which it was made; (3) that these points be considered—the old law, the mischief, and the remedy; (4) that a remedial statute be more liberally, and a penal more strictly construed; (5) in construing a statute, all other statutes made *in pari materiâ*, ought to be taken into consideration; (6) a statute which treats of things and persons of an inferior rank, cannot by any general words be extended to those of a superior; (7) where the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the Common Law; (8) a subsequent statute may repeal a prior one, not only expressly, but by implication, as when it is contrary thereto, i. e. so clearly repugnant that it necessarily implies a negative, but if the acts can stand together, they shall have a concurrent efficacy; (9) if a statute, that repeals another, is subsequently repealed, the repealed statute no longer revives without express words, 13 Vict. c. 21, ss. 5 & 6; and (10) acts of parliament derogatory from the power of subsequent parliaments do not bind.

Statutes are variously cited: many of the old statutes are called after the name of the place where the parliament which passed them was held, as the Statute of Merton, or Marlebridge, or Winchester, or Westminster; others are denominated entirely from their subject, as the Fines and Recoveries Act, the Non-arrest Act; some are distinguished from their initial words, as the statute *Quia emptores* or *De donis*. But since the time of Edward II. they are generally cited by naming the years of the sovereign's reign during which the session of parliament was holden in which the statute was passed, together with the chapter or particular act, according to its numerical order, as 3 & 4 Wm. IV. c. 74. All the acts of a session together make properly but one statute, and therefore, when two sessions have been held in one year, it is usual to mention stat. 1 or 2. Consult *Bac. Abr. Statute*, *Barrington* or *Dwarris on Statutes*; 1 *Steph. Com.* p. 69; and *Stamp's Index to the Statute Law.*

Acts of Parliament bind all persons within the territory to which they extend, but not the crown unless it be specially mentioned. They extend to England, which by 20 Geo. II., c. 42, s. 3, is deemed to include the dominion of Wales and town of Berwick-upon-Tweed; and also, if passed since the respective unions of those kingdoms with England, to Scotland and Ireland, though not expressly mentioned, unless they are excepted by express words or by necessary implication. They do not extend to the Isle of Man, a distinct territory from England, nor to the Channel Islands, Jersey, Guernsey, Alderney, and Sark, and their appendages, which were originally parcel of the Duchy of Normandy, unless they are expressly mentioned. As to the colonies, if acquired by occupancy, all acts of parliament passed previously to their acquisition, so far as they are suitable to the social state of an infant colony, extend to them upon their acquisition; but it is otherwise if they have been acquired by treaty or conquest; and as to both kinds they are not affected by acts of parliament passed since their acquisition unless express mention

of them be made. So also an act of parliament does not apply to India unless it be expressly mentioned. See 1 *Steph. Comm.* 85–138.

By 13 & 14 Vict. c. 21, 'An act for shortening the language used in Acts of Parliament,' it is provided *inter alia* that an act may be altered, amended, or repealed in the same session (s. 1). That words importing the masculine gender shall include females, and the singular shall include the plural, and the plural the singular, unless the contrary as to gender or number is expressly provided; that 'month' shall mean calendar month, unless words be added showing lunar month to be intended; county shall mean also county of a town or of a city, unless such extended meaning is expressly excluded by words; 'land' shall include messuages, tenements, and hereditaments, houses, buildings of any tenure, unless there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure; and 'oath,' 'swear,' and 'affidavit' shall include affirmation, declaration, affirming and declaring, in the case of persons allowed by law to declare or affirm instead of swearing (s. 4). That where any act repealing in whole or in part any former act is itself repealed, such last repeal shall not revive the act or provisions before repealed unless words be added reviving such act or provisions (s. 5). Whenever any act shall be made, repealing in whole or in part any former act, and substituting some provision or provisions instead of the provision or provisions repealed, such provision or provisions so repealed shall remain in force until the substituted provision or provisions shall come into operation by force of the last made act (s. 6). That every act made after the commencement of the act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such unless the contrary be expressly provided and declared by such act (s. 7). That this act shall commence and take effect from and immediately after the commencement of the next session of parliament (s. 8).

The confused mass of law contained in the Statute Book, occasioning, as it often does, great uncertainty as to what the law really is, has long been felt to be a great evil. For this evil the remedy would seem to be a classified consolidation of such of the Statute Law as remains in force.

The main objects to be effected by such consolidation would appear to be these:—

(1) The expurgation of all obsolete and repealed acts, and all abrogated portions of acts, together with the total rejection of every kind of tautology and all unnecessary words and phrases.

(2) The re-entitling of those acts whose present titles afford no clue to their purpose, and the separation of acts comprising subjects of a totally different nature.

(3) The insertion of those unrepealed statutes and clauses of statutes which are omitted in the printed copies, and the collation in one act of the continuing, enlarging, explaining, correcting, repealing, and reviving acts made *in pari materiâ*.

(4) The classification of all the dispersed statutes in force, after a general plan and under a simple arrangement, in accordance with the leading branches of our laws, so as to bring together all the statutes relating to a given subject, preserving at the same time their order, date, and connection, that the aid for their interpretation arising therefrom should be preserved, and reconciling the text with judicial decisions, and making their meaning correspond with their legal effect.

(5) A general glossarial statute, defining the technical words, phrases, and sentences made use of throughout the Statute Book, and containing the rules applicable to the construction and the interpretation of the statutes at large, and also some general provisions applicable to all local and personal acts.

Statutes made subsequently to the classification can be easily referred to their appropriate places; and this will not only facilitate and improve legislation, but render judicial construction more consistent, and consequently less uncertain.

This, it is submitted, is a reform worthy of accomplishment by the parliament of a great nation; and that it can be accomplished, although it is certainly perplexed and requires the most cautious consideration, so as not to affect existing interests, admits of no doubt. The partial consolidations effected during late years have swept away many difficulties, and prepared, to a slight degree, the way for this full and perfect revision. Rome did it even in her decline; America has also done it, and is about to do it again! Surely, then, England should attempt it. It is a subject which has occupied the attention of our jurists and legislators from an early period of our history, which has been often recommended from the throne, embodied in parliamentary reports, and even petitioned for by our two legislative houses.

Of late years steps have been taken by the Government with a view to remedy the existing evil. In 1833, a commission was issued to certain barristers to digest the Criminal Law, written and unwritten, and generally to inquire and report how far it might be expedient to consolidate the other branches of the existing Statute Laws or any of them. This commission (which devoted itself chiefly to Criminal Law) made one report on consolidation generally in July, 1835. In March, 1853, Lord Cranworth, L.C.,

constituted 'The Statute Law Board' for the consolidation of the Statute Law. It made three reports. In 1854 the Statute Law Commission issued, for the purpose of consolidating the Statute Laws, or such part as they might find capable of being usefully and conveniently consolidated, combining with that process, if they should think it advisable, the incorporation of any parts of the common or unwritten law in such manner as should seem desirable, and also for the purpose of devising and suggesting such rules, if any, as might in their judgment tend to insure simplicity or uniformity, or any other improvement in the form and style of future statutes. Four reports were made by that commission, and under it a Register of Public General Statutes from the union of Great Britain and Ireland was prepared. In October, 1859, the Statute Law Commission having been discontinued, F. S. Reilly and A. J. Wood, Esquires, Barristers-at-Law, were engaged by the Government to make a revision of the Statute Law with a view, in the first instance, to the preparation of a new edition of the statutes, to contain (as far as possible) solely such enactments as are in force, and thus to show what the existing Statute Law is, and bring together the whole body of it in a manageable shape, for the purposes either of ordinary use or of consolidation and other improvement. It has been considered that, as a preliminary step, a systematic examination of the Statute Book should be made, for the purpose of ascertaining what enactments have ceased to be in force by virtual repeal, expiration, or otherwise, without having been expressly and specifically repealed, and that the enactments in this condition, when ascertained, should be now repealed, so that there may be little or no question as to what is or is not to be comprised in the new edition. This work is now going on. One repealing Act, 24 & 25 Vict. c. 101, has been passed, and in the present session a further repealing bill will be introduced, covering the whole period from the earliest Statute to the Revolution.

Actaindre le meffait [Fr.], to fix the charge of a crime upon one, to prove a crime.—*Carp. Wedgw.*

Act of Settlement, 12 & 13 Wm. III. c. 2, limiting the crown to the Princess Sophia of Hanover, and to the heirs of her body being Protestants.

Acta exteriora indicant interiora secreta, 8 Co. 146.—(External acts indicate undisclosed thoughts.)

Actilia, military utensils.—*Blount.*

Actio pœnalis in hæredem non datur, nisi fortè ex damno locupletior hæres factus sit. Vin. Com. 756.—(A penal action is not given against an heir, unless, indeed, such heir is benefited by the wrong.)

Actio quælibet it sud vid. Jenk. Cent. 77. (Every action proceeds in its own way.)

Action, conduct, something done; also the form prescribed by law for the recovery of one's due, or the lawful demand of one's right. Bracton defines it:—*Actio nihil aliud est quam jus prosequendi in judicio quod alicui debetur* (an action is nothing else than the right of prosecuting to judgment that which is due to any one), *Celsus Dig.* 44, tit. 7, s. 51. Actions are divided into criminal and civil: criminal actions are more properly called prosecutions, and perhaps, actions penal, to recover some penalty under statute, are properly criminal actions. Actions civil are divided into three classes:—(1) *real,* which concern real property only—they are three, action of dower, dower *unde nihil habet,* and *quare impedit*; (2) *personal,* such as concern contracts, both sealed and unsealed, and offences or trespasses; the former are called *ex contractu*—they are debt, promises, covenant, account, detinue, revivor, and *scire facias*; the latter are *ex delicto,* as case, trover, replevin, and trespass *vi et armis*; (3) mixed, which lie as well for the recovery of the thing as for damages for the wrong sustained, as ejectment. See 3 *Bl. Com.*; *Step. on Plead.*; and *Arch. Crim. Plead.* For the classical learning on the subject, consult *Smith's Dict. of Antiq.* tit. '*Actio.*'

Also stock in a company, or shares in a corporation.—*Fr. Comm. Law.*

Actio bonæ fidei, an action which the judge decided according to Equity, the *judex* thus acting as *arbiter* with a wide discretion. *Sand. Just.* 424.

Actio commódati contraria, an action by a borrower against a lender, to enforce the execution of a contract.—*Poth. Prêt à Usage, n.* 75. *Civil Law.*

Actio commodati directa, an action by a lender against a borrower, to obtain restitution of the thing lent.—*Poth. Prêt. à Usage, n.* 65, 68. *Civil Law.*

Actio condictio indebiti, an action for the recovery of a sum of money or other thing paid by mistake.—*Poth. Promutuum, n.* 140. *Civil Law.*

Actio conducti, an action by a bailor of a thing for hire, against a bailee, to compel him to deliver the thing hired.—*Poth. Du Contr. de Louage, n.* 59. *Civil Law.*

Actio depositi contraria, an action which a depositary has against a depositor, to compel him to fulfil his engagement towards him. *Poth. Du Dépôt, n.* 69. *Civil Law.*

Actio depositi directa, an action which is brought by a depositor against a depositary, in order to get back the thing deposited.—*Poth. Du Dépôt, n.* 60. *Civil Law.*

Actio judicati, an action instituted after four

months had elapsed from the rendition of judgment, in which the judge issued his warrant to seize, first, the movables, which were sold within eight days afterwards, and then the immovables, which were delivered in pledge to the creditors, or put under the care of a curator, and, if at the end of two months the debt was not paid, the land was sold.—*Dig.* 42, t. 1; *Code*, 8, 34. *Civil Law.*

Actio non, special pleas began with this allegation, 'that the said plaintiff ought not to have or maintain his aforesaid action thereof against him,' *actio non habere debet.* Hence technically termed the *actio non.* 1 *Ch. Plead.* 531; 2 *ib.* 421; *Steph. Plead.* It is abolished by 15 & 16 Vict. 76, s. 66.

Actio non accrevit infra sex annos, the name of the plea of the Statute of Limitations, when the defendant alleges that the plaintiff's action has not accrued within six years.

Actio pro socio, an action by which either partner could compel his co-partners to perform their social contract.—*Poth. Contr. de Société, n.* 134. *Civil Law.*

Actio ad exhibendum, an action instituted for the purpose of compelling a defendant to exhibit a thing or title in his power. It was preparatory to another action, which was always a real action in the sense of the Roman Law, that is, for the recovery of a thing, whether it was movable or immovable.—*Merl. Quest. de Dr.* tome i. 84. *Civil Law.*

Action of adherence, an action competent to a husband or wife, to compel either party to adhere in case of desertion.—*Scotch Law.*

It is analogous to the English suit for restitution of conjugal rights.

Action redhibitory, an action instituted to avoid a sale on account of some vice or defect in the thing sold, which renders it either absolutely useless, or its use so inconvenient and imperfect, that it must be supposed the buyer would not have purchased it had he known of the vice.—*Civil Law.*

Actions ordinary, all actions not rescissory. *Ersk. Pr. L. Scot* 4, 1, 5.

Actions rescissory, are either (1) actions of proper improbation for declaring a writing false or forged; (2) actions of reduction—improbation for the production of a writing, in order to have it set aside for fraud; and (3) actions of simple reduction, for declaring a writing called for null until produced.—*Ersk. Pr. L. Scot.* 4, 1, 5.

Actiones nominatæ, writs for which there were precedents. The statute of Westminster, 2, c. 24, gave Chancery authority to form new writs *in consimili casu.* Hence the action on the case—*Bac. Ab. Court of Chancery, a.*

Actio injuriarum personalis moritur cum persona. Bacon.—(A personal action on a tort [i. e. *ex delicto*], dies with the person.) But if the tort or injury be of such a nature as that thereby property is acquired, which benefits the wrong-doer, an action for the value of the property would survive against the executor of the wrong-doer for legal waste, and equity would probably, in respect of equitable waste, decide in analogy to law.—*Lansdowne* v. *Lansdowne*, 1 *Mad.* 16; 3 & 4 *Wm. IV.* c. 42, s. 2. See 9 & 10 *Vict.* c. 93.

Actio non datur non damnificato. Jenk. Cent. 69.—(An action is not given to him who is not injured.)

Action on the case. See CASE.

Action prejudicial, otherwise called *preparatory* or *principal*, an action arising from some doubt in the principal, as in case a man sue his younger brother for lands descended from the father, and it is objected against him that he is a bastard, this point of bastardy must be tried before the cause can proceed. It is, therefore, termed *prejudicialis*, i. e. prejudiced.

Action of a writ, a phrase used when a defendant pleads some matter by which he shows that the plaintiff had no cause to have the writ sued upon, although it may be that he is entitled to another writ or action for the same matter.—*Cowel.*

Action of abstracted multures, an action for multures or tolls against those who are thirled to a mill, i. e. bound to grind their corn at a certain mill, and fail to do so. *Jacob.*

Action for poynding on the ground, so called because founded upon some infeoffment for an annuity (whether annual-rents, life-rent, or feu-duty, &c.), that affects the ground, and that ground being thus debitor, it is called *debitum fundi* (a debt of the ground), for which movables found upon the ground may be poynded (distrained), and these failing, the property affected by this servitude may be apprised or adjudged even in prejudice of intervening singular successors.—*Scotch Law.*

Action in the Scotch Law, a prosecution of his right by any party, in order to obtain a judicial determination.—*Scotch Dict.*

Actionare [i. e. *in jus vocare*, Lat.], to prosecute a person in a cause at law.—*Thorn's Chron.*

Actionary, a foreign commercial term for the proprietor of an action or share of a public company's stock, a stockholder.

Actiones compositæ sunt, quibus inter se homines disceptarent, quas actiones, ne populus prout vellet instituerent, certas solemnesque esse voluerunt.—(Forms of actions have been framed by which men dispute among themselves, which forms are made definite and solemn, lest the people proceed as they think proper.)

Actiones in personam, quæ adversus eum intenduntur, qui ex contractu vel delicto obligatus est aliquid dare vel concedere.—(Personal actions are those which are brought against

him who, from a contract or tort, is obliged to give or allow something.)

Actionum quædam sunt in rem, quædam in personam, et quædam mixtæ. Co. Litt. 284.—(Some actions are against the thing, some against the person, and some mixed.)

Actitation, a debating of law-suits.

Active debt, a debt due to a person.

Active trust, a confidence connected with a duty.

Active use, a present legal estate.

Acto [*Acton, Aketon,* Fr. *Hanqueton*]. A coat of mail.—*Du Fresne.*

Acton-Burnell, the statute giving the remedy by statute merchant 11 Edw. I. A. D. 1283, so termed from the place where it was made, situated in Shropshire.—*Cowel;* 2 *Reeves,* c. ix. p. 158.

Actor, a doer, generally a plaintiff or complainant. In a civil or private action the plaintiff was often called by the Romans *petitor*; in a public action (*causa publica*) he was called *accusator.* (*Cic. ad Att.* i. 16.) The defendant was called *Reus,* both in private and public causes; this term, however, according to Cicero (*De Orat.* ii. 43), might signify either party, as indeed we might conclude from the word itself. In a private action, the defendant was often called *adversarius,* but either party might be called so with respect to the other. Also a proctor or advocate in civil courts or causes. *Actor dominicus,* a term often used for the lord's bailiff or attorney. *Actor ecclesiæ* was sometimes the forensic term for the advocate or pleading patron of a church. *Actor villæ* was the steward or head bailiff of a town or village.—*Cowel.*

Actor qui contra regulam quid adduxit, non est audiendus.—(A plaintiff is not to be heard who has advanced anything against authority.)

Actor sequitur forum rei. Home's L. T. 232.—(A plaintiff follows the court of the defendant.)

Actore non probante reus absolvitur.—(When the plaintiff does not prove his case the defendant is acquitted.)

Actori incumbit onus probandi. Hob. 103. (The burthen of proof lies on a plaintiff.)

Acts of Court, legal memoranda of the nature of pleas, especially in Admiralty Courts.

Acts done, distinguished into acts of God, of the law, and of men, hence the following maxims:—

Actus contra actum, a mutual consent.

Actus curiæ nemini gravabit. Jenk. Cent. 118—(An act of the court will hurt no person.) See this maxim exemplified *Cumber* v. *Wane,* 1 *Str.* 126; & 1 *Smith, L. C.* 245–255.

Actus Dei necnon legis nemini est damnosus, or *facit injuriam.* 5 Co. 87.—(An act of God and also of law is hurtful, or operates an injury, to no one.)

Actus incœptus cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertiæ personæ, vel ex contingenti, revocari non potest. Bacon.—(An act already begun the completion of which depends on the will of the parties, may be recalled; but, if it depend on the consent of a third person, or on a contingency, it cannot be recalled.)

Actus legitimi non recipiunt modum. Hob. 153.—(Legal actions do not admit a limitation.)

Actus me invito factus, non est meus actus. (An act done by me against my will is not my act.)

Actus non facit reum, nisi mens sit rea. 3 Inst. 307.—(An act does not make a man guilty, unless he be so in intention.)

Actus repugnans non potest in esse produci. Plowd. 355.—(A repugnant act cannot be produced as in responsible existence.)

Acts not in use, repealed by 19 & 20 Vict. c. 64.

Acts of Sederunt, ordinances of the Court of Session, made under authority of the act 1540, c. 93, by which power is given to make such statutes as may be necessary for the ordering of processes and the expedition of justice. The Court is also authorised by other acts of parliament to make enactments relative to certain matters therein pointed out.—*Scotch Law.*

Acts of the General Assembly of the Church of Scotland. The acts of the general assembly, issued under their legislative powers, are binding on all the members and judicatories of the church. The form of their procedure is regulated by an act of the church (1679) termed the barrier act.—*Ibid.*

Actuarius, a notary.

Actuary, a short-hand writer, a registrar of a public body. Also a clerk that registers the acts and constitutions of the Lower House of Convocation; or a registrar in a Court Christian.—*Jacob.* Also an officer appointed to keep Savings-Banks' accounts, or the proceedings of a common Court. The manager of an Insurance Company; also a person skilled in the doctrine of life-annuities and insurances, and who is in the habit of giving opinions upon the value of interests in property.

Actus, a footway and horseway.

Adar (the same meaning as *Aries,* a ram, mighty). The twelfth sacred month of the Jewish calendar, and sixth of their civil year, answering to the end of February and beginning of March. As the lunar year which the Jews followed in their calculations is shorter than the solar by about eleven days, which at the end of three years make a month, they then intercalate a thirteenth month every third year, which they call *Veadar,* or the second Adar.—*Brown's Dict. of Bible; Jahn's Bib. Antiq.* c. vi. s. 103.

Adawlut, justice, equity ; a court of justice. The terms Dewanny Adawlut, and Foujdarry Adawlut, denote the civil and criminal courts of justice. See Dewanny and Foujdarry. *Indian Words.*

Adcordabilis denarii, money paid by a vassal to his lord upon the selling or exchanging of a feud.—*Encyc. Lond.*

Adcredulitare, to purge one's self of an offence by oath.—*Leg. Mæ.* c. 36.

Ad damnum (*to the damage*).

Addecimate, to take tithes.

Addictio, the giving up to a creditor of his debtor's person by a magistrate. The ordinary means of execution under a law which did not allow execution of a debtor's property. *Sand. Just.* 422.

Ad diem (*at the day*).

Addition, the title, or mystery, and place of abode of a person besides his names.—1 *Hen. V.* c. 5 ; *Termes de la Ley*, 20. By 14 & 15 Vict. c. 100, s. 24, no indictment shall be held insufficient for want of, or imperfection in, the addition of any defendant.

Additio probat minoritatem. 4 Inst. 80.—(An addition proves minority.)

Additionales, propositions or terms added to a former agreement or contract.

Ad ea quæ frequentius accidunt jura adaptantur. Wing. 216.—(The laws are adapted to those cases which more frequently arise.)

Address, a petition, also a place of business or residence. See Bill in Chancery.

Adeling, Ethling or **Edling** [*ædelan*, Sax.], noble, excellency. A title of honour among the Anglo-Saxons, properly belonging to the king's children.—*Spelm. Glos.*

Adelingia, Athelney in Somersetshire.

Ademption [fr. *adimo*, Lat.], revocation ; a taking away of a legacy, i. e. if a testator, after having given a legacy by his will, alienate the subject of it during his life, it is an ademption. *Ambl.* 402 ; 2 *Wms. Executors*, 1189. See Satisfaction.

Ad finem, abbrev. *ad fin.* [Lat.] (*at*, or *near to, the end.*)

Adhering, cleaving to or joining.

Adiation, a term used in the laws of Holland for the application of property by an executor. *Knapp. Rep. Privy Council*, p. 107.

A digniori fieri debet denominatio et resolutio. Wing. 265.—(The title and exposition ought to be made from that which is the more worthy.)

Ad inquirendum, a judicial writ commanding inquiry to be made of anything relating to a cause in the Superior Courts.—*Reg. Judic.*

Ad interim (*in the meantime*).

Adiratus, a price or value set upon things stolen or lost, as a recompense to the owner. *Cowel.*

Adjournment [fr. *jour*, Fr. a day], a putting off to another time or place, a continuation of a meeting from one day to another. An adjournment of parliament is a continuance of the session from one day to another.—1 *Bl. Com.* 185. The consul used to dismiss the Roman Senate in the following words : '*Nil vos moramur, Patres Conscripti.*' Adjournment of parliament differs from prorogation, the former being done by the Houses themselves, whereas the latter is an act of royal authority.

Either House may interrupt or postpone any debate, defer the consideration of any measure, or altogether adjourn its sittings. The Lords frequently adjourn 'during pleasure,' which means that the Lord Chancellor or other speaker of the House may, in the exercise of his discretion, take his seat on the woolsack, two other peers being present, and cause business to proceed at any hour within the day on which such adjournment 'during pleasure' takes place, otherwise their Lordships' House will stand adjourned to the usual hour on the following day; but usage has fixed five o'clock P.M. as the time for resuming after an adjournment 'during pleasure.' The Commons, on the contrary, always adjourn to a time specified. The adjournment of one House is no adjournment of the other. In Committee, to move that the Chairman report progress is equivalent to moving that the debate be then adjourned. Adjournment does not close the session ; prorogation does not terminate the parliament ; the former is an act of either House ; the latter an act of the Crown, the duration of which may be subsequently extended or curtailed, according to the royal pleasure. All unfinished proceedings during an adjournment remain *in statu quo.* A member who moves the adjournment of a debate, or is addressing the House at the time of adjournment, is said to be in possession of the House, and can speak again when the sittings are resumed. When Committees of the whole House adjourn, however, this rule does not prevail.—*Dod's Parl. Comp.*

Adjournamentum est ad diem dicere, seu diem dare. 4 Inst. 27.—(An adjournment is to appoint a day, or to give a day.)

Adjournment-day, a further day appointed by the judges at the *nisi prius* sittings to try issues in fact which were not then ready for trial. Notice of trial should be given ten days before this day.

Adjudication, giving or pronouncing a judgment, sentence, or decree. In Bankruptcy Law, adjudication is the act of the Court declaring a person to be bankrupt. In Scotch Law it is used to express the diligence by which land is attached in security and payment of a debt, or by which a feudal title is made up in a person holding an obligation to convey without procuratory or precept. There is thus (1) the adjudication for debt ; (2) the

adjudication in security; and (3) the adjudication in implement.

Adjudication in implement, the mode of perfecting a defective title to property.—*Scotch Law.*

Adjudication special, when the Lords of Sessions adjudge to the creditor some part of the debitor's lands proportionably to the sums due, with a fifth part more beside for composition due to the superior, and the expenses for obtaining enfeoffment; but if the debitor do not consent to such an adjudication, in the terms of the act 1672, all his lands and other heritable subjects are adjudged in the same manner as they were formerly apprised.—*Ibid.*

Adjudication after the old form, when the *hæreditas jacens* (the heir having renounced) is adjudged to the creditor for payment of his money.—*Ibid.*

Adjudication upon obligement, when a man, having obliged himself to enfeoff another in lands disponed by him, the Lords adjudge upon his refusal to perform.—*Ibid.*

Adjunction, when a thing belonging to one is attached or united to that which belongs to another, whether by inclusion, soldering, sewing, construction, writing, or painting, the whole generally becomes the property of the latter.—*Civil Law.*

Adjuncts, additional judges.

Adjunctum accessorium, an accessory or appurtenance.

Ad jura regis, a writ which was brought by the king's clerk presented to a living against those who endeavoured to eject him, to the prejudice of the king's title.—*Reg. of Writs,* 61.

Adjuration, a swearing or binding upon oath.

Adjustment [fr. *adjuster,* Fr. to make even] **of a loss,** the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay.—*Marsh,* 529.

Adlamwr [*ad-lam-gwr,* Cym. one returning], a proprietor who, for some cause, entered the service of another proprietor without agreement, and left him after the expiration of a year and a day, was liable to the payment of thirty pence to his patron.—*Welch Law.*

Ad Lapidem, Stoneham in Hampshire.

Ad largum (*at large*), used in the following and other expressions: title at large, assize at large, verdict at large, to vouch at large, &c. *Cowel.*

Adlegiare [fr. *aleier,* Fr.], to purge of a crime by oath.—*Brompt. Chron.* c. 4 & 13.

Admanuenses, persons who swore by laying their hands on the book.—*Old Law Books.*

Admeasurement, Writ of. It lay against persons who usurped more than their share, in the two following cases:—admeasurement of dower, where the widow held from the heir more land, &c., as dower, than rightly belonged to her; and admeasurement of pasture, which lay where any one having common of pasture surcharged the common.—*Termes de la Ley.*

Adminicle, aid, help, or support, 1 Edw. IV. c. 1. In the Scotch Law, it is a term used in the action of proving the tenor of a lost deed, and applicable to any deed or even scroll tending to establish the existence or terms of the deed in question. In the Civil Law it means imperfect proof.

Adminicular evidence, explanatory or completing testimony.

Administration, the giving or supplying of something; the disposing of an intestate's property; a term applied to the body of ministers appointed by the Crown to carry on the government of the country.

Administrator, the manager of a business; he to whom the goods and effects of a person dying intestate are committed by the Probate Court. The following are limited administrations:—*Administration durante minori ætate,* is granted where an infant is entitled to administration, or is made sole executor. The grant is made to the duly appointed guardian of the infant for his use and benefit until he attain the age of twenty-one years, when it ceases. *Administration durante absentiâ* is granted when the next person entitled to the grant is beyond sea, lest the goods perish or the debts be lost. *Administration pendente lite* is granted where a suit is commenced in the Probate Court concerning the validity of a will or the right to administration, until the suit be determined, in order that there may be somebody to take care of the testator's estate. *Administration cum testamento annexo* is granted when there is not any executor named in the will, or if a person be named who is incapable, or one who refuses to act. *Administration de bonis non* is granted when the first administrator dies before he has fully administered. An *ancillary administration,* so called because it is subordinate to the original administration, is granted for collecting the assets of foreigners. It is taken out in the country where the assets are situated. Consult *Toller on Executors; Williams's Executors and Administrators*; and *Story's Conflict of Laws,* 518, 522.

Administratrix, a woman who has goods and chattels of an intestate committed to her charge in like manner as an administrator.—*Blount.*

Admiral [supposed to be derived from *Amir al bahir,* Arab. commander of the sea or fleet], an officer having high command in the Royal Navy. An admiral has two subordinate commanders under him, a vice-admiral and rear-admiral, distinguished into three classes by the

colour of their flags, white, blue, and red. The admiral carries his flag at the main-topmast head, the vice-admiral at the fore-topmast head, and the rear-admiral at the mizen-topmast head.

Admiralty, the High Court of, is held before the Judge of the Admiralty, who sat as deputy of the Lord High Admiral of England until that office was put into commission, and then as deputy of the Lords Commissioners. There are two divisions of the Court—the Prize Court and the Instance Court. In the Prize Court the Judge has jurisdiction, by virtue of a commission issued under the Great Seal, at the beginning of every war to proceed upon all and all manner of captures, seizures, prizes, and reprisals of ships and goods which are or shall be taken, and to hear and determine according to the course of the Admiralty and the Law of Nations. In the Instance Court, also, the jurisdiction exercised by the Judge is conferred by a commission under the Great Seal. This is a municipal tribunal, it is a court of record, and its decrees and orders for the payment of money have the same effect as judgments in the Superior Courts of Common Law. It has jurisdiction in cases of private injuries to private rights arising at sea, or intimately connected with maritime subjects. Its jurisdiction in cases of torts is confined to wrongs committed at sea, or at least on the water within the jurisdiction of the Admiralty. Such are suits for—

(1) Sea batteries.

(2) Collision of ships. (For which there is also remedy at common law.)

(3) Restitution of possession of a ship where there is no *bonâ fide* claim to withhold her; and

(4) Piratical and illegal takings at sea.

In cases of contract, its jurisdiction is confined to those of a maritime nature, as—

(1) Between part owners of a ship. (Equity has a concurrent jurisdiction in this case.)

(2) Mariners' and officers' wages. (Also recoverable by action at law, or before a magistrate.)

(3) Pilotage.

(4) Bottomry and respondentia bonds; and

(5) Salvage (which is the compensation to be made to persons by whose assistance a ship, or her freight, or loading, has been saved from impending peril, or recovered after actual loss), and those relating to wreck. Salvage is also recoverable by action at law, or by summary hearing before magistrates or the Cinque Port Commissioners.

(6) Whenever any ship is under arrest by process issuing from the High Court of Admiralty, or when the proceeds of any ship having been so arrested have been brought into the Registry, the Court has jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of such ship, and to decide any suit instituted by any such person in respect of any such claims or causes of action respectively. (3 & 4 Vict. c. 65.)

The proceedings in this Court (which sits at Westminster) are greatly conformable to the civil law, in conjunction with marine customs. The Court of Admiralty has been entirely re-constructed, its practice improved, and civil jurisdiction extended by the 3 & 4 Vict. cc. 65, 66, and 24 & 25 Vict. c. 10. Serjeants, barristers-at-law, attorneys and solicitors, have been admitted to practice there, the practice has been assimilated to that of the Common Law Courts, power has been given to compel the attendance of witnesses and the production of papers, to take evidence *vivâ voce* in open Court, to order issues to be tried in any of the Courts of Nisi Prius with the same authority as the Common Law Courts as to bills of exceptions and new trials, to make rules of Court, and to commit for contempt. The judge may have the assistance of a jury; and in suits for collision, he usually decides upon his own view of the facts and law, after having been assisted by, and hearing the opinion of, two Trinity masters.

There is a summary form of proceeding, by an act on petition, in which the parties state shortly their respective cases, supporting them by affidavits; this is adopted in order to enforce payment of a bottomry-bond.

The first process in a plenary suit is frequently the arrest of the defendant's person, upon which he must find bail, or *fidejussors* in the nature of bail. The Court may fine and imprison for a contempt in its presence, although it is not a court of record.

In order to obtain restitution or enforce a claim, the arrest of a ship, her apparel, and furniture, is allowed, when, in order to release her, bail for her value, and intermediate earnings, must be given, and for the return of the vessel into the hands of the claimant, if the Court should ultimately adjudge the possession to him, or for the amount of the claim.

A monition is sometimes the first proceeding, as when an agent is required to bring in his account of the sale of a ship and cargo, and to distribute the balance of the proceeds, as in case of prize.

The Court may rehear and revise its own decrees; but it will very reluctantly permit such a proceeding. An appeal lies to the Judicial Committee of the Privy Council. See 2 & 3 Wm. IV. c. 51.

Whenever any of H. M.'s ships of war attack persons alleged to be pirates afloat or ashore, the High Court of Admiralty or any Court of Vice-Admiralty may determine whether such was the real character of the persons attacked, and all ships and goods taken from pirates by such ships, and their officers

and crews, may be proceeded against in any of such Courts, and are liable to condemnation as droits and perquisites of H.M. in her office of Admiralty; but if any part of the property shall be duly proved to have been taken from H.M.'s subjects, or the subjects of any foreign power, the same shall be restored to the former owner on his paying in lieu of salvage a sum of money equal to one-eighth part of the true value, to be distributed among the captors. (13 & 14 Vict. c. 26.)

This Court formerly had cognisance of all crimes and offences, committed either upon the sea, or on the coasts, out of the boundary or extent of any English county, until the 4 & 5 Wm. IV. c. 36, establishing 'The Central Criminal Court,' enacted by its 22nd section, that with a view to speedy justice, it should be lawful for the Judges to be appointed by the commissions to be issued under the authority of the act, or any two or more of them, to inquire of, hear, and determine any offence committed or alleged to have been committed on the high seas and other places within the jurisdiction of the Admiralty of England, and to deliver the gaol of Newgate of any person or persons committed to or detained therein for any offence alleged to have been done and committed upon the high seas aforesaid, within the jurisdiction of the Admiralty of England, and all indictments found and trials and other proceedings had and taken by and before the judges of oyer and terminer and gaol delivery, should be valid and effectual, to all intents and purposes whatsoever; and any three of such judges of oyer and terminer and gaol delivery, might order and direct the payment of the costs and expenses of such prosecutions in manner prescribed and directed by the 7 Geo. IV. c. 64.

There is a Court of Admiralty in Ireland; but the Scotch Court was abolished by 1 Wm. IV. c. 69. Vice-Admiralty Courts exist in many of our colonies. Consult *Bac. Ab.* tit. *Court of Admiralty*; *Com. Dig.* tit. *Admiralty*; and *Browne's Law of the Admiralty*. See PRIZE COURT.

From a Vice-Admiralty Court an appeal lies to the Sovereign in Council.

As to the jurisdiction of the Admiralty in the colonies, see 12 & 13 Vict. c. 96, and 23 & 24 Vict. c. 88.

Admiralty, Droits of. See DROITS OF ADMIRALTY.

Admissions in evidence, concessions of certain facts by an opponent.

Admission of a clerk by the bishop, when a patron of a church has presented him to it. It is, in fact, the ordinary's declaration that he approves of the presentee to serve the cure of the church to which he is presented.—*Co. Litt.* 344 *a*.

Admittance, giving possession of a copyhold estate. It is of three kinds: (1) Upon a *voluntary grant by the lord*, where the land has escheated or reverted to him. (2) Upon *surrender* by the former tenant. (3) Upon *descent*, where the heir is tenant on his ancestor's death. *Wood*, b. 2, c. 1; 1 Chit., p. 349.

Admittendo clerico, a writ of execution upon a right of presentation to a benefice being recovered in *quare impedit*, addressed to the bishop or his metropolitan, requiring him to *admit* and institute the clerk or presentee of the plaintiff.—*Reg. Orig.* 33 *a*.

Admittendo in socium, a writ for associating certain persons, as knights and other gentlemen of the county, to justices of assize on the circuits.—*Reg. Orig.* 206.

Admonition, a judicial reprimand.

Admortization, the reduction of property of lands or tenements to mortmain, in the feudal customs.—*Encyc. Lond.*

Ad Murum, Waltown or Walton.

Adnepos, a direct male descendant in the fifth degree.

Ad officium justiciariorum spectat, unicuique coram eis placitanti justitiam exhibere. 2 Inst. 451.—(It is the duty of justices to administer justice to every one pleading before them.)

Adnichiled [fr. *nichil* or *nihil*, Lat.], annulled, cancelled, made void.—28 *Hen. VIII.*

Adolescence, the period between 12 in females and 14 in males till 21 years of age.

Adoption, an act by which a person appoints as his heir the child of another. There is not any law of adoption in this country. *Sand. Just.* 121, *et seq.*

Ad ostium ecclesiæ (*Dower*). Where tenant in fee-simple of full age, openly, *at the church-door* (where all marriages were formerly celebrated), after affiance made and troth plighted between them, endowed his wife with the whole or such quantity of his land as he pleased, specifying and ascertaining the same; on which the wife, after her husband's death, might have entered without further ceremony. Abolished by 3 & 4 Wm. IV. c. 105, s. 13.

Ad Pontem, Pawnton in Lincolnshire.

Adpromissor, an accessory to a promise, in order to give a stipulator greater security; he guaranteed the fulfilment of a promise.—*Sand. Just.* 453.

Ad proximum antecedens fiat relatio, nisi impediatur sententiâ. Jenk. Cent. 180.—(Let relation be made to the nearest antecedent, unless it be prevented by the context.)

Ad quem [Lat.] (*to whom* or *which*). See JUDEX AD QUEM.

Adquieto, payment.—*Blount.*

Ad quæstiones facti non respondent judices; ad quæstiones legis non respondent juratores. Co. Litt. 295.—(Judges do not answer to questions of fact; juries do not answer to questions of law.)

Ad quod damnum, a writ which ought to be issued before the Crown grants further liberties, as a fair, market, &c., which may be prejudicial to others; it is addressed to the sheriff, to inquire what damage it may do to grant a fair, market, &c. It is also used to inquire of lands given in mortmain to any house of religion, &c. It may likewise be used for the turning and changing of ancient highways, which could not formerly be done without a licence from the Crown, which was obtained by this writ on inquisition found, that such a change would not be a public detriment; but now a highway may be diverted by order of two magistrates.—*Termes de la Ley*, 26.

Adrectare, to do right, satisfy, or make amends.—*Gerve Doroberen, anno* 1170.

Ad rectè docendum oportet primum inquirere nomina, quia rerum cognitio à nominibus rerum dependet. Co. Litt. 68.—(In order rightly to teach a thing, inquire first into the names, for a knowledge of things depends upon their names.)

Adrogation, the adoption of an *impubes*, i. e. a male under 14, and a female under 12 years old.

Ad sectam, abbrev. into *ads* or *ats* [Lat.] (*at the suit of*). It is used by a defendant in entitling the cause against him: thus, C. D. (defendant) *ats* A. B. (plaintiff.)

Adstipulator, an accessory party to a promise, who received the same promise as his principal did, and could equally receive and exact payment; or he only stipulated for a part of that for which the principal stipulated, and then his rights were co-extensive with the amount of his own stipulation.—*Sand. Just.* 453.

Ad terminum qui preteriit, a writ of entry, which lay for a lessor or his heirs, where a lease of premises had been made for life or years, and after the term had expired the premises were withheld from the lessor or his heirs, by the tenant or other person in possession of them: but now by the 4 Geo. II. c. 28, if a tenant for life, or years, or person holding under him, shall wilfully hold over after the expiration of a notice *in writing*, given by the landlord, and after demand of possession, the tenant will be liable to *double the yearly value* for so long a time as he detains the premises, to be recovered by an action of debt. And by the 11 Geo. II. c. 19, s. 18, it is enacted, that if a tenant give notice of his intention to quit the premises (which needs not be in writing), and do not deliver up possession at the time mentioned in his notice, he, or his executors or administrators, will be liable to pay *double rent*, to be recovered by the landlord, either by distress or action at law.

Ad tunc et ibidem [Lat.] (*then and there*).

Adult, a person of full age, i. e. of the age of twenty-one years.

Adulteration, the corrupt production of any article, especially food or beverage. It is a criminal offence, 6 & 7 Wm. IV. c. 37. By 23 & 24 Vict. c. 84, s. 1, every person who shall sell any article of food or drink with which, to the knowledge of such person, any ingredient or material injurious to the health of persons eating or drinking such article has been mixed, and every person who shall sell as pure or unadulterated any article of food or drink which is adulterated or not pure, shall for every such offence, on a summary conviction of the same before two justices of the peace at petty sessions in England, and in Scotland before two justices of the peace in justice of the peace court, or before the sheriff substitute of the county, or before justices at petty sessions or a divisional justice in Ireland, forfeit and pay a penalty not exceeding five pounds, together with such costs attending such conviction as to the said justices shall seem reasonable; and if any person so convicted shall afterwards commit the like offence it shall be lawful for such justices to cause such offender's name, place of abode, and offence to be published, at the expense of such offender, in such newspaper or in such other manner as to such justices shall seem desirable.

Adulterine, the issue of an adulterous intercourse.

Adulterine guilds, traders acting as a corporation without a charter, and paying a fine annually for permission to exercise their usurped privileges.—*Smith's Wealth of Nations*, b. i. c. 10.

Adulterium, a fine imposed for the commission of adultery.

Adultery [*ad*, Lat. and *alteram*, another person], anciently termed *Advowtry* (*quasi ad alterius thorum*). The violation of conjugal fidelity; the sin of incontinence between two married persons, or it may be where only one of them is married, in which case it would be *single* adultery, to distinguish it from the other, which is *double*. This offence is only punishable by ecclesiastical censure and penance, *pro salute animæ et reformatione morum*; the temporal courts do not take any cognisance of it as a public wrong. It is by these courts considered only as a civil injury.

By 20 & 21 Vict. c. 85, which creates a Court for Divorce and Matrimonial Causes, a husband can obtain a dissolution of his marriage upon the ground of his wife's adultery, and a wife can obtain a judicial separation on the ground of her husband's adultery, or a dissolution of marriage on the ground of his adultery, coupled with cruelty, or desertion, or bigamy, or of his incestuous adultery, provided that the person applying to the Court for relief has not been guilty of certain kinds of conjugal misconduct enumerated in the act.

It has long been a national reproach that our law should afford to a husband pecuniary compensation for the loss of a wife's society, comfort, and assistance. But how has the legislature dealt with this revolting subject? True, the action of *crim. con.* is abolished by 20 & 21 Vict. c. 85, s. 59; but the money-compensating degradation is still retained, for by s. 33 of the same act, a husband may claim damages from an adulterer, to be assessed by a jury, and the Matrimonial Court has power to direct in what manner the damages shall be paid or applied, and that the whole or any part thereof shall be settled for the benefit of the children, or as a provision for the maintenance of his wife.

Adultery being a gross betrayal of the marriage bed, the law holds it to be manslaughter only, if a husband detect a man in the act with his wife, and then and there directly kill him or her; but it is murder to kill a person on mere suspicion of adultery.

In countries where polygamy prevails, if a married man have criminal intercourse with a married woman, or with one promised in marriage, or with a widow expecting to be married to a brother-in-law, it is accounted *adultery*. If he be guilty of such intercourse with an unmarried woman, it is considered fornication merely. Adultery, even before the time of Moses (*Gen.* xxxviii. 24), was reckoned a crime of a very heinous nature, as being the corruption of marriage—the foundation of society—and was punished accordingly. In Egypt, the nose of an adulteress; in Persia, her nose and ears, were cut off. (*Ezek.* xxiii. 25.) In the Mosaic code, the punishment was death. (*Lev.* xx. 10.) The Jews had a particular method of trying or rather purging an adulteress, or a woman suspected of the crime, by making her drink the bitter water of jealousy, which, if she were guilty, was said to make her swell. (*Numb.* v. 17–28.) Reuben's incest with Bilhah is the first act of adultery we read of. In ancient Greece, adulterers, however high their station in society might be, were amenable to the laws; but they were sometimes allowed to commute the punishment by the payment of a fine called μοιχάγριον to the injured husband, and the father of the adulteress returned the dowry which he had received of her husband. Among the Romans, originally, an adulterer might be prosecuted by any person as a public offender, but under the Emperors, the right of prosecution was limited to the husband, father, brother, patron, and avunculus of the adulteress. Among the Romans, if a husband kept his wife, after his discovery of her adultery, he was guilty of the offence called *Lenocinium*. Among the ancient Britons, adultery was severely punished. By the laws of Ethelbert, anyone who committed adultery with his neighbour's wife was obliged to pay him a fine, and buy him another wife. Edmund the Saxon ordered it to be punished in the same way as homicide; and Canute the Dane ordained that an adulterer should be banished, and the woman's nose and ears cut off. In the time of Henry I. it was punished with the loss of eyes and genitals.—*Jahn's Bib. Antiq.* c. x. s. 158; *Smith's Dict. of Gk. and Roman Antiq.*; *Encyc. Lond.*

The word is used by ecclesiastical writers to describe the intrusion of a person into a bishopric during the former bishop's life. The reason of the appellation is, that a bishop is supposed to contract a sort of spiritual marriage with his church.

Adurni portu de, Etherington, or Ederington.

Ad valorem, a term used in speaking of the duties or customs paid on certain goods; the duties on some articles are paid by the number, weight, measure, tale, &c., and those on others are paid *ad valorem*, that is, according to their value.

Advance (fr. *avancer*, Fr. to push forwards, fr. *avant*, Fr. *avante*, It. *ab ante*, Lat.), money paid before it is due; encrease.

Advancement, promotion; additional price. To the doctrine of resulting trusts there is a very important exception, for in equity, where a purchase is made in the name of a wife or child, or of an illegitimate child, grandchild, or nephew of a wife, to whom the purchaser has placed himself *in loco parentis*, there will *primâ facie* be no resulting trust for such purchaser; but, on the contrary, a presumption arises that an advancement was intended, pursuant to the obligation to provide for such relations. And a purchase by a parent in the joint names of himself and his child, as well as a purchase in the joint names of his child and a stranger, will be held an advancement for the child to the extent of the interest vested in him, the stranger however holding the estate vested in him in trust for the parent. The father's entering into, and keeping possession, and taking the rents and profits of the purchased property, or the son's giving receipts in the name of the father, will not prevent the presumption of advancement from arising, especially where the son is advanced but in part. Where, however, a son is *fully* advanced, the father's entry into possession, and into the receipt of the rents or profits of property purchased in his son's name, *may* be considered as evidence of a trust.

The presumption of advancement may be rebutted by evidence of facts, showing the parent's intention, that the son should take property, purchased in his name, as a trustee, and not for his own benefit. Such facts, however,

must have taken place antecedently to, or contemporaneously with, the purchase; or immediately after it, so as to form, in fact, part of the same transaction; for subsequent facts will not be admissible in evidence to show an intention against the presumption of advancement.

This presumption may also be rebutted by evidence of parol declarations of the father made contemporaneously with the purchase, but not by any of his declarations made subsequently to it; but these may be used in evidence against him by the son. *A fortiori*, parol evidence may be given by the son to show the intention of the father to advance him; for such evidence is in support as well of the legal interest of the son as of the equitable presumption.

It is to be remarked, that if the parent and another person pay the money, it will not be deemed an advancement, for the child being a trustee for the latter, he will be held to be trustee for them both.

Advent, a coming to; also the month preceding the anniversary of the nativity of Jesus Christ. It begins on the Sunday that falls either upon St. Andrew's day, the 30th November, or next to it, and continues till the feast of Christmas day.—*Blount.*

Adventitious, that which comes unexpectedly or incidentally.

Ad ventrem inspiciendum [*to inspect the womb*]. See DE VENTRE INSPICIENDO.

Adventure [fr. *advenire*, Lat. to come to], the sending to sea of a ship or goods at the risk of the sender.—*Lex Merc.*

Adventure, *bill of*, a writing signed by a merchant, stating that the property of goods shipped in his name belongs to another, to the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce. An adventure is commercially defined as a speculation in goods sent abroad under the care of a supercargo, to be disposed of by him to the best advantage for the benefit of his employers.

Adversaria [*adversa*, things remarked or ready at hand], rough memoranda, common-place-books.

Adversary, a litigant-opponent.

Adverse possession, occupancy of realty without molestation, which may at length ripen into an unimpeachable title. As to adverse possession since 3 & 4 Wm. IV. c. 27, see Nepean *v.* Doe, 2 M. & W. 910; and as to it before this statute, Taylor *d.* Atkyns *v.* Horde, 1 Burr. 60, and 2 Smith's L. C. 433—584.

Advertisement [fr. *avertissement*, Fr.], a public notice or announcement of a thing. The duties payable on advertisements were repealed by 16 & 17 Vict. c. 63, s. 5.

Advertising for stolen or lost property. By 24 & 25 Vict. c. 96, s. 102, whosoever shall publicly advertise a reward for the return of stolen or lost property, and shall in such advertisement use words purporting that no questions will be asked, or purporting that a reward will be given without seizing or making inquiry after the person producing the property, or shall in such public advertisement promise or offer to return money paid for or advanced on such property by a pawnbroker or other person, or any other reward for the return of the same, or shall print or publish such advertisement, shall forfeit £50.

Advertising vehicles, prohibition of, 16 & 17 Vict. c. 33, s. 16.

Advice [fr. *avis*, Fr. *avviso*, It. *avise*, Old Eng. view, opinion], counsel; also, the instruction usually given by one merchant or banker to another *by letter*, informing him of bills or draughts drawn on him, with particulars of date, or sight, the sum, and the payee. Bills presented for acceptance or payment are frequently dishonoured for *want of advice*. Advice is also necessary to prevent forgery; if a merchant accept or pay a bill for the honour of another person, he is bound to advise him thereof, and this should always be done under *an act of honour*, by a notary-public.—*McCull. Comm. Dict.*

Advisement, deliberation.

Ad vitam aut culpam, an office which is to determine only by the death or delinquency of the holder, or which is, in fact, held *quamdiù se bene gesserit* (so long as he conduct himself properly).—*Jacob.*

Advocare [Lat. *Tyman getyman*, Ang.-Sax.], to defend, to call to one's aid, also to vouch, to warranty.—*Anc. Laws of England.*

Advocate, a patron of a cause assisting his client with advice, and pleading for him.—*Spel. Glos.* He is defined by Ulpian (*Dig.* 50, tit. 13) to be any person who aids another in the conduct of a suit or action.

In the English Ecclesiastical and Admiralty Courts, until recently certain persons learned in the civil and canon law, called advocates, had the exclusive right of acting as counsel. They were members of a college situate at Doctors' Commons, incorporated by charter, June 22, 8 Geo. III., under the title of 'The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts,' and had, previously to their admission to that college, taken the degree of Doctor of Laws at an English university. The jurisdiction of the Ecclesiastical Courts in matters matrimonial and testamentary has now been transferred to the Court for Divorce and Matrimonial Causes and the Court of Probate respectively, and these new courts and the Admiralty and Ecclesiastical Courts have been thrown open to the bar. By 20 & 21 Vict. c. 77, ss. 116, 117, the College of

Doctors of Law, &c., is empowered to sell its real and personal estate, and to surrender its charter of incorporation, upon which surrender the college is to be dissolved.

Advocate, Lord, the principal public prosecutor in Scotland. He is assisted by a Solicitor-General and four junior counsel, termed advocates depute. He is understood to have the power of appearing as prosecutor in any court in Scotland, where any person can be tried for an offence, or in any action where the Crown is interested; but it is not usual for him to act in the inferior courts, which have their respective public prosecutors, called procurators-fiscal, acting under his instructions. He does not, in prosecuting for offences, require the intervention of a grand jury, except in prosecutions for treason, which are conducted according to the English method. The Lord Advocate is virtually Secretary of State for Scotland.

Advocate, Queen's, a member of the College of Advocates, appointed by letters patent, whose office it is to advise and act as counsel for the Crown in questions of civil, canon, and international law. His rank is not fully settled, but he claims precedence of the whole bar.

Advocates, Faculty of, the bar of Scotland in Edinburgh. Only a small proportion, however, of these profess to be practising lawyers, and it has become a habit for country gentlemen to acquire the title of Advocate, in preference to taking a degree at the Scottish Universities. The Dean of Faculty and the two crown lawyers, the Lord Advocate and Solicitor-General, are the only persons who take precedence at the Scottish bar, independent of seniority. The Lord Advocate and the Solicitor-General are the only members of the Faculty who wear silk gowns and sit within the bar.

Advocatia, the quality, function, privilege, or territorial jurisdiction of an advocate.—*Civil Law.*

Advocation, a process by which an action may be carried from an inferior to a superior court before final judgment in the former (1 & 2 Vict. c. 86).—*Scotch Term.*

Advocati, patrons of churches.—*Blount.*

Advocati Fisci, advocates of the revenue among the Romans, tantamount to Queen's Counsel.

Advocatione decimarum, a writ which lay for tithes, demanding the fourth part or upwards, that belonged to any church.—*Reg. Orig.* 29.

Advocatus, a pleader or narrator.

Advocatus est, ad quem pertinet jus advocationis alicujus ecclesiæ, ut ad ecclesiam, nomine proprio, non alieno possit præsentare. Co. Litt. 119.—(A patron is he to whom appertains the right of presentation to a church, in such a manner that he may present to such a church in his own name, and not in the name of another.)

Advow, or **Avow,** or **Avouch** [under the feudal system when the right of a tenant was impugned, he had to call upon his lord to come forward and defend his right. This, in the Latin of the time, was called *advocare*, Fr. *voucher à garantie*, to vouch or call to warrant. As the calling the lord of the fee to defend the right of the tenant involved the admission of all the duties implied in feudal tenancy, it was an act jealously looked after by the lords, and *advocare*, or the equivalent Fr. *avouer*, to avow, came to signify the admission by a tenant of a certain person as feudal superior. Finally, with some grammatical confusion, the words *advocare*, and avow or avouch, came to be used in the sense of performing the part of the vouchee, or person called on to defend the right impugned. *Wedgw.*], to justify or maintain an act, e. g. one distrains for rent, and he that is distrained brings an action of replevin; if the distrainer, in his defence, justify or maintain his act, he is said to advow or avow, and his plea is called avowment or avowry.

It also signifies to call upon or produce, thus, anciently, when stolen goods were bought by one and sold to another, it was lawful for the right owner to take them wherever they were found, and he in whose possession they were found was bound to produce the seller to justify the sale, and so on till they found the thief.—*Old Nat. Br.* 43.

Advowee, or **Avowee,** the person or patron who has a right to present to a benefice.—*Fleta,* lib. v. c. 14.

Advowee paramount, the sovereign, or highest patron.

Advowson [fr. *advocare*, Lat.], a right of presentation to, or the patronage of, a church or spiritual living; the person possessed of this right or patronage being called the patron or advocate (*patronus aut advocatus*), on account of his obligation to protect and defend the privileges of the particular benefice. An advowson is in the nature of a temporal property and spiritual trust. For the origin and history of advowsons consult *Mirehouse on Advowsons*, pp. 1–6.

There are several kinds of advowsons, viz.:—

(I.) Presentative advowsons, subdivided into,
  (α) Appendant.
  (β) In gross, and
  (γ) Partly appendant, and partly in gross.

(II.) Donative advowsons.

(III.) Collative advowsons.

A presentative advowson appendant is a right of patronage annexed to the possession of some corporeal inheritance. Thus, where an advow-

son has immemorially passed together with a real or reputed manor by a simple grant of such manor, without particularly referring to the advowson, it is then said to be appendant, i. e. annexed to the demesnes of such manor, which subsist perpetually.

A presentative advowson in gross is a right of patronage self-subsistent, belonging to the patron as an individual, and not in anywise appendant to a corporeal inheritance.

While a few advowsons were originally in gross, as when the right originated in an agreement that a builder of a certain church and his heirs should be its patrons *ratione fundationis*, yet the greater number of them was primarily appendant, becoming by subsequent circumstances severed in gross.

The severance may take place in several modes:—(1) when the corporeal inheritance is conveyed away, with a special reservation of the advowson; (2) when the advowson is granted away, and not the corporeal inheritance to which it was incident; (3) when the patron presents to it as though it were already severed. An advowson once completely and unconditionally severed, can never again become appendant. But should an advowson be disappended conditionally, as in the case of a mortgage, it will reunite when the loan is repaid. So, if the advowson be excepted in a lease of the corporeal inheritance, it remains in gross during the lease, but upon its expiration it becomes appendant again. These instances, however, are rather suspensions than severances.

A disappendancy created by a wrongful act, may be done away with by defeating such act; and should it be effected by operation of law, the appendancy will be preserved unless otherwise expressly intended.

A presentative advowson may be partly appendant and partly in gross; thus, when the owner grants to another every second presentment, for then the advowson will be appendant for the grantor's turn, and in gross for that of the grantee. And should the advowson appendant, and that in gross be afterwards possessed by the same person, still the advowson will be appendant for one turn, and in gross for the other. So, if three persons be seised of a manor with a presentative advowson appendant, and two of them release their right of the patronage to the third, he then becomes seised of two-thirds of the advowson in gross, and of the unsevered third as appendant; but upon the death of this third person, the entire advowson will devolve upon his heirs or devisee in gross.—*Mirehouse on Advowsons*, p. 20.

A donative advowson is a spiritual preferment, not presentable, conferred by the royal letters-patent upon the founder of a church or chapel, to be visited by the founder and not the bishop or ordinary.

The deed of donation gives to the parson possession without any presentation, institution, or induction.

The donee or person taking a donation must be a priest episcopally ordained; must read the morning and evening prayers according to the Book of Common Prayer within two months after his donation, or in case of an impediment to be allowed of by the bishop, within one month after its removal, together with the form of giving assent and consent thereto; must before his admission subscribe to the declaration of conformity to the liturgy before the archbishop, bishop, or ordinary, or his vicar-general, chancellor or commissary; if the donative have a parish-church belonging to it, he must take a certificate under the hand and seal of the person before whom he subscribed his assent and afterwards read the same in the parish-church; must take the oath prescribed by 21 & 22 Vict. c. 48, before the patron; must subscribe to the thirty-nine articles before the bishop, if the donative be a benefice with cure; must also within six months again take the above-mentioned oath in one of the courts at Westminster, or at the general or quarter sessions; must read the thirty-nine articles, and assent thereto within two months, or at the time when he reads the services, as already mentioned, if the benefice be with cure; and, within three months after subscribing to the declaration, he must read the bishop's certificate of his subscription, and again make the same declaration within his parish-church.—*Mirehouse on Advowsons*, pp. 23–25.

It is the better opinion that where this kind of advowson is once presented to, it ceases to be donative.—*Ib.* 26.

A donative advowson never lapses, unless by the terms of the foundation, or by act of parliament, it is subject to lapse (1 Geo. I. st. 2. c. 10, ss. 6 & 7); but the bishop may compel the patron to fill the benefice by ecclesiastical censure. The complete dominion over the vacant benefice, and the freehold in it, remain in the patron, together with the right to take the intermediate profits until it is again granted by him to a new incumbent. The right of donation always devolves upon the real representatives of the patron, and never devolves upon the Crown, when the incumbent is promoted to a bishopric. The resignation of a donative must be to the patron.

A collative advowson arises when a bishop has the right of patronage, either originally or by lapse. Collation is the conferring of a benefice by a bishop. It is an immediate institution, without any presentation, and is completed by the induction of the collatee. Where a bishop collates and dies before induction, the Crown presents as having in its custody the temporalities of the vacant bishopric.

A presentative advowson may be sold and conveyed in fee, fee-tail, for life, for years, for the next presentation, or any number of future presentations. It may be limited in possession, reversion or remainder, and held in joint-tenancy, tenancy-in-common, or coparcenery. It is also subject to curtesy and dower, and, being deemed assets for the payment of debts (except during an actual vacancy), may be sold by an order of the Court of Chancery. An advowson in gross cannot be extended under an *elegit*, because it is not susceptible of being valued, but it is chargeable in equity under 1 & 2 Vict. c. 110, s. 13.

The alienation of an advowson may result (1) from some wrongful act, as an usurpation (or, as the civil law calls it, an intrusion), which prevents the patron from presenting for that turn only (7 Anne, c. 18), or a disseisin, the disseisor presenting before the person disseised; (2) from operation of law, as dower, curtesy, and descent-cast; or (3) from the conveyance of the proprietor, either expressly by granting it, or incidentally by a transfer of the corporeal inheritance to which the advowson is appendant, as it passes under the word 'appurtenances,' except in the case of the Crown, when it will not pass without particular words or express mention of it (17 Edw. II. c. 15); for nothing will pass by a royal grant, but that which is clearly and explicitly intended.

So a right to present to a future avoidance may be expressly aliened by the same means. An avoidance is either in deed, upon the incumbent's death, or in law, upon resignation, plurality, deprivation, incapacity, union or simony. An actual vacancy can never be granted, unless by the Crown, for this would be simony.

All ecclesiastical persons seised of advowsons in right of their churches, all masters and fellows of colleges, and guardians of hospitals, seised in right of their houses, are restrained from making any grants of things incorporeal, such as advowsons or appropriations, and next avoidances which lie in grant; such grants are void against their successors, although good against the grantors during their own time.—1 *Eliz.* c. 19; 13 *Eliz.* c. 10.

The patrons of united churches (1 & 2 Vict. c. 106, s. 15, *et seq.*; and 4 & 5 Vict. c. 39, s. 23), have several rights, for though there be but one advowson, yet every patron has the whole advowson in his turn, since the patronage remains as before, though by the union the incumbency of one church is extinguished; and though the incumbency of the churches is united, the tithes, boundaries, moduses, and profits continue as before, for there can be no union of parishes, though there be of churches.

The patron of the most valuable church has the first presentment, and a subject-patron of a benefice of the greatest value has his turn before the sovereign-patron of the lesser church.

As no change is made by union in the rights of patronage, which are reserved to the patrons, the advowsons continue as before, both in their nature and right.—*Mirehouse on Advowsons*, c. 6; see 19 & 20 Vict. c. 50. See also 23 & 24 Vict. c. 142, as to the union of contiguous benefices in cities, towns, and boroughs.

Advowson of the moiety of a church. Where there are two several patrons, and two several incumbents, in one and the same church, the one of the one moiety, and the other of the other. Or where two must join in the presentation, and there is but one incumbent, as where there are two parceners, and they agree to present by turn, yet each of them has but a moiety of the church.—*Co. Litt.* 17 *b*.

Advowson of religious houses. Where persons founded any house of religion, they had thereby the advowson or patronage of them. *Kennett's Paroch. Antiq.* 147, 153.

Æbudæ, the Hebrides or Western Isles of Scotland.

Ædificare in tuo proprio solo non licet quod alteri noceat. 3 Inst. 201.—(It is not permitted to build upon one's own land that which may be injurious to another.)

Ædificatum solo, solo cedit. Co. Litt. 4 *a*. (That which is built upon the land goes with the land.)

Æfesn [*Pasnagium* or *Pannagium*, Lat.], the remuneration to the proprietor of a domain for the privilege of feeding swine under the oaks and beeches of his woods. This remuneration, according to *Ine.* 49, consisted of the third hog, when the fat was three fingers thick, and so on in proportion. Instead of a payment in kind, a payment of money appears to have been customary at the time of the survey. See *Sir H. Ellis's Introd. to Domesday*, vol. i. p. 99, note. Spelman cites one or two rather far-fetched etymons of the word pannage or pasnage, but its derivation is obviously from the French *paisson*, pasture.—*Ancient Laws of England.*

Æglesburgus, Ailesbury in Buckinghamshire.

Ægylde, or **Agylde**, or **Orgylde** [*inultus*, Lat.], uncompensated, unpaid for, unavenged. From the particle of exclusion, a, æ, or ex, (Goth.), and gild, *payment, requital.*—*Anc. Inst. Eng.*

Ægyptians, commonly called *Gypsies*. A strange kind of commonwealth, made up of wandering impostors and jugglers, who appeared in Germany in the beginning of the sixteenth century, and have since spread themselves throughout Europe and Asia. The Turks called them *Zingarees*; they have been also called

Zigenners, *Sziganys*, *Cygernis*, and *Tschingenes*, all appearing to be derived from the ancient German *Zichegan* or *vagrant*. The severe statutes against these people have been repealed, and they are now only punishable as vagrants by the 5 Geo. IV. c. 83, s. 4.

Æhlip, transgression of the law.—*Ancient Inst. Eng.*

Æhte-swan [*Servus Porcarius*, Lat.], a swine-herd, from 'æht,' *possessio pecus*, and 'swan' (Old Norse, or Icelandic, *sveinn*), a *servant*.—*Ib.*

Ælmfeoh, or **Ælmsfeoh**, Peter pence, which used to be paid to the Pope.

Æquitas agit in personam.—(Equity operates upon the conscience.)

Æquitas est convenientia rerum quæ cuncta coæquipărat, et quæ, in paribus rationibus, paria jura et judicia desiderat. Co. Litt. 24.—(Equity is a conveniency of things which makes all accord, and which, in equal reasonings, desires equal rights and decisions.)

Æquitas est correctio legis generaliter latæ, quâ parte deficit. Plowd. 375.—(Equity is a correction of law, when too general, in the part in which it is defective.)

Æquitas est correctio quædam legi adhibita, quia ab eâ abest aliquid propter generalem sine exceptione comprehensionem. Plowd. 467.—(Equity is a certain correction applied to law, because on account of its general comprehensiveness, without an exception, something is absent from it.)

Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nullâ scripturâ comprehensa, sed solâ ratione consistens. Co. Litt. 24.—(Equity is a sort of perfect reason which interprets and amends the written law; comprehended in no code, but depending on reason alone.)

Æquitas est quasi equalitas. Co. Litt. 24. (Equity is as it were equality.)

Æquitas est verborum legis sufficiens directio, qua una res, solummodo, cavetur verbis, ut omnis alia in æquali genere, iisdem cavetur verbis. (Equity is the efficient application of the language of the law, so that although only one thing is guarded against by its language, every other thing in the same category is also guarded against by the same language.)

Æquitas nunquam contravĕnit leges.—(Equity never counteracts the laws.)

Æquitas sequitur legem. Gilb. 136.—(Equity follows law.)

Æquum et bonum est lex legum. Hob. 224. (That which is equal and good is the Law of Laws.)

Æra or **Era**, a fixed point of chronological time, whence any number of years is counted. The origin of the term is contested, though it is generally allowed to have taken its rise in Spain. Sepulveda supposes it formed from A.ER.A. the *notæ* or abbreviatures of the words *annus erat Augusti*, occasioned by the Spaniards beginning their computation from the time their country came under the dominion of Augustus, or that of receiving the Roman calendar.

The difference between the terms *æra* and *epoch* is, that *æras* are certain points fixed by a people or nation, and *epochs* are points fixed by chronologists and historians. The idea of an *æra* comprehends also a succession of years proceeding from a fixed point of time, and the *epoch* is the point itself. Thus the Christian æra began at the epoch of the birth of our Saviour. *Kock's History of Europe, Introd.; Encyc. London.*

Ærie [fr. *æria accipitum*, Lat.], an airy or nest of goshawks.—*Spel. Glos.*

Æstimatio capitis [*pretium hominis*, Lat.], fines paid for offences committed against persons according to their degree and quality, by estimation of their heads, ordained by King Athelstane.—*Cress. Ch. Hist.* 834

Æstimatio præteriti delicti, ex postremo facto nunquam crescit. Bacon.—(The estimation of a committed crime is never increased by a subsequent fact.)

Ætate probanda, a writ which inquired whether the king's tenant holding in chief by chivalry, was of full age to receive his lands. It was directed to the escheator of the county, now disused.—*Reg. Orig.* 294.

Ætheling, a noble, though generally signifying a prince of the blood.—*Anc. Inst. Eng.*

Æthlyp [fr. *evasio*, Lat., escape, assault], the old Latin version renders it *conclamatio*. *Ibid.*

Affairs, a person's concerns in trade or property.

Affectio tua nomen imponit operi tuo. Co. Litt. 177.—(The affection of a person gives a name to his work.)

Affectum, challenge propter.—See JURY.

Affectus punitur licet non sequatur effectus. 9 Co. 56.—(The intention is punished, although the consequence do not follow.)

Affeerors [fr. *affeurer*, or *afferer*, Fr. to tax, fr. *feur* or *forum*, Lat., a market], persons who, in court-leets, upon oath, settle and moderate the fines and amercements imposed on those who have committed offences arbitrarily punishable, or that have no express penalty appointed by statute. They are also appointed to moderate fines, &c., in courts-baron.—*Cowel.*

Affiance [fr. *fidem dare*, Lat.], the plighting of troth or promise between a man and woman, upon agreement of marriage.—*Termes de la Ley*, 27; *Litt.* s. 39.

Affidare, to plight faith, or give or swear fealty, i. e. fidelity.—*Blount.*

Affidatio Dominorum, an oath taken by the lords in parliament.—*Ibid.*

Affidatus, a tenant by fealty, a retainer. *Blount.*

Affidari [*seu affidari ad arma*, Lat.], to be mustered and enrolled for soldiers upon an oath of fidelity.—*MS. Dom de Farendon*, 22, 55.

Affidavit [fr. *affirdare*, M. Lat., to pledge one's faith, fr. *fides*, Lat.], a declaration in writing, sworn before a person having authority to administer an oath; an affidavit ought to set forth the matter of fact only intended to be proved, it ought not to declare the merits of the case of which the court is to judge.—21 *Car.* 1, *B. R.*

By the practice of the Court of Chancery, the plaintiff and defendant may not only support their case by affidavit on interlocutory applications, but, when issue has been joined, may verify their respective cases either wholly or partially by affidavit, or wholly or partially by the oral examination of witnesses.

Every affidavit is intituled in the cause or matter in which it is made, and contains the true place of residence, description and addition of the deponent. The affidavit is taken and expressed in the first person of the deponent. Any solicitor, party, or person filing an affidavit not so taken and expressed, will not be allowed the costs of preparing and filing such affidavit in any taxation of costs.

The affidavit must state distinctly what facts or circumstances deposed to are within the deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are known to or believed by him, by reason of information derived from other sources than his own knowledge, and what such sources are, and if it fails so to state, the costs of it will be disallowed on taxation unless the Court otherwise directs. Before an affidavit is exhibited in court, or otherwise produced for the purpose of grounding any proceeding thereon, it shall be filed in the office of the Clerks of Records and Writs. And no order grounded upon an affidavit shall be drawn up unless the affidavit be first so filed, and an office copy thereof be produced.—*Orders, Hilary Term*, 1860, xviii. 1–5; *Smi. Chan. Prac.* 407.

By the rules of practice at Common Law, Hil. T. 1853, rule—

138. The addition and true place of abode of every person making an affidavit shall be inserted therein.

139. In every affidavit made by two or more deponents, the names of the several persons making such affidavit shall be written in the *jurat*.

140. No affidavit shall be read or made use of in any matter depending in Court in the *jurat* of which there shall be any interlineation or erasure.

141. Where any affidavit is sworn before any Judge or any Commissioner, by any person who from his or her signature appears to be illiterate, the Judges, Clerk, or Commissioner taking such affidavit, shall certify or state in the *jurat*, that the affidavit was read in his presence to the party making the same, and that such party seemed perfectly to understand the same, and also that the said party wrote his or her mark or signature in the presence of the Judge's Clerk or Commissioner, taking the said affidavit.

142. No affidavit of the service of process shall be deemed sufficient if sworn before the plaintiff's own attorney or his clerk.

143. Where an agent in town, or an attorney in the country, is the attorney on the record, an affidavit sworn before the attorney in the country shall not be received; and an affidavit sworn before an attorney's clerk shall not be received in cases where it would not be receivable if sworn before the attorney himself; but this rule shall not extend to affidavits to hold to bail.

144. An affidavit sworn before a Judge of any of the Courts shall be received in the Court to which such Judge belongs, though not entitled of that Court; but not in any other Court, unless entitled of the Court in which it is to be used.

145. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be made use of in Court or before the Master, unless by leave of the Court or a Judge.

146. No rule which the Court has granted upon the foundation of any affidavit shall be of any force unless such affidavit shall have been actually made before such rule was moved for, and produced in Court at the time of making the motion.

147. All affidavits used before a Judge out of Court, shall be filed with the Masters of the said Courts, and be alphabetically indexed; and such affidavits shall be delivered to the Masters of the respective Courts, in order to be filed within ten days next after that on which the matter is disposed of.

148. No commission for taking affidavits shall be issued to any person practising as a conveyancer, unless such person be also an attorney or solicitor of one of the Courts at Westminster; and no such commission shall issue without an affidavit made by the person intended to be named therein, that he is not and does not intend to become a practising conveyancer, or that he is an attorney or solicitor duly enrolled in one of the said Courts, and hath taken out his certificate for the current year.

Every affidavit to be used in any cause or civil proceeding in any of the superior courts of Common Law shall be drawn up in the first

person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit, or part of an affidavit, substantially departing from this rule.—*Rule* 2, *Mic. V.* 1854.

Any party to any civil action or other civil proceeding, in any of the superior courts of law requiring the affidavit of a person who refuses to make an affidavit, may apply by summons for an order to such person to appear and be examined upon oath before a Judge or Master, to whom it may be most convenient to refer such examination as to the matters concerning which he has refused to make an affidavit; and a Judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination for the purpose of being examined, and for the production of any writings or documents to be mentioned in such order, and may therein impose such terms as to such examination, and the costs of the application and proceedings thereon, as he shall think just.—*C. L. P. Act*, 1854, s. 48.

Such order shall be proceeded upon in like manner as an order made under 1 Wm. IV. c. 22, and the examination shall be conducted and the depositions taken down and returned, as nearly as may be, in the mode now used on *vivâ voce* examinations under the said Act of Parliament.—Sect. 49; 2 *Chit. Arch. Prac. by Prem. p.* 1541, *et seq.*

Affidavit Office in Chancery, abolished by 15 &16 Vict. c. 87, ss. 27 & 29, and its duties transferred to the Clerks of Records and Writs.

Affiliation, the adoption of the child of another; also the proof of a child's paternity.

Affinage [*purgatio metalli*, Lat.], refining metal, hence fine and refine.—*Blount.*

Affinitas affinitatis, the connection which has neither consanguinity nor affinity, as, the connection between a husband's brother and his wife's sister.

Affinitas dicitur, cùm duæ cognationes, inter se divisæ, per nuptias copulantur, et altera ad alterius fines accedit. Co. Litt. 157.—(It is called affinity, when two families, divided from one another, are united through marriage, and either approaches the confines of the other.)

Affinity, relationship by marriage between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband.—2 *Steph. Com.* 259. This is a relationship in law, and no real kindred.

Affinity is distinguished into three kinds. (1) *Direct*, or that subsisting between the husband and his wife's relations by blood, or between the wife and the husband's relations by blood. (2) *Secondary*, or that which subsists between the husband and his wife's relations by marriage. (3) *Collateral*, or that which subsists between the husband and the relations of his wife's relations.

Affirm, to ratify or confirm a former law or judgment.—*Cowel.*

Affirmance, the confirmation of a voidable act.

Affirmant, a person who solemnly affirms, instead of taking an oath.

Affirmanti, non neganti incumbit probatio.—(The proof lies upon him who affirms, not upon him who denies.)

Affirmation, a solemn declaration without oath; an indulgence to the people called *Quakers*, *Moravians*, and *Separatists*, who, in giving evidence either in civil or criminal cases, in lieu of an oath, may make a solemn affirmation that what they say is true. False affirmations are liable to the penalty of perjury. 9 Geo. IV. c. 32; 3 & 4 Wm. IV. cc. 49 & 82; 1 & 2 Vict. c. 77; C. L. P. Act, 1854, s. 20; and 8 & 9 Vict. c. 25, Scotland. See QUAKERS.

Affirmative Pregnant, an assertion implying a negation.

Affirmativum negativum implicat.—(An affirmation implies a negative.)

Afforare, to set a price or value on a thing. See AFFEER.—*Blount.*

Afforatus, appraised or valued, as things vendible in a fair or market.—*Ibid.*

Afforciament, a fortress, stronghold, or other fortification.—*Ibid.*

Afforciare, Afforce, to add, increase or make stronger; in case of disagreement of the jury, let the assize be increased, which is an afforcement of the assize.—*Ibid.*

Afforest, to turn ground into a forest. *Chart. de Forest. c.* 1.

Affranchise, to make free.

Affray [fr. *effrayer*, Fr., to affright], a skirmish or fighting between two or more persons; there must be a stroke given or offered, or a weapon drawn, otherwise it is not an affray. It is a public offence, and is so called because it affrights persons. It differs from an assault in that it is a wrong to the public, while an assault is of a private nature.—1 *Hawkins, P. C.* 154; 4 *Steph. Com.* 318; *Roscoe, Crim. Law*, 253.

Affreightment [fr. *fret*, Fr.], the freight or lading of a ship.—*Cowel.*

Affri, or **Affra,** bullocks, horses, or beasts of the plough.—*Ibid.*

Aforesaid, already mentioned.

Aforethought, prepense, premeditated.

A fortiori (*by so much stronger* [*reason*], Lat.) It is thus applied:—A private person, and *à fortiori*, a peace officer (*it being his especial duty*), who is present at the commission of a felony, is bound by the law to arrest the

felon, on pain of fine and imprisonment.—2 *Hawk. P. C.* 74.

Africa, Coast of. By 6 & 7 Vict. c. 13, amended by 23 & 24 Vict. c. 121, provision is made for the government of British settlements on the coast of Africa.

African Company, a company which, under a charter of Charles II., enjoyed an exclusive trade from the port of Sallee, in South Barbary, to the Cape of Good Hope, both inclusive, with all the islands near to those coasts. Several statutes passed, placing their trade upon a new footing, but the 1 & 2 Geo. IV. c. 28, abolished the company and annulled all the grants made to them; under it the Crown took possession of their forts and castles, and the trade was thrown open.

African Slave Trade, The, was abolished by 3 & 4 Wm. IV. c. 73; the 7 Wm. IV. & 1 Vict. c. 91, made the slave trade piracy, and the 1 & 2 Vict. c. 3, s. 19, abolished slavery apprenticeship, and gave compensation.—See 25 & 26 Vict. c. 40 and c. 90.

Aftermath, the last crop of grass or pasture.

Agalma, [ἄγαλμα, Gr.], an impression or image of anything on a seal.— *Cowel.*

Agard, award.

Age, the criminal responsibility of males and females, and their power to do certain acts, depend upon their age. Thus in criminal matters, a person of the age of fourteen may be capitally punished for any capital offence, but under the age of seven he cannot. The period between seven and fourteen is subject to much uncertainty; the rule applicable to it depends upon the infant's capacity to discern good from evil; if he could, then the maxim is, *malitia supplet ætatem* (malice supplies the want of age), and he may be convicted and executed. A male at twelve years old may take the oath of allegiance, at fourteen is at years of discretion, so far at least that he may enter into a binding marriage, or consent or disagree to one contracted before, and at twenty-one, he is at his own disposal, and may aliene his lands, goods, and chattels. A female at twelve is at years of maturity, and may enter into a binding marriage, or consent or disagree to one contracted before, and at twenty-one may dispose of herself and all her property. Full age in male or female is twenty-one years, which age is completed on the day preceding the twenty-first anniversary of a person's birth. — 1 *Co. Litt.* 78; *Bro. Abr.* '*Age.*'

The Roman Civil Law divides age thus:—

I. *Infantia*, from birth to seven years.

II. *Pueritia* { (*a*) *Ætas infantiæ proxima*, from 7 to 10½. (*b*) *Ætas pubertati proxima*, from 10½ to 14.

III. *Pubertas*, from 14 upwards. During *infantia* and *ætas infantiæ proxima*, a person was not punishable for any crime. During *ætas pubertati proxima*, a person was liable, if *doli capax*. At *pubertas*, a person became fully responsible. — *Tayl. C. L.* 254, *et seq.*

Age-prier or **prayer** [*ætatis precatio*, Lat.], to pray age, thus, when an action is brought against a minor for the recovery of lands, which he possesses by descent, he petitions or moves the court to stay the action until he attain his majority, which is generally acceded to.—*Termes de la Ley*, 30.

Aged witness, a person seventy years old.

Agency, deed of, a revocable and voluntary trust for payment of debts.—*Lew. Tr.* 483.

Agenfrida, the true lord or owner of anything.—*Cowel.*

Agenhina, Agenhine, a guest at an inn, who, having stayed there for three nights, was then accounted one of the family.—*Ibid.*

Agent, a person appointed to transact the business of another.—*Dyche.*

Agents may be divided into three classes:—

I. Commercial, as —
- (*a*) Auctioneers.
- (*b*) Brokers.
- (*c*) Factors.
- (*d*) Consignees.
- (*e*) Supercargoes.
- (*f*) Ships'-husbands.
- (*g*) Masters of ships.
- (*h*) Partners.

II. For the purpose of litigation, as —
- (*a*) Attornies at Law.
- (*b*) Solicitors in Equity.
- (*c*) Proctors in the Spiritual, Probate, and Divorce Courts.

III. Social, as —
- (*a*) Attornies in fact.
- (*b*) Servants.

It is a general common law rule, that where an authority is given to two or more persons to do an act, the act binds the principal only when all of them concur in doing it; for the authority is construed strictly, and the power is deemed to be joint, unless expressed to be several.

But a more liberal construction in favour of commercial transactions is admitted, for, if a joint consignment be made to two factors (whether partners or not), each possesses the whole power over it, but such joint-factors are co-obligors, and as such, are jointly accountable and answerable for one another *in solido*. *Story's Agency*, 38.

Agent and patient, when the same person is the doer of a thing and the party to whom done; thus, where a widow endows herself of the best part of her husband's possessions, this being the act of herself to herself, she is both agent and

patient. Again, if one be indebted to another, and afterwards the debtor makes the creditor his executor, the creditor may retain out of the testator's assets as much as will satisfy the debt; by such retainer he is both agent and patient. 8 *Rep.* 118, 138.

Agentes et consentientes, pari pœnâ plectentur. 5 Co. 80.—(Acting and consenting parties are liable to the same punishment.)

Aggravation, the increase of the enormity of crime; augmenting the injury of a wrong, or inflaming damages. As to aggravated assaults on females and boys under 17, see 24 & 25 Vict. c. 100, s. 43.

Aggregate, a collocation of individuals, units, or things, in order to form a whole.

Aggressor, the beginner of a quarrel or dispute.

Agild [*sine mulctâ*, Lat.], free from penalties, not subject to customary fines or impositions. *Blount.*

Agiler [fr. *a gilt*, Sax. without fault], an observer or informer.—*Ibid.*

Agillarius, an hey-ward, herd-ward, or keeper of cattle in a common field, solemnly sworn at the lord's court. There were two sorts, one of the town or village, another of the lord of the manor.—*Ken. Paroch. Antiq.* 534, 576.

Agio [*aggio*, Ital. an exchange of money for a premium], a term used to express the difference in point of value, between metallic and paper money, or between one sort of metallic money and another.—*McCull. Comm. Dict.*

Agiotage, a speculation on the rise and fall of the public debt of states, or the public funds. The speculator is called *agioteur.*

Agist [fr. *gisement*, Fr. a bed or resting place], to take in and feed strangers' cattle in the Royal Forest, and to collect the money due for it.—*Mann. Forest Laws, c.* 11 *to* 80.

Agistatio animalium in foresta, the drift or numbering of cattle in the forest.—*Ibid.*

Agisters, or **Gist Takers** (called also *Agistators*), officers appointed to look after cattle, &c.—*Ibid.*

Agistment [fr. *jacere*, Lat., *gésir*, Fr. to lie, whence *giste*, a lodging], the taking in of other men's cattle into pasture-land, at a certain rate per week; so called, because the cattle are suffered *agiser*, i. e. to be *levant et couchant* there. Many great farms are employed for this purpose. Also the profit of such feeding. *Agistment* of sea banks [*terræ agistatæ*, Lat.], where lands are charged with a tribute to keep out the sea.—*Spel. Wats.* c. 50.

Agitators, persons chosen to manage a business.

Agius [fr. ἅγιος, Gr.], holy.—*Mon. Ang.* 15, 17.

Agnates, agnati, or **adgnati,** relations derived *per virilis sexus personas,* i.e. relations by the father's side as distinguished from *cognati*, relations by the mother's. An agnate is related by generation; thus, my son, brother, paternal uncle, and their children, as also my daughter and sister, are agnated to me.—See *Smith's Dict. of Antiq.*—*Cognate.*

Agnation, kinship by the father's side.

Agnomen, a name derived from some notable personal circumstance.—*Cum. C. L.* 170, and *Smith's Dict. Nomen. of Antiq.*

Agnomination, a sir-name.

Agnus Dei (Lat.), a piece of white wax, in a flat, oval form, like a small cake, stamped with the figure of a lamb, and consecrated by the Pope.—*Cowel.*

Agraria Lex. The Agrarian law was enacted to distribute among the Roman people all the lands which they had gained by conquest, and to limit the quantity of land possessed by each person to a certain number of acres.—*Cicero pro Leg. Agr.; Smith's Dict. of Antiq.; Harrington's Oceana.*

The following passage relating to this subject occurs in Dr. Arnold's *Rome*, vol. I. c. ix. p. 156. Second edition:

If, amongst Niebuhr's countless services to Roman history, any single one may claim our gratitude beyond the rest, it is his explanation of the true nature and character of the agrarian laws. Twenty-four years have not yet elapsed since he first published it, but it has already overthrown the deeply-rooted false impressions which prevailed universally on the subject; and its truth, like Newton's discoveries in natural science, is not now to be proved, but to be taken as the very corner-stone of all our researches into the internal state of the Roman people. I am now to copy so much of it as may be necessary to the right understanding of the views and merits of Spurius Cassius.

It seems to have been a notion generally entertained in the ancient world, that every citizen of a country should be a landholder, and that the territory of a state, so far as it was not left unenclosed or reserved for public purposes, should be divided in equal portions amongst the citizens. But it would almost always happen that a large part of it was left unenclosed; the complete cultivation of a whole country, without distinction of soil, being only the result of an excess of population, and therefore not taking place till a late period. The part thus left out of cultivation was mostly kept as pasture, and a revenue was raised from it, not only from every citizen who had turned out sheep or cattle upon it, but also from strangers, who, although incapable of buying land, might yet rent a right of pasture for their flocks and herds. But when a new territory was gained in war, the richer parts of it already in cultivation were too valuable to be given up to pasture; while, on the other hand, if they were

divided, the division would only follow the general rule, and allot an equal portion to every citizen. In these circumstances, it was the practice at Rome, and doubtless in other states of Italy, to allow individuals to occupy such lands, and to enjoy all the benefits of them, on condition of paying to the state the tithe of the produce as an acknowledgment that the state was the proprietor of the land, and the individual merely the occupier. With regard to the state, the occupier was merely a tenant-at-will; but with respect to other citizens, he was like the owner of the soil, and could alienate the land which he occupied either for a term of years or for ever, as much as if he had been its actual proprietor.

This public land, thus occupied, was naturally looked to as a resource on every admission of new citizens. They were to receive their portion of freehold land according to the general notion of a citizen's condition; but this land could only be found by a division of that which belonged to the public, and by the consequent ejectment of its tenants-at-will. Hence, in the Greek states, every large accession to the number of citizens was followed by a call for a division of the public land; and as this division involved the sacrifice of many existing investments, it was regarded with horror by the old citizens as an act of revolutionary violence. For although the land was undoubtedly the property of the state, and although the occupiers of it were in relation to the state mere tenants-at-will, yet it is in human nature that a long undisturbed possession should give a feeling of ownership, the more so, as while the state's claim lay dormant, the possessor was in fact the proprietor, and the land would thus be repeatedly passing by regular sale from one occupier to another. And if there was no near prospect of the state's claiming its right, it is manifest that the piece of land thus occupied would, after some years of undisturbed possession, be nearly equal to that of an actual freehold.

Under such circumstances, the English law, with its characteristic partiality to individual and existing investments, would no doubt have decided, as it did in the somewhat similar case of copyhold, that the occupier could not be ejected so long as he continued to pay his tithe to the state. The Roman law, on the other hand, in a spirit no less characteristic, constantly asserted the utterly precarious tenure of the occupier, whenever the state might choose to take its property into its own hands. And, accordingly, most of the kings of Rome are said to have carried an agrarian law, that is, to have divided a portion, more or less, of the public land, amongst those whom they admitted to the rights of citizenship. Yet it was understood that these new citizens, the Roman commons, although they received their portion of land as freehold whenever the public land was divided, had still no right to occupy it while it lay in the mass unallotted; while the old burghers, who enjoyed exclusively the right of occupation with regard to the undivided public land, had no share in it whatever when it was divided, because they already enjoyed, from ancient allotment, a freehold property of their own. Thus the public land was wholly unprofitable to the commons so long as it was undivided, and became wholly lost to the burghers when it was divided.

Now, twenty-four years after the expulsion of Tarquinius, there must have been at least as great need of an agrarian law as at any former period of the Roman history. The loss of territory on the right bank of the Tiber, and all those causes which had brought on the general distress of the commons, and overwhelmed them hopelessly in debts, called aloud for a remedy; and this remedy was to be found, according to precedent, no less than abstract justice, in an allotment of the public land. For, as the burghers who occupied this land had even grown rich amidst the distress of the commons, so they could well afford to make some sacrifice; while the reservation to them of the exclusive right of occupying the public land, till it was divided, held out to them the hope of acquiring fresh possessions so soon as the nation, united and invigorated by the proposed relief, should be in a condition to make new conquests.

Spurius Cassius accordingly proposed an agrarian law for the division of a certain proportion of the public land, while from the occupiers of the remainder he intended to require the regular payment of the tithe, which had been greatly neglected, and to apply the revenue thus gained to paying the commons whenever they were called out to serve as soldiers. Had he been king he would have carried the measure without difficulty, and would have gone down to posterity invested with the same glory which rendered sacred the memory of the good King Servius. But his colleague, Proculus Virginius, headed the aristocracy in resisting his law, and in maligning the motives of its author. His treaties with the Latins and Hernicans were represented as derogating from the old supremacy of Rome; and this cry roused the national pride even of the commons against him, as four centuries afterwards a similar charge of sacrificing the rights of Rome to the Italian allies ruined the popularity of M. Drusus. Still it is probable that the popular feeling in favour of his law was so strong, that the burghers yielded to the storm for the moment, and consented to pass it. They followed the constant policy of an aristocracy, to separate the people from their leaders,

to pacify the former by a momentary resignation of the point in dispute, and then to watch their time for destroying the latter, that so, when the popular party is deprived of its defenders, they may wrest from its hands that concession which it is then unable to retain.

When, therefore, the year was over, and Spurius Cassius was no longer consul, the burghers knew that their hour of vengeance had arrived. Ser. Cornelius and Quintus Fabius were the new consuls; Kæso Fabius, the consul's brother, and Lucius Valerius, were the inquisitors of blood, *quæstores parricidii*, who as they tried all capital offences subject to an appeal to the burghers or commons, were also empowered to bring any offender at once before those supreme tribunals, instead of taking cognisance of his case themselves. Cassius was charged with a treasonable attempt to make himself king, and the burghers, assembled in their *curiæ*, found him guilty. He shared the fate of Agis and of Marino Falieri; he was sentenced to die as a traitor, and was, according to the usage of the Roman law, scourged and beheaded, and his house razed to the ground.

An agrarian law was clearly developed in the regulations of the Jewish lawgiver, who, following the example of the Egyptians, made agriculture the basis of the state. He accordingly apportioned to every citizen a certain quantity of land, and gave him the right of tilling it himself, and of transmitting it to his heirs. The person who had thus come into possession could not alienate the property for any longer period than the year of the coming jubilee—a regulation which prevented the rich from coming into possession of large tracts of land, and then leasing them out in small parcels to the poor. It was another law of Moses, that the vendor of a piece of land, or his nearest relative, had a right to redeem the land sold whenever they chose, by paying the amount of profits up to the year of jubilee.—*Ruth.* iv. 4; *Jer.* xxxii. 7; *Jahn's Bib. Antiq.*; *Graves on the Pentateuch.*

Agreed, this word in a deed creates a covenant.

Agreement [fr. *gratus*, Lat., acceptable; *aggregatio mentium*, Lat.], a joining together of two or more minds in anything done or to be done. Also, the effect of a joint-consent of two or more parties to a contract or bargain. There are three sorts:—(1) An *agreement executed* at once, as where money is paid for the matter agreed, or other satisfaction made, at the time it is entered into. (2) An agreement after an act done by another, as where one does a thing and another afterwards agrees to it, this is also called an executed agreement. (3) An *agreement executory*, or to be performed at some future time.—*Termes de la Ley*, 31; *Plowd.* 5.

Agri, arable lands in common fields.—*Fortescue.*

Agri limitati, lands belonging to the state by right of conquest, and granted or sold in plots.—*Sand. Just.* 186.

Agusadura, in ancient customs, a fee, due from the vassals to their lord for sharpening their ploughing tackle. Anciently, the tenants in some manors were not allowed to have their agricultural implements sharpened by any but those whom the lord appointed; for which an acknowledgment was paid, called *agusadura* or *agusage*, which some take to be the same with what was otherwise called *rullage*, from the ancient French *reille*, a ploughshare.—*Encyc. Lond.*

Agweddi [*ag-gwedd*, conjunction], a portion given with a bride.—*Anc. Inst. Wales.*

Aiders, advocates, abettors. See ACCESSARY.

Aid of the King [*auxilium regis*, Lat.], the king's tenant prays this, when rent is demanded of him by others. A city or borough, holding a fee-farm from the king, if anything be demanded which belongs to such fee-farm, may pray in 'aid of the king,' and the king's bailiffs, collectors or accountants, shall have aid of the king. The proceedings are then stayed until the crown-counsel are heard, but this aid will not be granted after issue joined, because the Crown cannot rely upon the defence made by another.—*Jenk. Cent.* 64.

Aid prayer, formerly made use of in pleading for a petition in court, praying in aid of the tenant for life, &c., from the reversioner or remainder-man, when the title to the inheritance was in question. It is a plea in suspension of the action.—*Com. Dig.* '*Aide*' B. 5; 2 *Bos.* and *Pul.* 384; 3 *Bl. Comm.* 300.

Aids [fr. *aides*, Fr.; *auxilia*, Lat.], originally mere benevolences granted by a tenant to his lord, in times of distress, but at length the lords treated them as a matter of right, and not of discretion. They were principally three: (1) To ransom the lord's person, if taken prisoner; (2) To make the lord's eldest son and heir apparent a knight; (3) To give a suitable portion to the lord's eldest daughter on her marriage. Abolished by 12 Car. II., c. 24. Also, extraordinary grants to the Crown by the House of Commons, and which were the origin of the modern system of taxation.

Aiel or **aile** [fr. *aïeul*, Fr.; *avus*, Lat., a grandfather], a writ which lay when a man's grandfather, or great grandfather (called *besaile*), died seised of lands in fee-simple, and on the day of his death the heir was dispossessed of his inheritance by a stranger.—*F. N. B.* 222.

Aillt [*aill*, other], a villain.—*Anc. Inst. Wales.*

Air, one of the elements; it is *publici juris.* As to the right to the enjoyment of air free

and unpolluted, see *Gole on Easements*, 289, 290.

Airway, a passage for the admission of air into a mine. To maliciously fill up, obstruct, or damage, with intent to destroy, obstruct, or render useless the airway to any mine, is a felony punishable by penal servitude or imprisonment at the discretion of the Court. 24 & 25 Vict. c. 97, s. 28.

Al, or **ald** [*eald*, Sax., age], this syllable prefixed to the names of places denotes antiquity, as Aldborough, i. e. Old Borough, Aldeburgh, Aldworth, Aldgate, &c.—*Blount.*

Ala Campi, Wingfield.

Alæ ecclesiæ, the wings or side aisles of a church.—*Blount.*

Alæmis, the river Ax, in Devonshire.

Alanerarius, a manager and keeper of dogs for the sport of hawking; from *alanus*, a dog known to the ancients. A falconer.—*Blount.*

Alauna, Alnwick in Northumberland; also Alcester in Warwickshire.

Alba, a surplice or white sacerdotal vest, anciently worn by the officiating priests. *Blount.*

Alba Firma. When quit rents payable to the Crown by freeholders of manors were reserved in silver or white money, they were called white-rents or blanch-farms, *reditus-albi*, in contradiction to rents reserved in work, grain, &c., which were called *reditus-nigri*, black-mail.—2 *Inst.* 19.

Alba marla, Albemarle.

Albeneio De, De Albeneto, D'Aubeney, Albiney.

Albergenium, an habergeon, a defence for the neck.—*Hoveden*, 6 *b.*

Albinatus jus, the *droit d'aubaine* in France, whereby the king, at an alien's death, was entitled to all his property, unless he had peculiar exemption. Repealed by the French laws in June, 1791.

Albo Monasterio, De, Whitchurch.

Albrea and **Albericus**, Aubrey.

Album, white rent paid in silver. See ALBA FIRMA.

Albus Liber, an ancient book containing a compilation of the law and customs of the City of London. It has lately been reprinted by order of the Master of the Rolls.

Alcade, a judicial officer in Spain.

Alcavala, a tax on the transfer of property in Spain.

Alder, the first, as *alder best*, is the best of all; *alder liefest*, the most dear.—*Blount.*

Alder carr, land covered with alders.—*Norfolk phrase.*

Alderman [*ealdorman*, Ang.-Sax., fr. *eald* old, *ealdor* a parent, hence a ruler], originally a dignity of the highest rank, both hereditary and official, nearly synonymous with that of king. In the *Sax. Chron.*, Cerdic, founder of the kingdom of Wessex, and his son Cynric, are denominated 'aldormen.' They were also governors of provinces, and, in that capacity, presided in the Hundred Court. After the breaking up of the Heptarchy, we find them, under the supremacy of Wessex, occupying the place of kings, in the conquered kingdoms of Mercia and East Anglia. In the latter days of Anglo-Saxon sovereignty, under those miserable princes Ethelred and his son Edward, the dignity of ealdorman seems to have reached its highest point, from which it rapidly descended, their functions being either suppressed or exercised by officials under other denominations, until the once great name remained alone to that civic magistrate, of whom the earliest traces are, perhaps, to be found in the time of Edward the Confessor. *Sic transit*, &c. Aldermen at this day are associates to the civil magistrate of a city or town corporate. *Spel. Glos.*

Alderney, one of the islands in the English Channel, which formed part of the Duchy of Normandy, and was annexed to the English Crown by the first princes of the Norman line. These islands are governed by their own laws, chiefly collected in the book called '*Le Grand Coustumier.*'

Alditheleia, De, Audley.

Alea, the chance of gain or loss in a contract.—*Civil Law.*

Aleatory contract, an agreement of which the effects, with respect both to the advantages and losses, whether to all the parties, or to some of them, depend on an uncertain event. *Ibid.*

Alecinarium, a hawk, called also a *lanner.*

Ale-conner or **Ale-kenner** [*gustator cervisiæ*, Lat.], one who kens or knows what good ale is; an officer appointed at a court-leet, who is sworn to look at the assize and goodness of ale and beer within the precincts of the lordship. *Kitch.* 46. There are four ale-conners, chosen by the liverymen of the city of London, in Common Hall, on Midsummer-day, whose office it is to inspect the measures used in public houses.—*Encyc. Lond.*

Ale-founder. See ALE-CONNER.

Ale-house, a place where ale, beer, &c., are drunk.—*Burn's Justice.* As to the licensing ale-houses, consult 9 Geo. IV. c. 61; and as to the sale of beer on Sundays, 18 & 19 Vict. c. 118.

Ale-silver, a rent or tribute paid annually to the Lord Mayor of London, by those who sell ale within the liberty of the city.—*Antiq. Purvey*, 183.

Ale-stake, a maypole or long stake driven into the ground, with a sign on it for the sale of ale.—*Cowel.*

Ale-taster. See ALE-CONNER.

Alfet, a cauldron or furnace, into which

boiling water was poured, in which a criminal plunged his arm up to the elbow and there held it for some time, as an ordeal.—*Du Cange.*

Algarum maris, probably a corruption of *Laganum maris*, *lagan* being a right, in the middle ages, like *jetson* and *flotsam*, by which the goods thrown from a vessel in distress became the property of the king or the lord on whose shores they were stranded.—*Spel. Jacob*, and *Du Cange.*

Alia enormia [Lat.] (*other wrongs*). A declaration in trespass sometimes concludes thus:—'and other wrongs to the plaintiff then did,' &c. This is technically called an allegation of *alia enormia.*

Aliamenta, a liberty of passage, open way, water-course, &c., for the tenants' accommodation.—*Kitch.*

Alias (*otherwise*), a second or further writ, which is issued after a *first* writ has expired without effect, and containing this clause, 'We command you, as we formerly have commanded you (*sicut alias præcepimus*).'—*Cowel.*

Alias dictus (*otherwise called*), a second name belonging to a person besides that which may have been already expressed.—*Dyer*, 50.

Alibi (for *ali-ubi*, *elsewhere*). It is a defence resorted to in criminal prosecutions, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence that he was in a different place at the time the offence was being committed.—*Encyc. Lond.*

Alien [fr. *alienigena*, *alibi natus*, Lat.], a person born in a foreign country, out of the allegiance of the British Crown. Consult the 7 & 8 Vict. c. 66, which relaxes the law of aliens in their favour. The 10 & 11 Vict. c. 83 relates to the colonies. As to tracing descent through an alien, see 12 & 13 Wm. III. c. 6, and 25 Geo. II. c. 39.

Alien ami or **amy,** a subject of a nation which is at peace with this country.

Alien enemy, a subject of a nation which is at war with this country.

Alien née, a man born an alien.

Alienage, the state of an alien.

Alienate or **aliene,** to transfer property.

Alienation, a transferring property to another.—*Co. Litt.* 118.

Alienigena est alienæ gentis, seu alienæ ligeantiæ, qui etiam dicitur peregrinus, alienus, exoticus, extraneus, &c. 7 Co. 16.—(An alien is of another nation or another allegiance, who is also called a stranger, foreigner, &c.)

Alienatio, i. e. *alienum facere*; *vel, ex nostro dominio in alienum transferre*; *sive, rem aliquam in dominium alterius transferre.* Co. Litt. 118.—(Alienation, that is, to make alien, or to transfer from our ownership to that of another, or to transfer anything into the power of another.)

Alienatio licet prohibeatur, consensu tamen omnium, in quorum favorem prohibita est, potest fieri, et quilibet potest renunciare juri pro se introducto. Co. Litt. 98.—(Although alienation be prohibited, yet by the consent of all in whose favour it is prohibited, it may take place; for it is in the power of any man to renounce a law made in his own favour.)

Alienatio rei præfertur juri accrescendi. Co. Litt. 185.—(The alienation of property is preferred to the right of survivorship.)

Alienation office, a place to which all writs of covenants and entries were carried for the recovery of fines levied thereon.

Alienee, one to whom a transfer of property is made.

Alieni juris, under another's authority.

Aliunde, from another place or person.

Alienor, one who transfers property.

Aliment [fr. *alimentum*, Lat.], a fund for maintenance.—*Scotch Term.*

Alimentorum appellatione venit victus, vestitus, et habitatio. 2 Inst. 17.—(Under the expression of *aliments* come food, clothes, and lodging.)

Alimony [fr. *alimonia*, Lat.], the allowance made to a wife out of her husband's estate for her support, either during a matrimonial suit or at its termination, when she proves herself entitled to a separate maintenance, and the fact of a marriage is established. But she is not entitled to it if she elope with an adulterer, or wilfully leave her husband without any just cause for so doing.

It is of two kinds: (*a*) *In causes between husband and wife.* Upon the principle that the whole property is supposed by law to devolve upon the husband, he is generally obliged to pay the expenses on both sides, and to allow his wife alimony during the suit, and this whether the suit be commenced by or against him, and whatever its nature may be. It is usually about one-fifth of the husband's net annual income. The alimony will be reduced according to the fluctuations of the husband's income. If the husband's circumstances should alter, if he be *lapsus facultatibus*, he should, without delay, apply to have the alimony reduced, his means having diminished; and the wife may apply for an increase if his means have improved. (*b*) *Permanent alimony*, which is allotted to a wife upon a judicial separation being decreed on account of the husband's conduct. This alimony is more ample than alimony pending a suit; it is generally a third, and is larger in proportion to a small than a great income. Where a husband meditates a departure from this country in order to evade its payment, the Court of Chancery will grant its prerogative writ of *ne exeat regno*, under which he will be arrested.

Alimony is within the exclusive jurisdiction

of the Court for Divorce and Matrimonial causes. The 20 & 21 Vict. c. 85, s. 24, enacts that the Court may direct its payment either to the wife herself or to any trustee on her behalf. With regard to permanent provision for a wife after a decree dissolving the marriage has been pronounced, s. 32 enacts that the Court may, on a decree for dissolving marriage, order the husband to secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties it shall deem reasonable, and for that purpose may refer it to any one of the conveyancing counsel of the Court of Chancery to settle and approve of a proper deed or instrument to be executed by all necessary parties; and the said Court may in such case, if it shall see fit, suspend the pronouncing of its decree until such deed shall have been duly executed.

A l'impossible nul n'est ténu.—(There should not be any obligation to the impossible.)

Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur. Co. Litt. 197. (Something is conceded, which otherwise would not be conceded, lest an injury should remain unpunished.)

Aliquis non debet esse judex in propriâ causâ, quia non potest esse judex et pars. Co. Litt. 141. (A person ought not to be judge in his own cause, because he cannot act as judge and party.)

Aliter (*otherwise*).

Aliter puniuntur ex eisdem factionibus servi, quam liberi; et aliter qui quidem aliquid in dominum, parentemve commiserit, quam in extraneum; in magistrum, quam in privatum. 3 Inst. 220.—(Slaves and freemen are punished differently for the same offences; he who has committed an offence against a master or parent, is punished otherwise than if he had committed it against a stranger; against a magistrate, than if against a private person.)

Aliud est celare, aliud tacere.—(To conceal is one thing, to be silent another.)

Aliud est possidere, aliud esse in possessione. Hob. 103.—(It is one thing to possess, it is another to be in possession.)

Allaunds [fr. *alanis, Scythiæ gente,* Lat.], hare-hounds.—*Cowel.*

Allay, or **Alloy** [fr. *lex,* Lat. *lega,* It. *loi, alloi,* Fr. law or rule], the mixture of base metals with silver or gold, to increase the weight, in order to defray the charge of coinage, and to make it more fusile to cast. A pound weight of gold, by the present mint standard, is twenty-two carats fine and two carats allay. A carat weighs four grains. A pound of silver consists of eleven ounces two pennyweights of fine silver, and eighteen pennyweights of allay.—*Lowdnes's Essay on Coins,* p. 19. From signifying the proportion of base metal in the coin, the term *alloy* was applied to the base metal itself. *Wedgw.*

Allegans contraria non est audiendus. Jenk. Cent. 16.—(A person making contradictory allegations is not to be heard.)

Allegans suam turpitudinem non est audiendus. 4 Inst. 279.—(A person alleging his own infamy is not to be heard.)

Allegari non debuit quod probatum non relevat. 1 Chan. c. 45.— (That which if proved would not be relevant, ought not to be alleged.)

Allegata, a word anciently subscribed at the bottom of rescripts and constitutions of the Roman emperors, as *signata* or *testata* under other instruments.—*Encyc. Lond.*

Allegata and **probata,** assertions and facts.

Allegation of faculties, the statement of a person's means. A term formerly used in the Ecclesiastical Courts in proceedings for Alimony.

Allegation [fr. *alleguer,* Fr. *legare, allegare,* Lat. to depute], an asserted fact; the adduction of reasons or witnesses in support of an argument.

Allegiance [fr. *ligo,* Lat.], the natural, lawful and faithful obedience which every subject owes to the supreme magistrate who oversteps not his prerogatives. It is either natural and perpetual, where one is a subject born, or has been naturalized, or local and temporary, where one is merely a resident in the British dominions.—1 *Inst.* 129 *a.* It is also either *implied,* so soon as the relationship of sovereign and subject is created; or *express,* which is the formal declaration of it.

Allegiance, Oath of, the substituted oath for the old oath of allegiance is provided for by 21 & 22 Vict. c. 48; and the form of affirmation for Quakers and others by 22 Vict. c. 10.

Allegiare, to defend or justify by due course of law.—*Spel.*

Aller, superlatively, as *aller good* is the greatest good.—*Blount.*

Aller san jour, to go without day, i. e., to be finally dismissed from the Court, because there is no further day assigned for appearance. *Kitch.* 146.

Alleviare, to levy or pay an accustomed fine. *Cowel.*

All fours. A case agreeing in all its circumstances with another case is sometimes said to be *on all fours* with it.

Alliance [fr. *alleanga,* It. *alianca,* Sp. *alliance,* of *allier,* Fr. of *alligo,* Lat. to tie or unite together], the state of connection with another by confederacy; a league. In this sense our histories of Queen Anne mention *the grand alliance*; relation by marriage; relation by any form of kindred; the act of forming or contracting relation to another; the act of making a confederacy the persons allied to each other.

The forms or ceremonies of alliance have been various in different ages and countries. Among us, signing and swearing are the chief; anciently, eating and drinking together, and offering sacrifices together were the customary rites of ratifying an alliance. Among the Jews and Chaldeans, heifers or calves; among the Greeks, bulls or goats; and among the Romans, hogs were sacrificed on this occasion. Among the ancient Arabs, alliances were confirmed by drawing blood out of the palms of the hands of the two contracting princes with a sharp stone, dipping therein a piece of their garments, and therewith smearing seven stones, at the same time invoking the gods Vrotalt and Alilat, i. e., according to Herodotus, Bacchus and Urania. Among the people of Colchis, the confirmation of alliance is said to be effected by one of the princes offering his wife's breasts to the other to suck, which he was obliged to do till there issued blood.—*Encyc. Lond.*

Allision, the running of one vessel against another.

Allocation, an allowance made upon accounts in the Exchequer, or rather a placing or adding to a thing.—*Encyc. Lond.*

Allocatione facienda, a writ allowing to an accountant such sums of money as he has lawfully expended in his office; it is addressed to the Lord Treasurer and the Barons of the Exchequer.—*Reg. Orig.* 206.

Allocato comitatu, in proceedings in outlawry, when there were but two County Courts holden between the delivery of the writ of *exigi facias* to the sheriff and its return, a special exigi facias, with an *allocato comitatu* issued to the sheriff in order to complete the proceedings. See *Bac. Abr.* OUTLAWRY, and *Fitz. Exig.* 14.

Allocatur (*it is allowed*). The certificate of the allowance of costs by the master on taxation. *Jacob.*

Allocatur exigent, a writ which is issued when an outlaw has not been exacted five times under the *exigi facias*, in order to complete the number of exactions.

Allodarii, tenants having as great an estate as subjects can enjoy.

Allograph, a document not written by any of the parties thereto.

Allotment, partition, the distribution of land under an enclosure act, or shares in a public undertaking.

Allotment system, the practice of dividing land in small portions for cultivation by agricultural labourers and other cottagers at their leisure, and after they have performed their ordinary day's work. See 1 *Mill's Pol. Econ.* 440, *et seq.*

Allottee, a person to whom land under an enclosure act or shares in a public undertaking are allotted.

Allowance [fr. *locare*, Lat. *allocare*, *allogare*, It. *alogar*, Prov. *louer*, *allouer*, Fr. to place or assign], a deduction, an average payment, a portion.

Also in selling goods, or in paying duties upon them, certain deductions are made from their weights, depending on the nature of the packages in which they are enclosed, and which are regulated in most instances by the custom of merchants, and the rules laid down by public offices. These allowances, as they are termed, are distinguished by the epithets, *draft*, *tare*, *tret*, and *cloff*.

Draft is a deduction from the original or gross weight of goods, and is subtracted before the tare is taken off.

Tare is an allowance for the weight of the bag, box, cask, or other package, in which goods are weighed.

Real, or *open tare*, is the actual weight of the package.

Customary tare is, as its name implies, an established allowance for the weight of the package.

Computed tare is an estimated allowance agreed upon at the time.

Average tare is when a few packages only among several are weighed, their mean or average taken, and the rest tared accordingly.

Super-tare is an additional allowance or tare where the commodity or package exceeds a certain weight.

The remainder, after the allowance of tare, is called the suttle weight; but if tret be allowed, the remainder is called the net weight.

Tret is a deduction of 4 lbs. from every 104 lbs. of suttle weight. This allowance, which is said to be for dust or sand, or for the waste or wear of the commodity, was formerly made on most foreign articles sold by the pound avoirdupois; but it is now nearly discontinued by merchants, or else allowed in the price. It is wholly abolished at the East India warehouses in London, and neither tret nor draft is allowed at the Custom-house.

Cloff, or *Clough*, is another allowance that is nearly obsolete. It is stated in arithmetical books to be a deduction of 2 lbs. from every 3 cwt. of the *second suttle*, that is, the remainder after tret is subtracted; but merchants, at present, know cloff only as a small deduction, like draft, from the original weight, and this only in the case of two or three articles. See *Kelly's Cambist*, art. '*London*,' and *McCul. Comm. Dict.*

Allowance to bankrupts. Under 12 & 13 Vict. c. 106, ss. 194, 195, the Court of Bankruptcy had power to order that an allowance should be made to a bankrupt out of his estate for the support of himself and his family, but by the Bankruptcy Act, 1861, 24 & 25 Vict. c. 134, that power has been

taken from the Court and vested in the creditors. By the 109th section at the first meeting of creditors after adjudication, 'A majority in value of the creditors present shall determine whether any or what allowance for support shall be made to the bankrupt up to the time of passing his last examination.' And by section 174 it is provided that at the dividend meeting 'the majority in value of the creditors present shall determine whether any and what allowance shall be made to the bankrupt out of his estate if he has obtained or shall obtain a discharge.' Under s. 196 of 12 & 13 Vict. c. 106, which still remains in force, if a sufficient dividend has been paid upon the joint and separate estate of one of several partners who has obtained his discharge, he is entitled to his allowance, although the other partner may not be entitled to any allowance.

Allonge [Fr. an eking piece], a paper annexed to a bill of exchange or promissory note, when there are so many successive endorsements to be made that the original paper would not contain them.—*Story on Bills*, 225; *Chit. on Bills*, 158.

Alloy. See ALLAY.

Alltud [*all-tud*, other land], a person either from foreign parts or from another part of the island, in villenage under the king or freeholder. *Anc. Inst. Wales.*

Alluminor, one who anciently illuminated, coloured, or painted upon paper or parchment, particularly the initial letters of charters and deeds. The word is used in the 1 Ric. III. c. 9.

Alluvion [fr. *alluo*, Lat.], land imperceptibly gained from the sea or a river by the washing up of sand and soil, so as to form *terra firma*.—2 *Bl. Com.* 261; *Res. Cotidianæ Dig.* 40, tit. 1, s. 7. See ACCRETION.

Ally [fr. *allier*, Fr.; *ligare*, Lat. to tie, *alligare*, to tie to], a power in alliance with us.

Almanack [fr. *al.* Arab. and *manah*, Heb. to count or compute; or *al*, and *μήν*, Gr. a month; or, from a Teutonic original *al* and *maan*, the moon, an account of every moon or month], a book or instrument in which is recounted the days of the week, month, and year, both common and particular, distinguishing the fasts, feasts, terms, &c., from the common days by proper marks, pointing out also the several changes of the moon, tides, eclipses, &c. It is part of the law of England, of which the courts must take notice in the returns of writs, &c., but the almanack to go by is that annexed to the Book of Common Prayer. It is not evidence of the time of sunrise on a particular day.—6 *Mod.* 41, 81.

Almaria, the archives or muniments of a church or library.—*Blount.*

Almner, or **Almoner,** an officer of the royal household, whose business it is to distribute the royal alms. The lord almoner, who is usually now some bishop, had the disposition of the sovereign's dish of meat, after it came from the table, which he might give to whom he pleased. The Marquis of Exeter is hereditary Grand Almoner.—*Fleta*, lib. ii. c. 22; *Co. Litt.* 94 *a.*

Almodarii, the lords of free manors, lords paramount.—*Old Records.*

Almoin, a tenure of lands by divine service. *Ancient Customs.* See FRANKALMOIGNE.

Almonarium, a kind of safe or cupboard, in which broken victuals were laid up to be distributed among the poor.—*Old Records.*

Almonarius [corruption of *eleemosynarius*], a distributor of alms.

Almsfeoh, or **Almesfeoh** [Sax.], alms-money. It has been taken for *Peter-pence*, first given to the Pope by Ina, King of the West Saxons, and anciently paid in England on the first of August. It was likewise called *romefeoh*, *romescot*, and *heorthpening*.—*Selden's Hist. Tithes*, 217.

Almutium, a cap made of goats' or lambs' skin, the part covering the head being square, and the other part hanging behind to cover the neck and shoulders; worn by priests.—*Monast.* tom. iii. p. 36.

Alnage, or **Aulnage** [fr. *aune*, Fr., an ell], a measure, particularly the measuring with an ell.—*Cowel.*

Alnager, or **Aulnager,** formerly a public sworn officer of the king, who examined into the assize of cloth, and fixed seals to it, and also collected a subsiduary or *aulnage* duty on all cloths sold, 25 Edwd. III. st. 4, c. 1. There were afterwards three officers belonging to the regulation of clothing, viz., searcher, measurer, and aulnager.—4 *Inst.* 31. Alnage duties were abolished in England by 11 & 12 Wm. III. c. 20, and in Ireland by 57 Geo. III. c. 109.

Alnet, De, D'Auney.

Alnetum, a place where alders grow, or a grove of alder-trees.—*Domesday Book*; *Co. Litt.* 4 *b.*

Alodial, or **Allodial,** or **Allodium** [perhaps fr. *ódal*, Icel.; *odel*, Dan. Sw., a patrimonial estate. See *Wedgw.*], a holding of lands in absolute possession without acknowledging any superior lord, contradistinguished from *Feudal* lands, which are held of superiors. *Cowel.* There are not any alodial lands in England, according to Sir E. Coke.—*Co. Litt.* 93 *a*; 1 *Hall. Mid. Ages*, ch. 2. pt. i. p. 147.

Alodium. See ALODIAL.

Alody, inheritable land.

Aloverium, a purse.—*Fleta*, lib. ii. c. 82, par. 2.

Alsatia, formerly a cant name for Whitefriars, a district in London, between the Thames and Fleet Street, and adjoining the

Temple, which, possessing certain privileges of sanctuary, became for that reason a nest of those mischievous characters who were generally obnoxious to the law. These privileges were derived from its having been an establishment of the Carmelites, or White Friars, founded, says Stow, in his survey of London, by Sir Richard Grey, in 1241. Edward I. gave them a plot of ground in Fleet Street to build their church upon. The edifice then erected was rebuilt by Courtney, Earl of Devonshire, in the reign of Edward I. In the time of the Reformation the place retained its immunities as a sanctuary, and James I. confirmed and added to them by a charter in 1608. Shadwell was the first author who made some literary use of Whitefriars, in his play of the Squire of Alsatia, which turns upon the plot of the Adelphi of Terence. Scott's Introd. to 'Fortunes of Nigel.'

Alta, De, *ripa,* Dantry.

Alta proditio, high treason; now simply called treason.

Altarage, offering made upon the altar; the profit arising to the priest by reason of the altar. *Termes de la Ley,* 39.

Alteration, changing. When witnesses are examined upon exhibits, &c., they (the exhibits) ought to remain in the place where the examination took place, and not to be taken back into private hands, by whom they may be altered. *Hob.* 254.

Alternat, a usage amongst diplomatists, by which the rank and places of different powers, who have the same rights and pretensions to precedence, are changed from time to time, either in a certain regular order, or one determined by lot. In preparing treaties and conventions, it is the usage of certain powers to alternate both in the preamble and the signatures, so that each power occupies, in the copy intended to be delivered to it, the first place. *Wheat. Internat. Law,* pt. ii. c. 3, s. 4.

Alternativa petitio non est audienda. 5 Co. 40. (An alternative petition is not to be heard.)

Alternative, the one or the other of two things.

Altius non tollendi, a servitude due by the owner of a house, by which he is restrained from building beyond a certain height.—*Dig.* 8, 2, 4, and 1, 12, 17, 25; *Civil Law.*

Altius tollendi, a servitude which consists in the right, to him who is entitled to it, to build his house as high as he may think proper. In general, however, every one enjoys this privilege, unless he is restrained by some contrary title.—*Civil Law*; *Sand. Just.* 209.

Alto et basso (*high and low*), an absolute submission of all differences.—*Blount.*

Altum mare (*the high sea*).

Alumnus, a child which one has nursed; a foster-child.—*Dig.* 40, 2, 14; *Civil Law.*

Amalphitan Code, a collection of sea-laws, compiled about the end of the eleventh century, by the people of Amalphi. It consists of the laws of maritime subjects which were or had been in force in countries bordering on the Mediterranean; and, on account of their being collected into one regular system, it was for a long time received as authority in those countries.

Amanuensis [*a manu,* Lat.], one who writes that which another dictates.

Amabyr, or **Amvabyr,** a custom in the honour of Clun, belonging to the Earls of Arundel.—*Pretium virginitatis domino solvendum.* Abolished.—*Cowel.*

Ambactus, a servant or client.—*Cowel.*

Ambassador [*legatus,* Lat.], a diplomatic minister sent by one sovereign power to another, with authority conferred on him by letters of credence, to treat on affairs of state. Ambassadors are either *ordinary,* who reside in the place whither they are sent, the protection of commerce being their greatest care; or, *extraordinary,* who are employed upon special matters, as condolements, congratulations, overtures of marriage, &c. The person of an ambassador is protected from civil arrest by 7 Anne, c. 12. Consult *Bac. Abr.* '*Ambassador,*' or *Com. Dig.*

Ambassy, a committee sent with a state communication to a foreign potentate.

Amber, or **Ambra,** a measure of four bushels. *Introd. Domesd.* vol. i. p. 133.

Ambidexter, one who plays on both sides. A juror or embraceror, who takes bribes from both parties to influence his verdict.—*Termes de la Ley,* 38.

Ambigua responsio contra proferentem est accipienda. 10 Co. 59.—(An ambiguous answer is to be taken against him who offers it.)

Ambiguis casibus semper præsumitur pro rege. (In doubtful cases the presumption is always in favour of the king.)

Ambiguum placitum interpretari debet contra proferentem. Co. Litt. 303 *b.*—(An ambiguous plea ought to be interpreted against the party delivering it.)

Ambiguitas verborum latens verificatione suppletur; nam quod ex facto oritur ambiguum verificatione facti tollitur. Bacon.—(A hidden ambiguity of the words may be supplied by evidence; for whatever ambiguity arises from an extrinsic fact may be removed by extrinsic evidence.

Ambiguity, doubtfulness, double-meaning, obscurity. There are two species of ambiguity, viz. that which is apparent on the face of an instrument, and which cannot be rendered certain by the evidence of collateral facts and surrounding circumstances, admissible under the rules of construction; this is called *ambiguitas patens*; and that which, although apparently certain, and without ambiguity, for

anything that appears upon the face of the deed or instrument, is rendered ambiguous by extrinsic and collateral matter out of the deed; this is called *ambiguitas latens*. The former ambiguity cannot be explained by parol evidence, because the law will not couple and mingle matter of specialty, which is of the higher account, with matter of averment, which is of inferior account, in law; but the latter can be explained by the actions of the parties previously to and contemporaneously with the contract. Ambiguity of language is, however, to be distinguished from unintelligibility and inaccuracy, for words cannot be said to be ambiguous, unless their signification seem doubtful and uncertain to persons of competent skill and knowledge to understand them. *Story on Contracts*, 272; *Phillipps on Evidence*.

Pleadings must not be ambiguous or doubtful in meaning, and when two different meanings present themselves, that construction shall be adopted which is more unfavourable to the party pleading. A pleading, however, is not objectionable as ambiguous or obscure, if it be certain and clear to a common intent, that is, if it be clear enough according to reasonable intendment or construction, though not worded with absolute precision. Ambiguity is ground for demurrer, but it is in general cured by verdict or by pleading over.—*Steph. Plead.* 415–422.

Amboglanna, Ambleside in Westmoreland, and Burdoswold in Cumberland.

Ambra, a Saxon vessel of measure for salt, butter, meal, or beer. See AMBER.

Ambrosii Burgus, Amesbury in Wilts.

Ambry, Aumbry, Aumber [fr. *armoire*, Fr.; *armario*, *almario*, Sp.; *almer*, Germ.; *armaria*, *almaria*, m. Lat.; a cupboard], a place where the arms, plate, vessels, and everything belonging to housekeeping were kept.—*Cowel.*

Ambulatoria voluntas (*an absolute power*).

Amenable [fr. *amener*, Fr., to lead unto], tractable, that may easily be led or governed; applicable to a wife who is governable by her husband. Also responsible or subject to answer, &c., in a court of justice.—*Cowel.*

Amende honorable [Fr.], an adequate reparation.

Amendment, a correction of any errors in the pleadings in actions, suits, or prosecutions. The power of amendment has been much extended by recent statutes, but it is never exercised to the prejudice of a party to the proceeding.—Consult 2 *Ch. Arch. Prac. by Pren.* 1487; and 14 & 15 *Vict.* c. 100, ss. 1, 2, 3, & 25.

Amendment of a bill. After a plaintiff has filed his bill, he may, if he find it necessary, amend it, subject to certain restrictions, either by the correction of mistakes, or by the omission of impolitic admissions in the original; or by adding new parties; or by inquiring into additional facts; or by the further investigation of facts, which have been only partially disclosed; or by putting in issue new matter, stated in the answer. It is not now necessary to exhibit any supplemental bill, for the purpose only of stating or putting in issue facts or circumstances which may have occurred after the institution of any suit; but such facts or circumstances may be introduced by way of amendment into the original bill of complaint, if the cause is otherwise in such a state as to allow of such an amendment being made.—15 & 16 Vict. c. 86, s. 53. If, however, the cause is not in such a condition the plaintiff may state such an amendment, and put it in issue by filing in the record and writ clerk's office a statement, either written or printed, to be annexed to the bill; and such proceedings, by way of answer, evidence, and otherwise, are to be had and taken upon the statement so filed, as if the same were embodied in a supplemental bill; but the court may make any order for accelerating the proceedings that may appear just and practicable.—*Orders Hil. Term.*, 1860, xxii. 2.

Amendments are of two sorts—(1) those affecting the substance of the case; and (2) those relating to the parties.

The courts are very liberal in permitting the amendment of a bill. They will allow a bill to be converted into an information, or the statements of a bill to be altered so as to agree with the defendant's answer, or to present an entirely new case. Perhaps the conversion of a bill of discovery into a bill for relief by adding a prayer for relief, or a bill for relief into one for discovery only, by striking out the prayer for relief, will not be allowed. Should an amendment entirely change the original case of the plaintiff, the defendant may move for his taxed costs already incurred; and if an amendment strike out an important part of the bill, which compelled the defendant to incur costs, he may move for such costs to be taxed, and paid by the plaintiff. A defendant is of course entitled to make a new defence to any amendment of the plaintiff's bill.

Every amendment must be sanctioned by an order of the court. If an information require amendment, the sanction and signature of the Attorney-General to it must be obtained in the same manner as to an original information.

An order to amend may be applied for at any period of the suit; but whether the order should be as of course, or special, demands attention.

A plaintiff can obtain as many orders as he requires for leave to amend his bill *at any time*

before answer, upon motion or petition, without notice. So an order for leave to amend a bill only for the purpose of rectifying some clerical error in names, dates, or sums, may be obtained *at any time* upon a like motion or petition. After answer, and before replication or undertaking to reply, a plaintiff (if not precluded from amending, or limited as to the time of amending by some former order) may obtain one order of course for leave to amend his bill at any time within four weeks after the answer of a sole defendant, or of several defendants, if they all join in the same answer, is to be deemed or is held to be sufficient, or within four weeks after the last of the answers of several defendants who do not join in the same answer, is to be deemed or is held to be sufficient.—*Orders Hil. T.* 1860, ix. 10 & 11. This order to amend is obtained on any day, whether in or out of term, either by a petition as of course impressed with a 7*s.* 6*d.* fee fund stamp, and lodged with the secretary of the Master of the Rolls, or by a hand-motion in the court to which the cause is attached.

If after the expiration of *four weeks* after the answer, or the last of several answers, is to be deemed or is held to be sufficient; or after filing, or undertaking to file a replication; or after having already obtained an order to amend after any sufficient answer has been filed, the plaintiff wish to amend his bill, he must apply for leave to do so specially.

A special order for leave to amend a bill is not to be granted without an affidavit to the effect, (1) that the draft of the proposed amendment has been settled, approved, and signed by counsel; and (2) that such amendment is not intended for the purpose of delay or vexation, but because the same is considered to be material for the case of the plaintiff. After the plaintiff has filed or undertaken to file a replication, or after the expiration of *four weeks* from the time when the answer or the last of the answers required to be put in is to be deemed or is held to be sufficient, a special order for leave to amend a bill is not to be granted without a further affidavit, shewing that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill. These affidavits are to be made by the plaintiff and his solicitor, or by the solicitor alone, should the plaintiff from being abroad or otherwise be unable to join therein. *Orders Hil. T.* 1860, ix. 14, 15 & 16. Where the general orders require an affidavit of the solicitor, an affidavit of the solicitor's clerk is not sufficient; but in cases where the facts to be deposed to are within the personal knowledge of the clerk only, the court may perhaps require an affidavit from both.

A bill may be amended by striking out the name of a defendant at any time before he has answered; but after he has appeared, it can only be done upon payment of his costs. Such an amendment should be specified in the order, since the common form of the order giving liberty to amend as the plaintiff may be advised, does not authorise a plaintiff to strike out the name of a party to the record. Before the defendant has appeared, it is also a motion of course to strike out or to add the name of a plaintiff; but after appearance, a plaintiff's name can only be struck out by special application, and generally upon the terms of giving security for costs. The addition of a plaintiff, after answer, is quite discretionary with the judge, and it must be shewn that the person proposed is quite willing to become a co-plaintiff in the suit. If parties are added after witnesses have been examined, the depositions of those witnesses cannot be read against them, as they have not had any opportunity of cross-examining them; and if the parties are added after the closing of evidence, the cause as to those parties must be heard upon bill and answer. After the cause is set down, the plaintiff can only amend by adding parties, and cannot introduce new statements, or put a new material fact in issue, or raise a different case from that on which he had previously relied, and which was properly put in issue by the pleadings. The plaintiff cannot obtain an order of course for leave to amend his bill, after a defendant (being entitled to move) has served a notice of motion to dismiss the bill for want of prosecution.—*Orders Hil. T.* 1860, ix. 12. Nor can a plaintiff obtain the common order to amend pending an appeal from the overruling of a demurrer.

Special applications for leave to amend bills must be made by summons, 'for leave to amend the plaintiff's bill,' to the Master of the Rolls or a Vice-Chancellor in chambers, who may direct the matter to be heard in open court, should he think it ought to be so heard. 15 & 16 Vict. c. 80, s. 26–28. Sec. 35 repeals the 13th, 14th, & 15th ss. of the 3 & 4 Wm. IV. c. 94.

The judge may order and direct whether *the costs of the application* shall be costs in the cause, or whether such costs, or any part thereof, shall be paid by any of the parties personally; and in the latter case the judge will either fix the sum to be paid for such costs, or direct the same to be taxed. The party to whom such costs are directed to be paid, may enforce their payment.

Should a plaintiff not require from a defendant a further answer to his amended bill, it must be expressly so stated in the order. The order having been obtained, a copy of it should be forthwith served on the defendant's

solicitor, for it operates from the time of service only.

Where a plaintiff is directed to pay to the defendant *the costs of the suit*, then the costs occasioned to a defendant by any amendment of the bill shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which may have been made by special leave of the court, or which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff, according to the course of the court, at the time of any amendment.

Where upon taxation a plaintiff who has obtained a decree with costs is not allowed the costs of any amendment of the bill, upon the ground of its having been unnecessarily made, the defendant's costs, occasioned by such amendment, shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.—*Orders Hil. T.* 1860, xl. 7 & 8.

The plaintiff having obtained an order for leave to amend his bill, has, in all cases in which no other time is limited by such order, *fourteen days* after the date of the order within which he may amend such bill. If he do not amend within the time limited by the order, or, if no time is limited, within fourteen days, the order to amend becomes void, and the cause as to dismissal stands in the same situation as if such order had not been made. *Orders Hil. T.* 1860, ix. 17 & 24.

The defendant's costs, which are payable when a further answer is required of him, should be paid to his solicitor at the time he is served with a copy of the order to amend; his acceptance of them waives every irregularity in the order.

After the proposed amendments have been settled and signed by counsel on the draft of the original bill (but, if amended by the same counsel who drew the bill, and a reprint is not necessary, counsel's name need not be repeated), they may be introduced by written alterations into the original printed bill as filed, and also by additions on the interleaved paper: this is done by the clerk of records and writs, the fee being 10*s.* payable by means of stamps, and 5*s.* for amending every office copy. When the amendments exceed two folios of ninety words each in one place, the bill must be reprinted. A bill cannot be amended partly in print and partly in writing. The original and amended bill constitutes but one record. It is not necessary that notice of the amendments having been made should be given to the defendant; and the practice of amending the defendant's copy of the bill is abolished; but a copy of an amended bill, whether upon an amendment by a reprint, or by such alterations and additions as already mentioned, is to be served upon the defendant or his solicitor: and such copy may be partly printed and partly written, if the amendment is not made by a reprint; but in every case the copy to be served is to be stamped with a 5*s.* stamp, by one of the clerks of records and writs, indicating the date of the filing of such amended bill.—15 & 16 *Vict.* c. 86, s. 8.

The plaintiff, by amending his bill, generally loses all benefit of a previous order to take the bill *pro confesso*, or any prior proceedings of contempt issued against the defendant, either for want of his appearance or his answer; and it has the effect of obliging him to begin the same *de novo*, and entitles a defendant in custody to an *ex parte* order to be discharged, without either payment or tender of costs. A defendant, however, imprisoned under contempt for not answering, when the plaintiff is proceeding to take his bill *pro confesso*, is an exception to this rule.—1 *Wm. IV.* c. 36, rule 10.

An order to amend his bill substantially prevents a plaintiff from excepting to an answer already filed, unless it is specially obtained without prejudice to such a right. An order to amend as of course, pending a notice of motion for an injunction to stay an action, will operate as a waiver of such notice; but the amendment of a bill does not prejudice an injunction, nor discharge a writ of *ne exeat regno*, nor the recognizances of the sureties. See further 1 *D. P. by H.* 376–403; and *Smi. Handb.* 241, *et seq.*; and *Morgan's Chancery Acts and Orders.*

The times of vacation are not to be reckoned in the computation of the times appointed, or allowed, for the amending or obtaining orders for leave to amend bills.

Amends, satisfaction.

A mensa et thoro (*from table and bed*). A term used to describe a partial divorce, in cases in which the marriage was just and lawful, but for some supervenient cause, such as the commission of adultery or cruelty by the husband or wife, it became improper or impossible for them to live together. This divorce was effected by sentence of the Ecclesiastical Court. It caused the separation of the husband and wife, but did not dissolve the marriage, so that neither of them could marry during the life of the other.

A decree of judicial separation by the Court for Divorce and Matrimonial Causes has been substituted for this kind of divorce by 20 & 21 Vict. c. 85, s. 7.

Amentia, insanity.

Amercement, or **amerciament,** a punishment by the purse, a penalty assessed by the peers or equals of the party amerced for an

offence, by the commission of which he had placed himself at the mercy of the lord. The difference between *amercements* and *fines* is as follows:—The latter are certain, and are created by some statute; they can only be imposed and assessed by courts of record; the former are arbitrarily imposed by courts not of record, as a court-leet.—*Termes de la Ley*, 40.

Amhiniogau tir (*land borderers*), witnesses in a court in suits respecting landed property, whose lands bordered on that in dispute.—*Anc. Inst. Wales.*

Ami. See AMY.

Amicia, a cap, made of goat's or lamb's skin. See ALMUTIUM.

Amictus, or **Amesse,** the uppermost of the six garments worn by priests. It is tied round the neck and covers the breast and heart. The other five garments are alba, cingulum, stola, manipulus, and planeta.—*Cowel.*

Amicus curiæ (Lat. *friend to the court*), a stander by, who informs the court when doubtful or mistaken.—2 *Co. Litt.* 178.

Amita, a paternal aunt; the sister of one's father.

Amita magna, a great aunt.

Amittere legem terræ, or **liberam legem,** to lose the liberty of swearing in any court. But by 6 & 7 Vict. c. 85, persons who were previously excluded from giving evidence by incapacity arising from crime or interest, are made competent witnesses, their credibility being left to the jury. A person outlawed is said to lose his law; i. e. to be put without its protection, so that he cannot sue, although he may be sued.—*Glanvil*, lib. ii.

Ammobragium, a service, or poll-money, like chevage.—*Spel.*

Ammodwr [*am-bod-wr*], a compactor, one before whom a compact is made, and who is therefore admissible as a witness to prove the terms of it.—*Anc. Inst. Wales.*

Amnery, an almshouse.

Amnesty [fr. *ἀμνηστία*, Gk., non-remembrance], an act of pardon or oblivion, by which crimes against the government up to a certain date are so obliterated that they can never be brought into charge.

Amnitum insulæ, isles upon the west coast of Britain.—*Blount.*

Amobh [fr. *am-gobr*, fee], the fee paid to a lord on the marriage of a female.—*Anc. Inst. Wales.*

Amortization, or **amortizement,** an alienation of lands in mortmain to any corporation, guild or fraternity and their successors, i. e. to some community that never is to cease. *Encyc. Lond.*

Amortize, to alienate lands in mortmain, which cannot be done without licence from the Crown.—*Ibid.*

Amotion, a putting away, a removing, deprivation of possession.—*Scott.*

Amove, to remove from a post or station.

Amoveas manus, or **Ouster le main,** a livery of land to be amoved out of the king's hands on a judgment obtained upon a *monstrans de droit*, to restore the land, its effect being the same as a judgment that the party should have his land again. Abolished by 12 Car. II. c. 24.

Ampliation, an enlargement, a deferring of judgment till the cause be further examined. *Cowel.*

Amputation of right hand, the punishment for a stroke or blow given in a superior court; or for assaulting a judge sitting in the court. 4 *Steph. Com.* 291.

Amrygoll [*am-rhy-coll*, total loss], loss of property.—*Anc. Inst. Wales.*

Amy, or **ami** [fr. *amicus*, Lat.], usually called *prochein amy*, the next friend (as distinguished from the guardian), suing on behalf of an infant or orphan. Infants sue by *prochein amy*, or guardian, and defend by guardian. *Cowel.*

An, jour, et waste, year, day, and waste. A forfeiture of the lands to the Crown incurred by the felony of the tenant, after which time the lands escheat to the lord.—*Termes de la Ley*, 40.

Anacoenosis [fr. *ἀνακοινώσις*, Gk.], a rhetorical figure, whereby we seem to deliberate and argue the case with others upon any matter of moment.—*Encyc. Lond.*

Anacoluthon, or **anacoluthus** [fr. *ἀκόλουθος*, Gk.], a rhetorical figure, when a word that is to answer another is not expressed.—*Ibid.*

Anacrisis [fr. *ἀνάκρισις*, Gk.], an investigation of truth, interrogation of witnesses, and inquiry made into any fact, especially by torture.—*Ib.; Civ. Law.*

Anagraph, a register, or inventory.

Analogism, an argument from the cause to the effect.

Analysts. By 23 & 24 Vict. c. 84, s. 2. In the city of London and the liberties thereof the Commissioners of Sewers of the City of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the Act for the better Local Management of the Metropolis in England and Ireland, the Court of Quarter Sessions of every county, and the town council of every borough having a separate Court of Quarter Sessions, and in Scotland the Commissioners of Supply at their ordinary meetings for counties, and town councils within their several jurisdictions, may, from time to time for their respective city, districts, counties, or boroughs, appoint and remove one or more persons possessing competent medical, chemical, and microscopical knowledge as

analysts of all articles of food and drink purchased within the said city, metropolitan districts, counties, or boroughs, and may pay to such analysts such salary or allowances as they may think fit; but such appointments and removals shall at all times be subject in Great Britain to the approval of one of Her Majesty's principal secretaries of state, and in Ireland to that of the Lord Lieutenant.

Anarchy [fr. *ἀναρχία*, Gk., absence of government], that state of commotion that arises when a government has lost its power.

Anathematize, to pronounce accursed by ecclesiastical authority, to excommunicate. *Encyc. Lond.*

Anatocism [fr. *ἀνά* and *τόκος*, Gk.], taking usurious interest for the loan of money; when compound interest is extorted, or the interest of several years are added together as principal, upon which interest is required. Interest upon interest. This is the worst kind of usury, and has been severely condemned by the Roman law, as well as by the law of most other nations.

Anatomy act, 2 & 3 Wm. IV. c. 75.

Ancestor, one that has gone before in a family; it differs from predecessor, in that it is applied to a natural person, and his progenitors, while the latter is applied to a corporation, and those who have held offices before those who now fill them.—*Co. Litt.* 78 *b.*

Ancestral, or **ancestrel**, that which has relation to ancestors.—*Blount.*

Anchor, a measure containing ten gallons. *Lex Merc.*

Anchorage, a duty taken from the owners of ships for the use of the havens where they cast anchor.—*MS. Arth. Trevor Ann.*

Ancient [fr. *ante*, Lat.; *antes*, Prov.; *anzi*, It.; before; whence *anziano*, *anuen*, belonging to former times] **demesne**, a tenure existing in certain manors, which, though now granted to private persons, were in the actual possession of the Crown, in the times of Edward the Confessor and William the Conqueror, and appear to have been so by the great survey in the Exchequer called Domesday-Book, and, therefore, whether lands are ancient demesne or not, is to be tried only by this book, called in consequence *Liber Judicatorius*; but the question must be tried by a jury whether lands be parcel of a manor, which is ancient demesne, being a question of fact. It is a species of copyhold, which differs, however, from common copyholds in certain privileges, but yet must be conveyed by surrender, according to the custom of the manor. There are three sorts—(1) where the lands are held freely by the king's grant; (2) customary freeholds, which are held of a manor in ancient demesne, but not at the lord's will, although they are conveyed by surrender, or deed and admittance; (3) lands held by copy of court-roll at the lord's will, denominated copyholds of base tenure. Consult *Watkins* or *Scriven on Copyholds.*

Ancient lights, the enjoyment of light for twenty years and upwards.

Ancient writings, documents upwards of thirty years old.

Ancients, gentlemen of the Inns of Court and Chancery. In Gray's Inn the society consists of benchers, ancients, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, those who have passed their readings, are termed ancients. The Inns of Chancery consists of ancients and students or clerks; from the ancients a principal or treasurer is chosen yearly.

Ancienty, eldership or seniority.

Ancillary [fr. *ancilla*, Lat.], that which depends on, or is subordinate to, some other decision.—*Enc. Lond.*

Ancwyn, a stated allowance of provision allotted to the officers of the court in their lodgings; the term appears to be put in opposition to *cwynos* (*cœna*) supper, as being a privileged *private* allowance for that meal; the *cwynos* being the *public* evening meal. *Ancwyn* is translated *cœna* in some Latin copies of the ancient Welsh laws.—*Anc. Inst. Wales.*

Andaga, or **Andæg**, a day or term appointed for hearing a cause: hence *Andagian*, to appoint the day.—*Anc. Inst. England.*

Andena, a swath or line of grass or corn in mowing, or as much ground as a man can stride over at once.—*Jacob.*

Anderida, Newenden in Kent.

Andreapoits, St. Andrew's in Scotland.

Andria mulier, a female hermaphrodite.

Androcoetesis [fr. *ἀνδροκοίτεω*, Gk.], the infamous act of sodomy.

Androgynus [fr. *ἀνήρ*, *ἀνδρός*, Gk., man, and *γυνή*, woman], a hermaphrodite.

Androlepsy, the taking by one nation of the citizens or subjects of another, in order to compel the latter to do justice to the former.

Anelacius, a short knife or dagger.—*Mat. Paris*, 277.

Anfeldtyhde, or **Anfealtihle**, a simple accusation.—*Saxon.*

Angaria [fr. *ἀγγαρεία*, Gk.], personal service, which tenants were obliged to pay to their lords. Impressing of ships.—*Blount.*

Angel, an ancient English coin of the value of ten shillings.—*Jacob.*

Angelica vestis, a monkish garment which laymen put on a little before death, in order to have the benefit of the monks' prayers. *Monast.* tom. i. 632.

Anghyvarch [fr. *an*, *cyvarch*, unquestion-

able], a term used for the articles which were exclusively the property of a man or woman, and not subject to division upon a separation ensuing. A fine for committing certain actions without permission.—*Anc. Inst. Wales.*

Angidllarianum Monasterium, the city of Ely in Cambridgeshire. It is the only city in England not represented in Parliament.

Angild [fr. *an*, one, and *gild*, payment, mulct, or fine, Sax.], the single valuation or compensation of a criminal. *Twigild* was the double, and *trigild* the treble, mulct or fine. *Laws of Ina*, c. 20.

Angliæ jura in omni casu libertatis dant favorem. Fortesc. c. 42.—(The laws of England in every case of liberty are favourable.)

Anglican Church, the established Protestant Church of England and Ireland.

Angylde, the rate fixed by law, at which certain injuries to person or property were to be paid for; in injuries to the person, it seems to be equivalent to the 'wer,' i. e. the price at which every man was valued. It seems also to have been the fixed price at which cattle and other goods were received as currency, and to have been much higher than the market price, or *ceap-gild.*—*Anc. Inst. England.*

Anhlote, a single tribute or tax, paid according to the custom of the country, as scot and lot.—*Leges Wm. I.* c. 64.

Anichiled, annulled, cancelled, or made void. *Blount.*

Aniens or **Anient**, void, of no force or effect. *F. N. B.* 214.

Animalia fera, si facta sint mansueta, et ex consuetudine eunt et redeunt, volant et revolant ut cervi cygni, &c., eo usque nostra sunt, et ita intelliguntur quamdiu habuerunt animam revertendi.—7 Co. 16.—(Wild animals, if they be made tame, and are accustomed to go out and return, fly away and fly back, as stags, swans, &c., are considered to belong to us so long as they have the intention of returning to us.)

Animals may be divided into—

(1) Domestic animals, or animals not naturally mischievous, such as dogs or oxen.

(2) Animals *mansuetæ naturæ*, such as sheep and cows.

(3) Animals that are naturally dangerous and ferocious, such as lions, bears, &c.

(4) Animals *feræ naturæ* (which are unreclaimed), such as hares, pheasants, partridges, &c.—*Browne's Actions*, 369.

By 24 & 25 Vict. c. 97, s. 40, the unlawful and malicious killing, maiming or wounding of cattle is a felony, punishable by penal servitude for a term not exceeding fourteen and not less than three years, or imprisonment for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

By s. 41, the unlawful and malicious killing, maiming or wounding any animal not being cattle, but being the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, is an offence punishable on summary conviction by imprisonment and fine in addition to the amount of the injury done.

By 12 & 13 Vict. c. 92 (amended by 17 & 18 Vict. c. 60), if any person shall cruelly beat, ill-treat, over-drive, abuse, or torture any horse, mare, &c., &c., or any other domestic animal, he shall forfeit 5*l.* for every such offence, recoverable before a justice of the peace in a summary way; and if by such misconduct he injures the animal, or any person or property, a further sum of 10*l.* to the owner or person injured.

The act also contains provisions imposing penalties against conveying such animals in such manner or position as to subject them to unnecessary pain or suffering; against bull-baiting and cock-fighting. It contains, also, provisions for the regulating of the business of slaughtering of horses and other cattle not intended for butchers' meat; and also for supplying food and water to animals impounded.

Animus, an intent.

Animus cancellandi, the intention of destroying or cancelling.

Animus furandi, the intention of stealing.

Animus manendi, the intention of remaining.

Animus morandi, the intention of remaining.

Animus recipiendi, the intention of receiving.

Animus revertendi, the intention of returning.

Animus revocandi, the intention of revoking.

Animus testandi, the intention of willing.

Animus ad se omne jus ducit.—(Intention attracts all law to itself.)

Animus hominis est anima scripti. 3 Bulst. 67.—(The intent of a man is the soul of his writing.)

Ann or **annat**, half year's stipend, over and above what is owing for the incumbency, due to a minister's relict, child, or nearest of kin, after his decease.—*Scotch Law.*

Anna, a piece of money, the sixteenth part of a rupee.—*Indian.*

Annales, yearlings or young cattle from one to two years old.—*Cowel.*

Annats, or **Annates** [fr. *primitiæ*, Lat.], first fruits of a spiritual living.—*Termes de la Ley*, 40.

Annealing of tile [fr. *onælan*, Sax.; *accendo*, Lat.; or rather fr. *niello*, It.; *nigellum*, m. Lat.; a kind of black enamel on gold and silver], burning or hardening tiles, which are made of burnt clay, and are used for covering houses. 17 *Edw. IV.* c. 4.

Annexation, the union of lands to the Crown and declaring them inalienable. Also the appropriation of church-lands by the Crown, and the union of land lying at a distance from the kirk to which they belong, to a kirk to which they are contiguous.—*Scotch Law.*

Anniented, abrogated, frustrated, or brought to nothing.—*Litt.* c. 3, s. 741.

Anni nubiles, marriageable years of woman, i. e. 12 years.—2 *Co. Litt.* 434.

Anniversary days, solemn days appointed to be celebrated yearly in commemoration of the death or martyrdom of saints; or the days, whereon, on the return of every year, men were wont to pray for the souls of dead friends, according to the custom of the Roman Catholics, mentioned in the statute of 1 Edw. VI. c. 14; Lib. Rames, s. 134. It is a day annually observed at our two Universities, in gratitude to their founders and benefactors. It was anciently called *year*-day or *mind*-day. *Jacob.*

Anno Domini (abbreviated A.D.), the Christian computation of time, from the incarnation of our Saviour Jesus Christ, which is generally inserted in the dates of public writings, and private assurances, together with the year of the sovereign's reign, although both are not *necessary.* It is called the 'Vulgar Æra.' Scaliger, a high authority in chronology, classes the date of the Nativity of the Saviour among the mysteries that will never be discovered. Gresswell advances as a conjecture, that the day of the Nativity is that on which the Paschal Lamb was set apart preparatory to the sacrifices, that is on the tenth of Nisan, answering to the 5th of April, in the year of Rome 750, four years before the vulgar æra. The Romans began their æra from the building of Rome, 753 B. C.; the Greeks computed time by Olympiads, first observed by the Idæi Dactyli, B. C. 1453.—*Lempriere*; *Macbride's Diatessaron.*

Annoisance, or **Annoyance** [fr. *annoiare,* It.; *ennuyer,* Fr.], any hurt done to a place, public or private, by placing anything thereon that may breed infection, or by encroachment, or such like means. It is the same as *noisance* or *nuisance.*—22 Hen. VIII. c. 5.

Annonæ civiles, rents paid to monasteries.

Annotation, the designation of a place of deportation; the citing of an absentee; the prince's answer on a doubtful point of law. *Civil Law.*

Annual pension, a yearly profit or rent. *Scotch Law.*

Annua pensione, an ancient writ to provide the king's chaplain, if he had no preferment, with a pension.—*Reg. Orig.* 165, 307.

Annuale, the yearly rent or income of a prebendary.—*Cowel.*

Annualia, a yearly stipend assigned to a priest for celebrating an anniversary, or for saying continued masses for the soul of a deceased person.—*Blount.*

Annuity, properly so called, is merely personal property, and not at all connected with realty, although it is frequently ranged under incorporeal hereditaments, issuing out of land, and even the legislature treats it sometimes as a rent-charge, from which it materially differs. 3 & 4 *Wm. IV.* c. 27, s. 21. The words 'annuity' and 'rent charge' are frequently used as convertible terms.

An annuity is a periodical payment of money either bequeathed as a gift, or secured by the personal covenant or bond of the payer. It is mostly charged upon personalty.

Although an annuity may be made a personal hereditament by granting it to the payee and his heirs, upon whom it will descend, if not disposed of, though totally unconnected with realty; yet, not being a tenement, it cannot be entailed, nor can there be a remainder of it. If, then, an annuity be granted to A, and the heirs of his body, it is a conditional personal fee, and may be alienated by A after issue is born to him.—*Co. Litt.* 20 *a.* An annuity to A 'for ever' will pass to A's personal, not his real, representatives.—11 *Sim.* 158.

It is not now usual to grant inheritable or perpetual annuities; because if a person grant that he and his heirs will pay a yearly sum to A and his heirs; or covenant or give a bond that he and his heirs will pay such an annuity, the heirs will not be liable unless they inherit sufficient descendable lands or hereditaments.—*Co. Litt.* 144 *b.* But the executors or administrators will be bound so far as they have assets, whether they are named or not.—*Co. Litt.* 209 *a.* And Equity would compel the personal representatives, so far as they have assets, to set aside a sufficient fund to answer such an annuity, the annuitant having the absolute disposition of such fund. *Smith* v. *Pybus,* 9 *Ves.* 574. As to the personal representatives of an heir, who had real assets by descent from the ancestor who created the personal annuity, Equity would compel them to set aside so much of the heir's personal estate as would be sufficient to answer the personal annuity, so far as the value of the real assets descended to the heir would extend. They are generally created for life, *pour autre vie,* or for a certain number of years determinable upon given lives, and thence called contingent annuities, or for a term of years, and so are annuities certain.

A perpetual annuity granted in consideration of a sum of money advanced, differs from a loan at interest in this—that the grantee has no right to demand back his principal, which is entirely sunk, but must be content

to receive the annuity which he has purchased, as long as it shall please the other party to continue it: but the annuity is in its nature redeemable at the option of the grantor, who is thus at liberty to discharge himself from any further payments by returning the money which he has borrowed. It may, however, be agreed between the parties that the redemption shall not take place for a certain number of years.

An annuity for life or years is not redeemable in the same manner; but it may be agreed by the parties to the contract that it shall be redeemable on certain terms; or it may afterwards be redeemed by consent of both parties. Equity will decree a redemption upon the ground of fraud or gross inadequacy.

An annuity may be bequeathed. It may be either created by, or, if already existing, may be transmitted by, will. A created annuity is a general legacy, and will abate with the other legacies upon a deficiency of assets. A personal annuity of inheritance will pass under a general bequest.—*Aubin* v. *Daly*, 4 *B. & A.* 59.

An annuity is frequently resorted to as a means of borrowing money, where the borrower has not any available security; the borrower undertaking to pay an annuity during his own life, instead of interest and the return of the loan. The borrower is the grantor, and the lender is the grantee, of such annuity.

Again, a person desirous of increasing his income, and having, perhaps, no relations for whom he wishes to provide, may sink the capital he possesses, and purchase an annuity for his life. While the Government offers the best and safest security for the due payment of a purchased annuity, joint-stock companies and private speculators hold out higher rates of interest, which, however, are not always preferable, seeing that certainty of payment is the grand desideratum. See 10 Geo. IV. c. 24, 2 & 3 Wm. IV. c. 59, and 1 & 2 Vict. c. 49, as to annuities granted by the Commissioners for the Reduction of the National Debt; and 3 & 4 Wm. IV. c. 14, and 7 & 8 Vict. c. 83, ss. 8 & 9, as to such grants by Savings' Banks. Stock in the public funds is a species of annuity, regulated by particular Acts of Parliament.

An annuity cannot be created or assigned or released *inter vivos* without a deed.—*Gerard* v. *Boden*; *Hetl.* 80; *Maund's Case*, 7 *Co.* 28 *b.*

While the 17 & 18 Vict. c. 90, wholly repealed from the 10th of August, 1854, the 53 Geo. III. c. 141, except so much thereof as repealed the 17 Geo. III. c. 26; the 18 Vict. c. 15, after reciting that by reason of the repeal of this act, purchasers were no longer enabled to ascertain by search what life-annuities or rent-charges may have been granted by their vendors or others, enacted by sec. 12 as follows:—Any annuity or rent-charge granted after 26th of April, 1856, otherwise than by marriage settlement, for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives, shall not affect any lands, tenements or hereditaments as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute containing the name, and the usual or last known place of abode, and the title, trade or profession of the person whose estate is intended to be affected thereby, and the date of the deed, bond, instrument, or assurance whereby the annuity or rent-charge is granted, and the annual sum or sums to be paid shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the particulars aforesaid in a book in alphabetical order by the name of the person whose estate is intended to be affected by the annuity or rent-charge, together with the year and the day of the month when every such memorandum or minute is so left with him; and he shall be entitled for every such entry to the sum of two shillings and sixpence, and all persons shall be at liberty to search the same book, together with the other books or registers in the office, on payment of the sum of one shilling.

The 14th section excepts annuities or rent-charges given by will from the act.

As to bankruptcy of the grantor of an annuity, see 24 & 25 Vict. c. 134, ss. 175, 176; as to his insolvency, see 1 & 2 Vict. c. 110, s. 80.

The most expeditious remedy to recover the arrears of a personal annuity is an action of debt upon the deed. An action of covenant will lie; and if judgment by default be recovered, a reference to the master to compute the arrears is obtained. Where there is a bond, an action for its penalty may be brought, and a *scire facias* issued upon the judgment as the arrears become due from time to time.

Annuities of teinds, i. e. tithes, are 10*s.* out of the boll of teind wheat, 8*s.* out of the boll of beer, less out of the boll of rye, oats, and peas, allowed to the Crown yearly out of the teinds not paid to bishops, or set apart for other pious uses.—*Scotch Law.*

Annuity-tax, an impost levied annually in Scotland for the maintenance of the ministers of religion. It is abolished in Edinburgh and Montrose by 23 & 24 Vict. c. 50, which introduces a new scheme.

Annulum et baculum, a ring and pastoral staff or crosier, the delivery of which by the prince was the ancient mode of granting investitures to bishoprics.—1 *Bl. Com.* 377.

Annus deliberandi, the year allowed by the Scottish law for the heir to deliberate whether he will enter upon his ancestor's lands and

represent him. Entry has very serious effects, and, therefore, this time is given for consideration; it commences at the ancestor's death, unless in the case of a posthumous heir, and then from his birth.—*Scotch Law.*

Annus, dies, et vastum [Lat.] (*Year, day, and waste*). See AN JOUR ET WASTE.

Annus luctus, the year of mourning, during which the widow, by the ordinances of the civil law, could not marry, to prevent the inconvenience of a widow bearing a child, which, by the period of gestation, might be the child either of her deceased or her present husband.—*Cod.* 5, 9, 2.

Anomy [fr. *ἀνομία*, Gk.], lawlessness, breach of law.

A non posse ad non esse sequitur argumentum necessarie negativè, licet non affirmativè. Hob. 336. (An argument necessarily in the negative follows from the not possible to the not being, though not in the affirmative.)

Anon, An, A, abbreviation for anonymous.

Anonymous partnerships in Ireland. See 21 & 22 *Geo. III.* c. 46 (Irish).

Anrhaith [*an-rhaith*, lawless], spoil.—*Anc. Inst. Wales.*

Anrhaith-oddev, spoliation, sufferance. A term used when a person's goods were confiscated and seized by the lord.—*Ibid.*

Anrhaith-gribddail, pilfering, spoliation. A term for the graver spoliation to be exercised towards a homicide.—*Ibid.*

Ansel, or **Ansul,** an ancient mode of weighing by hanging scales or hooks at either end of a beam or staff, which, being lifted by the middle, showed the equality or difference between the weight at one end, and the thing weighed at the other.—*Termes de la Ley,* 66.

Answer [fr. *andswarian*, A.-S.; *andswer*, Goth.; *antwoord*, Belg.], reply, counter-speech.

Answer in Chancery. When a defendant is advised to take the judgment of the Court upon the whole case, or any part of it, as made by the parties on both sides, he files an answer (for further details see *Mit. Pl.* 15, 123, 127, 357–381; *Sto. Eq. Pl.* c. xviii.; 1 *D. P.* by *H.* 675–760, and *Smi. Handb.* 199–240) either to the whole bill or to such parts of it as are not covered by a demurrer or plea, where a combined defence is resorted to.

An answer to a bill seeking relief consists of two parts—(1) The defence or several defences to the case made by the bill, in order to apprise the plaintiff of the nature of the matter intended to be set up, and to enable the defendant to take advantage of it; for a defendant cannot avail himself of any defence not stated in his answer. (2) The examination for discovery as to which interrogatories are filed. See INTERROGATORY. It is desirable (if practicable) to keep these parts distinct and separate from one another. An answer must not contain inconsistent defences, or an alternative of inconsistent defences, for that would be to deprive the defendant of the benefit of either, and to entitle the plaintiff to a decree.

An answer either traverses, i. e. denies, or confesses and avoids the statements of the bill, and alleges matter shewing the defendant's rights in the subject of the suit, or it admits the truth of such statements, and, alleging additional circumstances or otherwise, submits the case as thus made to the judgment of the Court.

The general rule is, that if a defendant submit to answer, he must answer fully; but a defendant is not bound to answer any statement or charge in the bill, unless specially and particularly interrogated thereto; nor is a defendant bound to answer any interrogatory, except those interrogatories which such defendant is required to answer; and where a defendant answers any statement or charge in the bill, to which he is not interrogated, only by stating his ignorance of the matter so stated or charged, such answer will be deemed impertinent.—*General Orders,* March 6, 1860, xv. 3. A defendant may, however, answer any matter tending to the strengthening of his defence to which he is not interrogated. The answer of a defendant may contain, not only his answer to the plaintiff's interrogatories, but such statements material to the case as he may think it necessary or advisable to set forth therein; and the answer must be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate and distinct statement or allegation.—15 & 16 Vict. c. 86, s. 14.

The general rule, just mentioned, is narrowed in its operation by Gen. Ord. March 6, 1860, xv. 4, which directs that a defendant may by answer decline answering any interrogatory, or part of an interrogatory, from answering which he might have protected himself *by demurrer*; and that he may so decline, notwithstanding his answering other parts of the bill, from which he might have protected himself by demurrer.

This order applies only to cases where a defendant could have protected himself from answering by a demurrer, but a defendant is not bound to answer to matters which are scandalous, or impertinent, or immaterial, or irrelevant, or which may subject him to any penalty, forfeiture, or punishment, or which would involve a breach of professional confidence, or disclose facts as to his own title. In these cases, if a defendant do not defend himself from a discovery by a demurrer or plea, he is permitted by answer to insist that he is not obliged to make the discovery; but the plaintiff may except to the defendant's answer as sufficient, whereupon it will be determined

by the Court whether the defendant is, or is not, obliged to make the discovery.—*Sto. Eq. Pl.* s. 846. The defendant, if he had raised the defence at the hearing of the cause, will generally be entitled to the same advantage by this mode of defence, as he would have had by demurring or pleading.—1 *D. P.* by *H.* 680.

A defendant must answer positively as to a fact charged to be within his own knowledge, unless it took place more than *seven years* ago, when he may answer it as to his remembrance or belief only. If a fact be not within his own knowledge, the defendant must answer as to his information and belief.

An answer must be full and perfect, stating facts and not indulging in arguments, and be certain in its allegations so far as it is practicable.

It must be direct and not evasive, for an evasive answer is in effect no answer, and will be liable to be taken off the file of the court. An answer must be particular, precise, and full to all the material inquiries of an interrogatory; but if the inquiry be immaterial, i. e. if the defendant's admission would neither assist the plaintiff's equity, nor advance his claim to relief, it needs not be answered. It is not enough merely to answer the charges (if any) literally, but the substance of each charge must either be confessed or traversed.

Where a defendant has in his power the means of acquiring the information necessary to enable him to give the discovery called for, he is bound to make use of such means, whatever pains or trouble it may cost him.

If a defendant deny a fact, he must traverse it directly, and not by way of negative pregnant, i. e. such a form of negative expression as may imply, or carry within it, an affirmative (see NEGATIVE PREGNANT); and if he have received any part, he must set forth what part. Preparatory to Lord Bacon's interview with James I. upon his disgrace (A.D. 1621), he made some notes, which are preserved, of the topics he was to use:—'The law of nature teaches me to speak in my own defence. With respect to this charge of bribery, I am as innocent as any born on St. Innocent's Day; *I never had bribe or reward in my eye or thought when pronouncing sentence or order.*' A clear negative pregnant, admitting that the bribes had been received, although he was not influenced by them in giving judgment.—2 *Camp. Lives of the Chancellors*, 404.

It is, however, the general practice, where an interrogatory requires the defendant to set forth a general account, or to answer as to monies received, or as to documents in his possession, to set forth the account or a list of the sums, or documents, in one or more schedules annexed to the answer, which the defendant prays may be taken as part of his answer, and such practice is very convenient, and in many cases indispensable. It may also be resorted to by the defendant, for the purpose of shewing the nature of his own case, or of strengthening it, even though there is not anything in the bill itself, or in the interrogatory, which may render a schedule necessary.

Instructions for the preparation of an answer are laid before counsel. They consist of a copy of the bill, a copy of the plaintiff's interrogatories in half margin on the right hand of the paper, and the defendant's proposed answers written opposite to the several interrogatories, with any additional facts, which are deemed essential in aid of the defence. The draft, drawn, settled, and signed by counsel, should be read to the defendant, and should any material alterations suggest themselves, it should be again submitted to counsel for revision.

The form of an answer is set forth in Schedule C to Gen. Ord. March 6, 1860, which is to be adopted with such variations as the nature and circumstances of each particular case may require.—*Ord.* xvi.

Whether the plaintiff in any suit commenced by bill does or does not require any answer from the defendant, or any one or more of the defendants to the bill (in case of an amended bill, the time will run from service of a copy of it pursuant to Order ix. 20), such defendant or defendants, may, without any leave of the Court, put in an answer or a demurrer (see DEMURRER), or a plea (see PLEA), to the plaintiff's bill within the time now allowed to the defendant for demurring alone to a bill (i. e. 12 days), or within such other time as may be fixed by any general order of the Lord Chancellor (no order has yet been promulgated); but after that time a defendant or defendants not required to answer the plaintiff's bill cannot put in an answer, or demurrer, or plea, without leave of the Court, whose power to grant further time for answering a bill remains in full force, and is not in anywise prejudiced or affected by the new law. When the Court grants further time to a defendant for answering the bill, the plaintiff's right to move for a decree is in the meantime suspended.

A defendant required to answer a bill must file his answer or demurrer, not demurring alone, or plea, *within twenty-eight days* from the delivery to him, or his solicitor, of a copy of the interrogatories (see INTERROGATORY) which he is required to answer; the Court having however full power to enlarge such period, from time to time, upon application being made to a Judge at chambers for such purpose. 15 & 16 *Vict.* c. 86, s. 13, and *Gen. Ord.* March 6, 1860, xxxvii. 4 & 8.

The day on which an order that the plaintiff

give security for costs is served, and the time thenceforward, until and including the day on which such security is given, is not to be reckoned in the computation of time allowed to a defendant to plead, answer or demur, or otherwise to make his defence.—*Ord.* xxxvii. r. 14.

The application for further time must be made to the Judge at chambers to whose Court the cause is attached, unless it be during vacation, when the vacation Judge acts for the others. The form of application is by a summons, prepared by the defendant's solicitor, impressed with a 3*s.* stamp, and sealed by the Judge's clerk. A copy of this must be served upon the plaintiff's solicitor *two clear days* before its return, and another copy unstamped left in chambers. The evidence in support of the application may be by affidavit, the office copy of which, and not the original, is read in chambers, and it should shew a case of diligence on the part of the applicant, and that the time allowed was insufficient for the preparation of the answer. Previous notice of reading the affidavit should be given to the plaintiff's solicitor; and, if required by him, a copy must be furnished, he paying for it at the rate of 4*d.* per folio. On the first application further time is granted, almost, of course, even without an affidavit. The solicitor should be prepared with a form of order on a 5*s.* stamp, as, if the application be granted, the order may be drawn up immediately after the hearing. But by special leave the return may be earlier. When the opposite party does not attend, there should be an affidavit of service; but this may be produced at any time during the day. It is, however, sometimes dispensed with. The costs are in the discretion of the Judge.—15 & 16 *Vict.* c. 80, ss. 26, 28, 35; *Order* xxxv., rr. 5, 7, 27, 32; and xxxvi.

If a defendant do not answer within these respective times, as the case may be, and do not procure an enlargement of the time, he is subject to the following liabilities:—

(1) An attachment may be issued against him.

(2) He may be committed to prison and brought to the bar of the Court.

(3) The plaintiff may file a traversing note to this effect, 'The plaintiff intends to proceed with his cause as if the defendant had filed an answer traversing the case made by the bill,' or proceed to have the bill taken *pro confesso* against him.—*Order* xiii. r. 1.

The engrossed answer on parchment must be signed by the defendant or his guardian *ad litem* or committee (if any); but when an answer is put in under a power of attorney, it is thought better to take the answer without any signature, than that the person to whom the power is given should sign it in the name of the defendant. The power of attorney should be recited in the order, which authorises the answer to be put in under it.—*Bayley* v. *De Walkiers*, 10 *Ves.* 441 (1805).

Before an answer is sworn, a *jurat* should be written at the end of it, which must be signed by the person administering the oath.

An answer is put in upon the defendant's or his committee's or guardian's oath, administered to him in the form consonant with his religion; but a peer or bishop merely wages his honor, and a Quaker or Moravian solemnly affirms in lieu of an oath. A corporation aggregate puts in an answer under their common seal, while a corporation sole appears and answers like a private person. A foreigner, not conversant with English, so as to answer in our vernacular language, may obtain an order as of course upon motion or petition, for an interpreter, and the answer being engrossed in his own tongue, an English translation of it is made by such interpreter upon parchment and annexed. The foreigner is then sworn to his answer; the interpreter attending having been previously sworn both to interpret truly, and convey to the foreigner the language and meaning of the oath, and that the translation is true and just, to the best of his ability; the *jurat* being adapted thereto. The same course of proceeding seems proper where the defendant is deaf and dumb. Where a defendant is blind, some other person must swear that he has truly, distinctly, and audibly read the contents of the answer to the defendant. The defendant must also swear to the answer.

If a defendant be illiterate, he is sworn, and makes his mark upon, instead of signing, the answer, which mark requires to be attested by a witness, who swears that he has truly, distinctly, and audibly read the contents of the answer to such defendant, and that he saw him make his mark thereto; it is better, although not necessary, for the *jurat* to express that the defendant, being illiterate, appeared to understand the answer.—*Hill* v. *Earl of Bute*, 2 *Fowl. Ex. Pr.* 10. See a form of *jurat* in the case of a heathen or disbeliever, *Ramkissenseat* v. *Barker*, 1 *Atk.* 19.

If a defendant be imbecile, the Court will appoint a guardian *ad litem* to answer for him, and not permit his answer to be received without oath or signature.—*Wilton* v. *Clifton*, 2 *Hare*, 536.

If a wife join in one defence with her husband, relative to her own property, it is considered the defence of the husband. A wife is entitled to put in an answer separate from her husband on these grounds:—(1) If the husband and wife are made defendants in right of the wife, and she claims an interest adverse to him; (2) If the husband and wife

live separately and apart; (3) If the husband is out of the jurisdiction; and (4) Where she disapproves of the defence her husband intends to make. In order to answer separately, an order of the Court must be obtained for the purpose upon a motion or petition as of course. The answer of a married woman, who is under age, cannot be taken either separately or jointly with her husband, until she has had a guardian *ad litem* assigned.

When the Attorney-General is made a defendant, it is entirely in his discretion whether he will file a full answer, or a general answer, stating merely that he is a stranger to the matters contained in the bill, and that he hopes the interest of the Crown will be taken care of. His answer is merely signed by him.

If a defendant be in town, he is sworn or affirms, or attests upon honor before a clerk of records and writs (1*s.* 6*d.* being paid for the oath by means of a stamp, *Table of Fees, &c.*, January 30, 1857), or before a London Commissioner to administer oaths, and take declarations, affirmations, and attestations of honor in Chancery, the fee being 1*s.* 6*d.* (16 & 17 Vict. c. 78, s. 2.)

If he reside in the country, then he swears his answer with the same formalities as an affidavit before a Commissioner to administer oaths in Chancery in England, who can also take affirmations and attestations of honor, the fee being 2*s.* 6*d.* (16 & 17 Vict. c. 78, s. 1, and 15 & 16 Vict. c. 86, s. 21, which abolishes commissions to take pleas, answers, disclaimers and examinations, within the jurisdiction of the Court of Chancery.)

It may be here remarked, that all pleas, answers, disclaimers, examinations, affidavits, declarations, affirmations, and attestations of honor in causes or matters depending in Chancery, and also acknowledgments required for the purpose of enrolling any deed in Chancery, are also sworn and taken in the same manner. An answer is sworn and taken in Scotland or Ireland, or the Channel Islands, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Judge, Court, Notary Public, or person lawfully authorized to administer oaths in such country, colony, island, plantation, or place respectively, or before any of her Majesty's consuls or vice-consuls in any foreign parts out of her Majesty's dominions; and the Judges and other officers of the Court of Chancery must take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, Notary Public, person, consul, or vice-consul attached, appended, or subscribed to any such plea, answer, or other document.

All persons swearing, declaring, affirming, or attesting before any person authorized to administer oaths and take declarations, affirmations, or attestations of honor, will be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing, declaring, affirming, or attesting contained therein, as if the matter sworn, declared, affirmed, or attested had been sworn, declared, affirmed, or attested before any Court or persons now by law authorized to administer oaths, and take declarations, affirmations, or attestations upon honor.

If any person forge the signature or the official seal of any Judge, Notary Public, or other person lawfully authorized to administer oaths, or tender in evidence any answer with a false or counterfeit signature or seal of any such Judge, Court, Notary Public, or other authorized person attached or appended thereto, knowing the same signature or seal to be false or counterfeit, every such person will be guilty of felony, and liable to the same punishment as any offender under the 8 & 9 Vict. c. 113, intituled, 'An Act to facilitate the Admission in Evidence of Certain Official and other Documents.'

An answer, plea, disclaimer or examination, whether taken by commission out of the jurisdiction of the Court, or otherwise, is now filed without the oath of the messenger, and any alterations made therein previously to its being taken, must be authenticated according to the practice now in use with respect to affidavits, 15 & 16 Vict. c. 86, ss. 22, 23, 24, 25.

If a plaintiff will consent upon perusing the draft answer, and the Court will grant an order (which is obtained upon motion or petition of course, and properly passed and served), the oath or affirmation, or attestation of honor, and the defendant's signature as well may be dispensed with; and this is frequently done in amicable suits, and where the oath and signature cannot be obtained without delay and expense. No exceptions, however, can be taken to an answer thus filed.

The answer is left with the Clerk of Records and Writs, in whose division the suit happens to be, properly endorsed with the solicitor's name and address, who duly files it. Notice of it must be given on the same day to the plaintiff's solicitor.

Antagoge, a figure in rhetoric, charging an adversary, whose accusation is unanswerable, with the same or other crimes.—*Encyc. Lond.*

Antanaclasis [Lat., fr. ἀνταναϰλάω, Gk., to repercuss], a figure in rhetoric, when the same word is repeated in a different, if not in a contrary signification; as, *In thy youth learn some* craft, *that in old age thou mayest get thy living without* craft. It is also a returning to the matter at the end of a long parenthesis, as, Shall that heart (which does not only feel

them, but hath all motion of his life placed in them), shall that heart, I say, &c.—*Ibid.*

Antanagoge [fr. *ἀντὶ*, against, and *ἀνάγω*, Gk., to take up], in rhetoric, a reply to an accusation by way of recrimination.—*Ibid.*

Antedate, to date a document before the day of its execution.

Antejuramentum, or **præjuramentum,** an oath taken by the accuser and accused before any trial or purgation. The accuser swore that he would prosecute, and the accused was to swear on the day of ordeal that he was innocent.—*Leg. Athelstan apud Lambard,* 23.

Ante litem motam [Lat.] (*Before litigation commenced*).

Antenati, those born before a certain period, e. g. before marriage.

Ante-nuptial, before matrimony.

Anthorismus, in rhetoric, denotes a contrary description or definition of a thing from that given by the adverse party. Thus, if the plaintiff urge, that to take anything away from another without his knowledge or consent is a theft, this is called *ὅρος*, or definition. If the defendant reply, that to take a thing away from another without his knowledge or consent, provided it be done with a design to return it to him again, is not theft, this is an *ἀνθορισμὸς*.—*Ibid.*

Antichresis [fr. *ἀντίχρησις*, Gk.], in the civil law, a covenant or convention, whereby a person borrowing money of another engages or makes over his lands or goods to the creditor, with the use and occupation thereof, for the interest of the money lent. This covenant was allowed by the Romans, among whom usury was prohibited; it was afterwards called Mort-*gage*, to distinguish it from a simple engagement, where the fruits of the ground were not alienated, which was called Vif-*gage*, i. e. *vivum vadium.*—*Encyc. Lond.* The obsolete Welsh mortgage bears a resemblance to this kind of pledge.—1 *Domat*, b. iii. tit. I. s. i. art. 28; *Story on Bail*, 310.

Anticipation, doing or taking a thing before the appointed time.

Antient demesne. See *Ancient Demesne.*

Antigrapher, the keeper of the —

Antigraphy, a copy or counterpart of a deed.

Antigua. See 22 & 23 Vict. c. 13.

Anti-manifesto, the declaration of a belligerent shewing that the war, as far as he is concerned, is defensive.

Antinomy [fr. *ἀντὶ*, against, and *νομός*, Gk., law], a contradiction between two laws or two articles of the same law.—*Encyc. Lond.*

Antipelargia, an ancient and righteous law, whereby children were obliged to furnish necessaries to their aged parents. The *ciconia*, or stork, is a bird famous for the care it takes of its parents, when grown old. Hence, in some Latin writers, this is rendered *lex ciconiaria*, or the stork's law.—*Ibid.*

Antiqua customa, a duty which was collected on wool, wool-felts, and leather.

Antiqua statuta, the Acts of Parliament from Richard I. to Edward III.

Antistitium, a monastery.—*Blount.*

Antithetarius, or **anthetarius,** the recriminating upon the accuser of the same crime, which he has charged against the accused. *Canutus*, c. 47.

Antivestæum, the Land's End, in Cornwall.

Antona, the river Avon, in Warwickshire.

Antrustions, companions-in-arms of a German feudal chief.

Apatisatio, an agreement or compact. *Upton*, lib. 2, c. 12.

Apertura testamenti, a form of proving a will in the Civil Law by the witnesses acknowledging before a magistrate their having sealed it.—1 *Wm. Exs.* 292, *n.* (*t*).

Apiacum, Pap Castle, in Cumberland.

Apices juris non sunt jura.—Co. Litt. 304. (Fine points of law are not laws.) The ingenuity of special pleaders would frequently sacrifice the spirit of our laws upon the altar of technicality, were it not for this maxim, which prevents subtle exceptions diverting the stream of justice. The Courts frequently regret the occurrences of technical objections to the pleadings, depriving parties of their just and moral rights, but perhaps, upon the whole, it would be a subject of deeper regret, if, in order that supposed justice should be done, a remedy should be applied to a particular hardship, unsettling the established rules of pleading, and introducing laxity and uncertainty.—*Galloway* v. *Jackson*; 3 *Scott, N. R.* 773. Recent statutes have exploded a mass of pleading technicality.

Apograph, a copy, an inventory.

Aporiare, to bring to poverty, to shun or avoid.—*Wals. in R.* 2.

Apostacy, a total renunciation of Christianity, by embracing a false religion, or not any religion at all.—4 *Bl. Com.* 43.

Apostare, to violate, break, or transgress. *Blount*; *Leg. Edw. Conf.* c. 35.

Apostata capiendo, a writ formerly issued against an apostate, or one who had violated the rules of his religious order. It was addressed to the sheriff to deliver the defendant into the possession of the abbot or prior.—*Reg. Orig.* 71, 267.

Apostles [fr. *ἀπόστολος*, Gk., *one sent*], brief letters of dismission given to an appellant from an Admiralty Court. They state the case and declare that the record will be transmitted. *Civil Law.*

Apothecaries [fr. *apothicaire*, Fr.; fr. *ἀποθήκη*, Gk.], persons who prepare medicines according to a physician's prescription. Their practice in England and Wales is regulated by 55 Geo. III. c. 194. See also 21 & 22 Vict.

c. 90; 22 Vict. c. 21; 23 Vict. c. 7; 23 & 24 Vict. c. 66; and 25 & 26 Vict. c. 91.

Appanage, or **Apanage** [fr. *panis*, Lat., bread, whence *panar*, *apanar*, Prov., to nourish], the provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons, and also the allowance assigned to the prince of a reigning house for a proper maintenance out of the public chest.—1 *Hall. Mid. Ages*, c. 1, p. ii. p. 88.

Apparator, or **Apparitor,** a messenger, who cites and arrests offenders, and executes the decrees of the judges of the Spiritual Courts. *Gowel.*

Apparator comitatus, an officer formerly so called, for whom the sheriffs of Buckinghamshire had a considerable yearly allowance. *Hales' Sher. Acco.* 104.

Apparel, *excess in*, the penal laws against this luxury were repealed by 1 Jac. I. c. 25.

Apparent heir, or **appearand heir,** also sometimes called heir presumptive, a person who is next in the line of succession to real property, to whom it will descend if he outlive the present owner, e. g. the eldest son of a man seised of real estate, to whom it will descend, if he outlive his parent dying intestate. In the *Scotch Law*, he is the person to whom the succession has actually opened. He is so called until his regular entry on the lands by service or infeftment on a precept of *dare constat.*—*Scotch Dict.*

Apparlement [fr. *pareillement*, Fr., in like manner], a resemblance or likelihood.—2 *Ric. II.* st. 1, c. 6.

Apparura, furniture and implements. *Blount.*

Appeach, to accuse or bewray.

Appeal [fr. *appellatio*, Lat.; *appeller*, Fr.], the removal of a cause from an inferior to a superior court, for the purpose of testing the soundness of the decision by the inferior court. Criminally, it was an accusation by one private subject against another of some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public. Criminal appeals were either capital or not capital: capital were subdivided into (1) appeals of death or murder; (2) appeals of larceny or robbery; (3) appeals of rape; (4) appeals of arson, which are all obsolete and superseded by 59 Geo. III. c. 46; not capital were *de pace*, *de plagis*, *de imprisonamento*, and mayhem, superseded by actions of trespass.—*Leach's Hawk. P. C.* ii. 285. Consult *Kendall's Arguments on Trial by Battel.*

Appeal to Rome, abolished by 24 Hen. VIII. c. 12, and 25 Hen. VIII. c. 19, 21.

Appearance, personal presence, a being present in Court. When a person is served with a summoning process from a Court he generally comes into such Court to defend himself by entering an appearance with the proper officer.

There are several modes for a defendant to appear:—

(1) in person.
(2) by attorney.
(3) by guardian.
(4) by committee.

1. A defendant, who intends to resist the plaintiff's suit in Chancery, and take the Court's decision upon the subject litigated, should enter an appearance at the Record and Writ Clerk's Office, Chancery Lane, London, *within eight days* after service of the printed or written copy of the bill, either in person or by his solicitor, which latter is the safer and more usual course. A *general* authority to act for his client is sufficient for a solicitor to defend a suit, since it needs not be a *special* authority for the purpose.—*Wright* v. *Castle*, 3 *Mer.* 12. When a husband and wife are defendants, the husband should appear for himself and wife. Infants, idiots, and lunatics appear by a guardian *ad litem.*

There are six kinds of appearances:—

(1) *Gratis*, when a defendant appears before he is cited, upon learning that a bill has been filed against him. This anticipatory appearance is resorted to, when a defendant desires to make an immediate application to the Court. A defendant may also appear *gratis* at the hearing, and submit to be bound by the decree; but, if he be not named in the bill, the Court cannot hear him, unless all parties consent thereto, and his name is inserted in the record. A *gratis* appearance does not prevent a motion *ex parte* for an injunction; nor does it disentitle the defendant to such costs as the Court may award.

(2) *Voluntary*, when a defendant duly appears upon being cited; whereupon a written notice of it must be given to the plaintiff, if he sue in person, or to his solicitor on the same day before eight o'clock in the evening. *Gen. Ord.*, March 1860, iii. r. 9.

(3) *Compulsory* (when a defendant, being duly cited, does not appear), which is:—

(*a*) *Substituted* (appearance *sec. reg.*), when the appearance is entered by the plaintiff for the defendant, pursuant to Gen. Ord. March 6, 1860, x. r. 4, which provides thus: —If any defendant, *not appearing to be an infant or a person of weak or unsound mind, unable of himself to defend the suit*, is, when within the jurisdiction of the Court, duly served with a copy of the bill, and refuses or neglects to appear thereto *within eight days* after such service, the plaintiff may, after the expiration of such *eight days*, and *within three weeks* from the time of such service, apply to the Record and Writ Clerk to enter an

appearance for such defendant; and, no appearance having been entered, the Record and Writ Clerk is to enter (as of course) such appearance accordingly, upon being satisfied by affidavit that the copy of the bill was duly served (upon such defendant personally, or at his dwelling-house or usual place of abode); and after the expiration of such *three weeks*, or after the time allowed to such defendant for appearing has expired, in any case in which the Record and Writ Clerk is not hereby required to enter such appearance, the plaintiff may apply to the Court for leave to enter such appearance for such defendant; and the Court, being satisfied (by affidavit) that the copy of the bill was duly served, and that no appearance has been entered for such defendant (proved by a certificate of no appearance from the Record and Writ Clerk) may, if it so think fit, order the same accordingly. Affidavits filed for the purpose of proving the service of a copy of the bill upon any defendant are to state when, where, and how the same was served, and by whom such service was effected.—*Order* x. 8.

(*b*) *Personal*, when a defendant is taken and brought up upon an attachment, and compelled to enter an appearance for himself. Although a plaintiff has the option of enforcing a personal appearance by process of contempt instead of adopting the substituted appearance, yet as it has become almost obsolete in practice, on account of its being a more expensive, inconvenient, and a more oppressive course than that under the Orders of March 1860, it is not necessary to detail the proceedings.

(*c*) *By order, the defendant being out of the jurisdiction.* If, upon the expiration of the time limited by the order of the Court for appearing after the service of a bill on a defendant out of the jurisdiction, it appears to the satisfaction of the Court (upon affidavit) that such defendant was duly served with a copy of the bill, and a copy of the order, the Court may, upon the application of the plaintiff (producing a certificate of no appearance from the Record and Writ Clerk), order an appearance to be entered for such defendant. *Ord.* x. r. 7.

(4) *Special, without citation, the defendant having absconded.* Where the Court is satisfied by sufficient evidence that any defendant has been within the jurisdiction of the Court at some time *not more than two years* before the bill was filed, and that such defendant is beyond the seas, or that upon inquiry at his usual place of abode (if he had any), or at any other place or places where, at the time when the bill was filed, he might probably have been met with, he could not be found so as to be served with a copy of the bill, under 15 & 16 Vict. c. 86, s. 3, and that, in either case, there is just ground to believe that such defendant is gone out of the realm, or otherwise absconded, to avoid being served with such copy of the bill, or with other process, then the Court may order that such defendant do appear at a certain day, to be named in the order; and a copy of such order, together with a notice thereof to the effect set forth below, may, *within fourteen days* after such order made, be inserted in the *London Gazette*, and be otherwise published as the Court shall direct; and where the defendant does not appear within the time limited by such order, or within such further time as the Court may appoint, there, on proof made of such publication of the said order, the Court may order an appearance to be entered for the defendant on the application of the plaintiff.

Notice.—'A. B., take notice, that if you do not appear pursuant to the above order, the plaintiff may enter an appearance for you, and the Court may afterwards grant to the plaintiff such relief as he may appear to be entitled to on his own showing.'—*Gen. Ord.* March 6, 1860, x. r. 6.

(5) *Optional*, which is:—

(*a*) *Common.* Where a party served with a copy of the bill under the 11th Rule of the Order desires the suit to be prosecuted against himself in the ordinary way, is entitled to have it so prosecuted; and in that case he must enter an appearance in the common form, and the suit will then be prosecuted against him in the ordinary way. But the costs occasioned thereby must be paid by the party so appearing, unless the Court otherwise directs.—*Order* x. r. 4.

(*b*) *Special.* Where a party is served with a copy of the bill under the 11th Rule of Order x., and desires to be served with a notice of the proceedings in the cause, but not otherwise to have the same prosecuted against himself, he may enter a special appearance in the following form (that is to say):—'A. B. appears to the bill for the purpose of being served with notice of all proceedings therein.' And thereupon, the party entering such appearance shall be entitled to be served with notice of all proceedings in the cause, and to appear thereon. But the costs occasioned thereby must be paid by the party entering such appearance, unless the Court otherwise directs.—*Order* x. r. 15.

No party is to enter either a common or special appearance under the 14th or 15th Rules of Gen. Ord. x., after the expiration of *twelve days* from the service of the copy of the bill, without first obtaining an order of the Court for that purpose, such order to be obtained on notice to the plaintiff, and to be granted, if the Court think fit, upon such terms as are just; and any party so

entering such common or special appearance is bound by all the proceedings in the cause prior to such appearance being entered, unless the Court otherwise directs.—*Order* x. r. 16.

(6) *Subsequent* or *secondary*. A defendant, notwithstanding that an appearance may have been entered for him by the plaintiff, may afterwards enter an appearance for himself in the ordinary way; but such appearance by such defendant is not to affect any proceeding duly taken or any right acquired by the plaintiff under or after the appearance entered by him, or prejudice the plaintiff's right to be allowed the costs of the first appearance. *Order* x. r. 9.

It has been suggested, that, perhaps, the practice under this order will be, not to enter a second appearance, but simply to give to the plaintiff notice that the defendant will defend the suit by his own solicitor.

If a defendant at Common Law do not appear within eight days after service of a copy of the writ of summons, then, if the writ be specially endorsed, the plaintiff may, on filing an affidavit of service of a copy of the writ or a judge's order to proceed without service, sign final judgment, and issue execution after eight days from the last day for appearance; the defendant may, however, be let in to defend by leave of a judge, upon disclosing a defence upon the merits; but if the writ be not specially endorsed, the plaintiff then files a declaration endorsed with a notice to plead in eight days, and may sign judgment if no plea be delivered within such time. The defendant may appear at any time before judgment, either in person or by attorney.

Where the writ is specially endorsed and there are several defendants, and some make default, judgment may be signed against them, but if execution be issued, the plaintiff will be held to have abandoned his proceedings against the other defendants, to avoid which he should declare against the defendants who have appeared, suggesting the judgment as to the others.—15 & 16 *Vict.* c. 76, ss. 27—33, and *Ord.* 2, *H. T.* 1853. A defendant has twelve days to appear under the Bills of Exchange Act, 18 & 19 Vict. c. 67.

In ejectment the defendant has sixteen days to appear. A person not named in the writ may obtain an order to appear upon an affidavit showing that he is in possession of the land, either by himself or by his tenant.—15 & 16 *Vict.* c. 76, ss. 169—177, and *Ords.* 112—114, *H. T.* 1853.

An appearance should be entered to a citation from the Probate Court within the time limited in the citation, which, if the party cited is within the jurisdiction, is eight days from personal service of a copy of it, and should be accompanied by an address within three miles of the General Post Office, where pleadings and other proceedings not requiring personal service may be left.

If the party cited does not appear within the time limited in the citation, the cause proceeds in default; nevertheless, the party cited may enter an appearance at any time before a proceeding has been taken in default, or afterwards by leave of the judge or of one of the registrars. All appearances are entered in the Principal Registry, in a book provided for that purpose, and kept by the Clerk of the Papers.—See *Rules* 20, 26, 27, and 29 of *Contentious Business Rules*, 1862.

In default of the appearance of a respondent or co-respondent in the Divorce Court within the time limited in the citation, an affidavit of service and of non-appearance must be filed before any further proceedings can be taken by a petitioner. Every entry of an appearance is to be accompanied by an address within three miles of the General Post Office in London, at which it shall be sufficient to leave all notices, instruments, and other proceedings. See *Rules and Orders*, 1858, rr. 9, 12.

A defendant cited in the Ecclesiastical Court may appear either in person or by proctor; but if a defendant intend to object to the Court's jurisdiction, he should *appear under protest*, to save his contumacy, and then show cause against the citation upon petition and affidavits, upon which the Court either allows the protest and dismisses the defendant, or overrules it, and assigns the defendant to appear absolutely.

In indictments for felony, the accused must always appear and plead in person, and likewise in appeal or on attachment; but in indictments or informations in the Court of Queen's Bench for misdemeanors, the accused may appear by attorney; and in misdemeanors generally, after the accused has once appeared, the trial may proceed in his absence.—2 *Hawk. P. C.* c. 22, s. 1; *Cro. Jac.* 462; 4 *Steph. Comm.* 474.

Appearance sec. stat. (i. e. *secundum statutum*), which was entered at law by a plaintiff for a defaulting defendant under 12 Geo. I. c. 29, and 2 Wm. IV. c. 39, is abolished by 15 & 16 Vict. c. 76, s. 26.

Appellant, the party appealing; the party resisting the appeal is called *Respondent*.—*Encyc. Lond.*

Appellate, appealed against.—*Ibid.*

Appellate jurisdiction the power of a superior Court to review the decision of an inferior Court.

Appellatione fundi, omne ædificium et omnis ager continetur.—4 Co. 87. (Under the word '*fundus*' every building and every field is comprehended.)

Appellee, one who is appealed against or accused.—*Encyc. Lond.*

Appellor, an accuser; a criminal who accuses his accomplices, one who challenges a jury, &c.—*Ibid.*

Appendant, a thing of inheritance belonging to another inheritance which is more worthy: as an advowson, common, &c., which may be appendant to a manor, common of fishing to a freehold, a seat in a church to a house, &c. It differs from appurtenance, in that appendant must ever be by prescription, i. e. a personal usage for a considerable time, while an appurtenance may be created at this day, for if a grant be made to a man and his heirs, of common in such a moor for his beasts levant or couchant upon his manor, the commons are appurtenant to the manor and the grant will pass them.—*Co. Litt.* 121 *b.*

Appenditia, pertinances of an estate.—*Blount.*

Appennage, or **apennage,** a child's part or portion. It is properly the portion of the king's younger children in France, where, by a fundamental law, called the law of appennages, the king's younger sons formerly had duchies, counties, or baronies granted to them and their heirs, &c., the reversion being reserved to the Crown, as well as all matters of legality as to coinage and levying taxes in such territories. *Spelm.; Cowel.* See APPANAGE.

Appensura, the payment of money at the scale or by weight.—*Spelm.*

Applicatio est vita regulæ.—2 Buls. 79. (Application is the life of a rule.)

Application, a request, a motion to a court or judge; the disposal of a thing.

Appodiare, to lean on or prop up anything. *Wals.* 1271; *Mat. Paris Chron.*

Appointee, a person selected for a particular purpose; also the person in whose favor a power of appointment is executed.

Appointment [fr. *appoincter,* Fr. to pronounce fitting], direction, designation, the selection of a person for an office.

Appointment of new trustees. Every assurance which creates a trust and nominates trustees, should contain a power to appoint new trustees, and this power should be comprehensive, and should provide for all the usual contingencies. Such a power must be strictly exercised. A trustee who transfers the trust property to another, without an express power to do so, does not thereby pass the trust, for the office, with all its powers and responsibilities, is still vested in him, and he places himself in this predicament, his liability is retained, whilst he has deprived himself of his control over the property.

In the absence of a power to appoint new trustees, the Court of Chancery has jurisdiction to nominate other trustees, pursuant to 12 & 13 Vict. c. 60, and 15 & 16 Vict. c. 55.

Appointment in exercise of a power concerning uses, an instrument which alters, abridges, or suspends a use limited by a prior assurance containing or reserving the power which sanctions such appointment. The seisin to serve the appointed use being transferred by the prior assurance, the appointment vests the legal estate in the appointee, who takes as though he were named in such prior assurance.

A deed of appointment should recite or refer to the power and be expressed, to be in exercise of it, as manifesting the intention of the appointor, or person executing the power, and also of every other authority enabling him in that behalf, so as to guard against any misrecital of the assurance creating the power. It should likewise state that the formalities required for the execution of the power are complied with, and the attestation should set forth that such formalities were observed.

The formalities required by the creator of a power should be few and simple, for many an appointment has failed because they have not been precisely attended to. When the consent of any person is required to the exercise of a power, it is generally a condition precedent, and an execution of the power without such consent is not cured by its subsequent acquisition. See *Preston's Act,* 54 *Geo. III.* c. 168, as to the attestation of appointments made prior to the 30th of July, 1814; and also see 7 *Wm. IV.* and 1 *Vict.* c. 26, s. 10, as to appointments exercisable by will, and 22 & 23 Vict. c. 35, s. 12, by deed.

Appointor, a donee of a power after he has executed it; also a person who nominates another for an office.

Apponere, to pledge or pawn.—*Neubrig,* l. 1, c. 2.

Apportionment, a division of a rent, common, encumbrance, fine, or other charge. The 11 Geo. II. c. 19, s. 15, apportions rent between the representatives of a deceased tenant for life, and the person succeeding in remainder; and this statute has been extended by Equity to the case of tenant-in-tail. The 4 & 5 Wm. IV. c. 22, was passed to obviate the doubts which had arisen upon the 11 Geo. II. c. 19. It enacts that rents reserved on leases determining on the death of the person making them (though not strictly tenant for life), or on the death of tenant *pur autre vie* shall be considered as within the provisions of 11 Geo. II. c. 19 (s. 1.) All rents-service reserved on any lease by a tenant-in-fee, or for any life interest, or by any lease granted under any power, and which leases shall have been granted after the passing of this act (June 16th, 1834), and all rents-charge, and other

rents, annuities, pensions, dividends, moduses, compositions, and all other payments of every description, payable, or coming due at fixed periods, under any instrument executed after the passing of this act, or being a will or testamentary instrument, coming into operation after the passing of this act, shall be apportioned, so that on the death of any person interested in any such rents, annuities, &c., or in the estate, fund, office, or benefice, from or in respect of which the same shall be issuing or derived, or on the determination by any other means whatsoever of the interest of any such person, he or she, and his or her, executors, administrators, or assigns shall be entitled to a proportion of such rents, annuities, &c., according to the time which shall have elapsed from the commencement, or last period of payment thereof respectively, including the day of the death of such person, or of the determination of his or her interest, all just allowances and deductions in respect of charges on such rents, annuities, &c., being made (s. 2). The statute then gives the same remedies at Law and in Equity for the apportioned part as for the entire rent, &c., and provides that the Act shall not invalidate any express provision against apportionment (s. 3).—2 *Chit. Stat.* 801. And see 17 & 18 Vict. c. 97, ss. 10—14.

By 22 & 23 Vict. c. 35, s. 3, where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Apportum, the revenue or profit which a thing brings to the owner. It is commonly applied to a corody or pension.—*Blount.*

Apposal of sheriffs, charging them with money received upon the account of the Exchequer.—22 & 23 *Car. II.* c. 22.

Apposer, an officer of the Exchequer.

Appostille [Fr.], an addition or annotation to a document.

Appraisers [fr. *appréciateurs*, Fr.], persons employed to value goods, repairs, labour, &c. By 55 Geo. III. c. 184, they are required to take out an annual license. According to an old statute, 11 Edw. I. stat. Acton Burnel, appraisers valuing goods too highly are compelled to take them at their own valuation.

Appraisement [fr. *apprécier*, *prix*, Fr. *pretium* Lat.], the act of valuing property, goods, furniture, &c.

Apprehending offenders, persons active in so doing are allowed compensation in certain cases specified in 7 Geo. IV. c. 64, s. 28.

Apprehension [fr. *prehendere*, Lat. to catch hold of, *apprehendere*, to seize], the capture of a person upon a criminal charge. As to apprehending offenders in the Colonies escaping into the United Kingdom, and *è converso*, see 6 & 7 Vict. c. 34.

Apprendre, a fee or profit.—*Cowel.*

Apprentice [fr. *apprendre*, Fr. to learn], a person bound by indentures of apprenticeship to a tradesman or artificer, who covenants to teach him his trade or mystery. Consult *Bird* or *Chitty on the Laws of Apprentices*, &c.

'Apprenticeships were altogether unknown to the ancients. The reciprocal duties of master and apprentice make a considerable article in every modern code. The Roman Law is perfectly silent with regard to them. I know no Greek or Latin word (I might venture, I believe, to assert that there is none) which expresses the idea we now annex to the word apprentice, a servant bound to work at a particular trade for the benefit of a master, during a term of years, upon condition that the master shall teach him that trade.'—*Smith's Wealth of Nations*, b. i. c. x.

Apprentice en la ley (*A student of Law*).

Apprizing, an action by which a creditor formerly carried off the estates of his debtor in payment of debts due to him, in lieu of which adjudications are now resorted to.—*Scotch Law.*

Approbate or **reprobate,** a person who takes advantage of one part of a deed and rejects the rest.—*Scotch Law.*

Appropriation, the annexing of some ecclesiastical benefice to the proper and perpetual use of some religious house, &c., just as *impropriation* is the annexing a benefice to the use of a lay person or corporation. Appropriation may be severed and the church become disappropriate, if a patron or appropriator present a clerk, who is properly instituted and inducted, for he would then become complete parson; also, if a corporation, possessing the benefice, is dissolved, the parsonage becomes disappropriate at common law.—2 *Burn's Eccles. Law*, 347.

Appropriation of payments, the application by a creditor to one of several debts of a sum of money paid by a debtor on a general account.

Appropriare communiam, to discommon and enclose any parcel of land which was before open common.—*Paroch. Antiq.* 336.

Appropriator, a spiritual corporation entitled to the profits of a benefice.

Approve, to augment a thing to the utmost. 2 *Inst.* 474.

Approvement, i. e. improvement. Profits of land; also, where there exists a right of

common on a lord's waste, and the lord encloses part of such waste, leaving sufficient common. *Cromp. Juris.* 152; *Reg. Jud.* 8, 9.

Approver, or **Prover** [fr. *probus,* Lat. *probare, approbare*; *approver,* Fr. to consent unto], a criminal offender who accuses others of the same offence, and is admitted as a witness at the discretion of the Court to give evidence against his companions in guilt. He is vulgarly called 'Queen's evidence.' A criminal who has pleaded 'not guilty' cannot be such witness. This testimony must necessarily be of an unsatisfactory nature, as the approver's hopes of lenity and pardon must materially depend upon the conviction of his confederates. It is, therefore, seldom used without offering confirmatory evidence, unless in misdemeanours, when a conviction may ensue upon the uncorroborated evidence of an accomplice. If an accomplice act fairly and openly, and discover the whole truth, although he is not entitled of right to a pardon, yet the usage and practice and lenity of the Court is to stop the prosecution against him, and he has an equitable title to a recommendation to the royal mercy, which holds out a hope that accomplices so conducting themselves and bringing others to justice, shall themselves escape punishment and be pardoned. *Cowp.* 33. But this course of admitting approvers has been long disused, for the truth is, as Sir Matthew Hale observes, that more mischiefs have arisen to good men by these kinds of approvements upon false and malicious accusations of desperate villains, than benefit to the public by the discovery and conviction of real offenders.—2 *Hale, P. C.* c. 29; 4 *Bl. Com.* 330. The practice now is to admit accomplices to give evidence for the Crown, under an implied promise of pardon, on condition of their making a full and fair confession of the whole truth.

Approvers, bailiffs of lords in their franchises. Sheriffs were called the King's approvers in 1 Edw. III. c. 8.—*Termes de la Ley,* 49.

Appruare, to take to one's use or profit. *Cowel.*

Apprysing, when, by letters, a debitor is charged to appear before a messenger (who, in that case, represents the sheriff), to hear the land specified in the letter *apprysed* by inquest and declared to belong to the creditor for payment of his debts.—*Scotch Law.*

Appurtenances, belonging to another thing, as hamlets to a manor, and common of pasture, turbary, &c., liberties and services, out-houses, yards, orchards, and gardens are appurtenant to a messuage, but lands cannot properly be said to be appurtenant to a messuage.—*Com. Dig.* tit. *Appendant and Appurtenant.*

Appurtenant, pertaining or belonging to.

A prendre [Fr.], (*to take or seize a thing*), such as exercising the right of common.

A principalioribus seu dignioribus est inchoandum. Co. Litt. 18.—(We are to begin with the more worthy and principal parts.)

A priori. All arguments may be divided according to the relation of the subject-matter of the premises to that of the conclusion, into (*α*) *à priori* (from the antecedent to the consequence), or those of such a nature that the premises would account for the conclusion, were that conclusion granted, which is the Aristotelic method of reasoning; and (*β*) *à posteriori* (from the consequence to the antecedent), or those whose premises could not have been used to account for the conclusion, which is the Baconian method of reasoning. The former class is manifestly arguments from cause to effects, since to account for anything signifies to assign the *cause* of it. The latter class comprehends all other arguments.

Archbishop Whately (*Rhetoric,* chap. ii. s. 2), thus distinguishes these two kinds of arguments:—'The only decisive test by which to distinguish the arguments which belong to the one and to the other of these classes, is, to ask the question, "Supposing the proposition in question to be admitted, would this statement here used as an argument serve to *account* for and explain the truth, or not?" It will then be readily referred to the former or to the latter class, according as the answer is in the affirmative or the negative; as, e. g. if a murder were imputed to any one on the grounds of his "having a hatred to the deceased, and an interest in his death," the argument would belong to the former class; because, *supposing* his guilt to be *admitted,* and an inquiry to be made how he came to commit the murder, the circumstances just mentioned would serve to *account* for it, but not so with respect to such an argument as his "having blood on his clothes," which would, therefore, be referred to the other class.'

Aqua cedit solo. (Water passes with the soil.)

Aqua currit et debet currere. (Water flows and ought to flow.)

Aqua frisca, de, Freshwater.

Aquatic rights, those that are exercisable in running or still water.

Aqua pontanus, Bridgewater, in Somersetshire.

Aquæ calidæ, Aquæ solis, Akeman-cester, Bath, in Somersetshire.

Aquædon, Ediure, *vulgò* Eatoun.

Aquæ ductus, two servitudes, one a right to carry a water course through another's ground, the other to water cattle at a river, well, or pond.—*Scotch Law.*

Aquædunensis saltus, Waterdon.

Aquædunum, Aieton.

Aquage, or **Aquagium,** a watercourse, or toll paid for water carriage.—*Blount.*

Aquæudensis pons, Eiford.

Aquilædunum, Hoxton.

Aquitania, Aquitain, now containing Guienne and Gascony.

Aquæ haustus, a servitude which consists in the right to draw water from the fountain, pool, or spring of another.—*Civil Law.*

Aquæ immittendæ, a servitude which frequently occurs amongst neighbours. It is the right which the owner of a house, surrounded by other buildings, so that it has no outlet for its waters, has, to allow them to run upon and over his neighbour's land.—*Civil Law.*; and *Smith's Dict. of Antiq.*

A quo [Lat.] (*from whom* or *which*). See JUDEX A QUO.

A.R., *anno regni,* the year of the reign, as A. R. V. R. 22; (*Anno regni Victoriæ Reginæ vicesimo secundo*); in the twenty-second year of the reign of Queen Victoria.

Arabant, applied to those who held by the tenure of ploughing and tilling the lord's lands within the manor.—*Cowel.*

Arace, to rase or erase.—*Blount.*

Araho, to make oath in the church or some other holy place. All oaths were made in the church upon the relics of saints, according to the Ripuarian Laws.—*Cowel.*

Aratia, arable grounds.—*Blount.*

Aratrum terræ, as much land as can be tilled by one plough. A term applied to a service rendered by a tenant to his lord. *Cowel.*

Arbeia, Ireby, in Cumberland.

Arbiter, [*Ad-biter* fr. the old Latin *bëto,* to go; or perhaps fr. *arpa,* Fin. a lot, symbol, divining-rod — *Wedgw.*] a private extrajudicial judge; an arbitrator, or referee; a witness.

Arbitrament, the award or decision of arbitrators upon a matter of dispute, which has been submitted to them.—*Termes de la Ley,* 50.

Arbitrary, a discretion to act at pleasure to a certain extent.

Arbitrary punishment, such as is left to the discretion of a judge.

Arbitrate, to judge, to make an agreement.

Arbitration, the submitting of a matter in dispute to the judgment of one, two, or more persons, called arbitrators. — *Whart. Angl. Sacr.* 1, 772.

I. The matters which may be referred to arbitration are these:—Disputes concerning any personal chattel or personal wrong; differences touching realty; pure questions of law; suits and actions, excepting, perhaps, actions upon penal statutes by common informers; claims barred by a mere rule of practice; the future conduct of parties as to the enjoyment of property, in matters beyond the power of any Court to prescribe; matters referred by statute; price and compensation for lands taken for undertakings of a public nature; expenses of prisoners; disputes between masters and workmen; disputes relating to savings' banks and friendly societies; bankrupts' and insolvents' estates; joint-stock-companies' affairs; sums borrowed for houses and glebe; small debts by a county court judge; civil proceedings at quarter sessions; and misdemeanours confined to personal injury, and for which an action of damages would lie, the offence not being of a public nature.

II. The parties who may refer to arbitration are these:—Persons capable of disposing of their rights; husband and wife; partners and parties with joint interests; corporations, churchwardens, and overseers; authorised agents; attorneys and solicitors; counsel (but see *Swinfen* v. *Swinfen,* 24 *Beav.* 549, and 18 *C. B.* 485) executors and administrators; trustees; committees of lunatics with consent of the Lord Chancellor or the Lords Justices of Appeal; public officers; assignees of bankrupts and insolvents; trustees of savings' banks and friendly societies; promoters of public undertakings and railways; ecclesiastical and collegiate corporations concerning their lands; masters and workmen concerning their trade; and counties and boroughs concerning prisoners' expenses.

III. No formal submission, either verbal or written, is necessary. The several modes, however, of submitting matters to arbitration are these:—

(1.) By parol, which, however, is not advisable, as it is open to dispute as to the exact terms used, and besides, an award made in pursuance of it cannot be enforced by attachment, since a parol submission cannot be made a rule of Court. Such a submission is ineffectual so far as it comprehends realty.

(2.) By agreement in writing not under seal.

(3.) By mutual bonds.

(4.) By an indenture containing mutual covenants to stand to the award.

A covenant or agreement to refer *future* disputes to arbitration, is not effectual, unless an arbitrator is named, or the manner of his appointment is particularly provided for.

Courts of Equity will not enforce the specific performance of an agreement to refer any matters in controversy between adverse parties, deeming it against public policy to exclude from the appropriate judicial tribunals of the country any persons who, in the ordinary course of things, have a right to sue therein. Neither will they, for the same reason, compel arbitrators to make an award; nor, when

they have made an award, will they compel them to disclose the grounds of their judgment. The latter doctrine stands upon the same principle of public policy as the others, that is to say, on the one hand, not to compel a resort to these domestic tribunals, and, on the other hand, not to disturb their decisions, when made, except upon very cogent reasons.

Submissions in an action at Common Law are made, either—

(5.) By judge's order or rule of court, upon a consent signed by the attornies on both sides. And the 17 & 18 Vict. c. 125 (C. L. P. A. 1854) enacts that if it appear, at any time after the issuing of the writ, to the satisfaction of the court or a judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall then be lawful for such court or judge to decide such matter summarily, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the court, upon such terms as to costs and otherwise as shall be reasonable; and the decision or order of such court or judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred.—(s. 3.)

If it appear that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the court, or upon a question of fact fit to be decided by a jury, or by a judge upon the consent of both parties, it shall be lawful for such court or judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the court upon such case, and the finding of the jury or judge upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.—(s. 4.)

The 21 & 22 Vict. c. 74, s. 5, repeals the power to refer any cause to the judge of any county court.

(6) By order of *Nisi Prius*, drawn up on the consent of the parties, with or without a verdict taken for the damages. But if, upon the trial of any issue of fact by a judge under 17 & 18 Vict. c. 125, it shall appear to the judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the court, upon such terms as to costs and otherwise, as such judge shall think reasonable; and the award or certificate of such referee shall have the same effect as is provided as to the award or certificate of a referee before trial; and it shall be competent for the judge to proceed to try and dispose of any other matters in question, not referred, in like manner as if no reference had been made.—(s. 6)

(7) By order of a Court of Equity.

(8) By order of a county court judge, with consent of parties; 9 & 10 Vict. c. 95, s. 77.

Whenever the parties to any deed or instrument in writing, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration; and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence an action at Law, or suit in Equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the court in which such action or suit is brought, or a judge thereof, on application by the defendant or defendants or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement, and that the defendant was at the time of the bringing of such action or suit, and still is, ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such court or judge may seem fit: Provided always that any such rule or order may at any time afterwards be discharged, or varied, as justice may require. 17 & 18 Vict. c. 125, s. 11.

If in any case of arbitration the document authorising the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not shew that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, and such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act or become incapable of acting, or die, and the terms of the document authorising the reference do not shew that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator,

umpire, or third arbitrator respectively; and if, within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator be appointed, it shall be lawful for any judge of any of the superior Courts of Law or Equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator, as the case may be, and such arbitrator, umpire, or third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by the consent of all parties.—(s. 12.)

When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorising the reference shew that it was intended that the vacancy should not be supplied; and if, on such a reference, one party fail to appoint an arbitrator either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator; and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided, however, that the court or a judge may revoke such appointment on such terms as shall seem just.—(s. 13.)

When the reference is to two arbitrators, and the terms of the document authorising it do not shew that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make their appointment sooner.—(s. 14.)

Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the superior courts of Law or Equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such superior courts, it may be made of that court only; and if, when there is no such provision, a case be stated in the award for the opinion of one of the superior courts, and such court be specified in the award, and the document authorising the reference have not, before the publication of the award to the parties, been made a rule of court, such document may be made a rule only of the court specified in the award; and when, in such case, the document authorising the reference is or has been made a rule or order of any one of such superior courts, no other of such courts shall have any jurisdiction to entertain any motion respecting the arbitration or award.—(s. 17.)

The Court of Chancery, in regard to its *equitable* jurisdiction, is not a Court of Record, but so far as concerns its *Common Law* jurisdiction, it is a Court of Record, and as such, it is apprehended (for there does not appear to be any decision on the point), that an application may be made to the Lord Chancellor to make a submission a rule of court; unless it be so, the language of the second section of 9 & 10 Wm. III. c. 15, would be unintelligible.—2 *Chit. Arch. Prac. by Pren.* 1560; 2 *Story's Equity Juris.*; *Maddock's Equity*, vol. ii., title, '*Arbitration*;' and *Russell on Arbitration*, part i.

Arbitration of Exchange, where a merchant pays his debt in one country by a bill of exchange upon another.— 2 *Mill's Pol. Econ.* 168.

Arbitrator, or **Arbiter**, a disinterested person, to whose judgment and decision matters in dispute are referred.—*Termes de la Ley*, 50.

The civilians make a difference between *arbiter* and *arbitrator*, though both found their power in the compromise of the parties; the former being obliged to judge according to the customs of the law: whereas the latter is at liberty to use his own discretion, and accommodate the difference in that manner which appears most just and equitable.

An arbitrator ought to be an indifferent person between the disputants, and should be incorrupt and impartial.

An arbitrator's powers and duties are conferred and imposed by the submission. He is generally the final judge of law and facts; and although frequently a dictator, yet he should endeavour to arrive at his conclusions upon the same rules and principles which would have actuated the court for which he is substituted in coming to a decision. He is bound by the rules of law, and cannot award anything contrary thereto.

The submission determines the matters which are within an arbitrator's authority. His authority commences from the time of the agreement to refer being signed by all the parties.

An arbitrator upon any reference where the submission is or may be made a rule or order of any of the superior Courts of Law or Equity at Westminster, if he shall think fit, and if it is not provided to the contrary, may state his

award, as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court (17 & 18 Vict. c. 125, s. 5).

The proceedings upon any arbitration under the above act shall, except otherwise directed thereby or by the submission or document authorising the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent, under a rule of court or judge's order.—(s. 7.)

In any case where reference shall be made to arbitration, the court or judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the arbitrator, upon such terms, as to costs and otherwise, as to the court or judge may seem proper.—(s. 8.)

The arbitrator must make his award under his hand (unless the submission or order contain a different limit of time) within three months after he shall have been appointed and shall have entered on the reference, or shall have been called upon to act by a notice in writing, from any party, but the parties may, by consent in writing, enlarge the term for making the award; and it shall be lawful for the superior court of which the submission, document, or order is or may be made a rule or order, or for any judge thereof, for good cause to be stated in the rule or order, for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing, stating that they cannot agree.—(s. 15.) See 1 & 2 Vict. c. 98, ss. 16 & 17, and 8 & 9 Vict. c. 18, ss. 23 & 31.

As soon as the award is made, the arbitrator's authority is at an end.

The authority of the arbitrator cannot be revoked without the leave of the Common Law Court (3 & 4 Wm. IV. c. 42, s. 39); but a submission by order of a Court of Equity is revocable at the will of either party. Marriage and death frequently operate a revocation, unless it be specially provided for, either in the submission or by the particular statute under which the arbitrator is acting.

It lies entirely with the arbitrator to regulate the proceedings in the reference, and the mode in which they are to be conducted; he must take care to perform any condition precedent to his entering upon the arbitration. Witnesses are compulsorily summoned by rule or order, and are duly sworn. 3 & 4 Wm. IV. c. 42, ss. 40 & 41; and 14 & 15 Vict. c. 99, s. 16; and 17 & 18 Vict. c. 125, s. 7.

While an arbitrator can delegate a ministerial act, yet he cannot his judicial authority.

An arbitrator should always have a special authority given to him as to the costs.—*Russ. on Arbitration*, part ii.

Arbitrio domini res æstimari debet. 4 Inst. 275.—(The price of a thing may be fixed by its owner.)

Arbitrium est judicium. Jenk. Cent. 137. (An award is a judgment.)

Arbitrium est judicium boni viri, secundum æquum et bonum. 3 Bul. 64.—(An award is the judgment of a good man, according to justice.)

Arbor consanguinitatis, a tree-shaped table, shewing the genealogy of a family. See the *Arbor civilis* of the civilians and canonists, Hale's Hist. of Com. Law, p. 335.

Arbor dum crescit; lignum cum crescere nescit. 2 Bul. 82.—(A tree is so called whilst growing; but wood when it ceases to grow.)

Arca cyrographica, a common chest with three locks and keys, kept by certain Christians and Jews, wherein all the contracts, mortgages, and obligations belonging to the Jews were preserved to prevent fraud, by order of Richard I.—*Hov. Ann.* 745.

Archaionomia, a collection of Saxon laws, published during the reign of Queen Elizabeth, in the Saxon language, with a Latin version by Mr. Lambard. Dr. Wilkins enlarged this collection in his work entitled *Leges Anglo-Saxonicæ*, containing all the Saxon laws extant, together with those ascribed to Edward the Confessor, in Latin; those of William the Conqueror, in Norman and Latin; and of Henry I., Stephen, and Henry II., in Latin.

Archbishop [fr. *ertz-bischoff*, Teut., *archevêque*, Fr., *archiepiscopus*, Lat., ἀρχίεπισκοπος, Gk., of ἄρχων, chief, and ἐπίσκοπος, bishop, of επισκοπεω, to take care of]. The chief of the clergy in his province; he has supreme power, under the Queen, in all ecclesiastical causes, and superintends the conduct of other bishops his suffragans. The archbishops are said to be *inthroned*, when they are vested in the archbishopric, whereas bishops are said to be *installed*. England has two archbishops, Canterbury and York. The Archbishop of Canterbury is styled Primate of *all* England, and the Archbishop of York Primate of England. Ireland has four, Armagh, Dublin, Cashel, and Tuam, of whom the former is Primate of all Ireland.—1 *Bl. Com.* 381.

Archdeacon [fr. ἄρχων, chief, and διακονέω, Gk., to minister], a substitute for the bishop, having ecclesiastical dignity and jurisdiction over the clergy and laity next after the bishop, either throughout the diocese or in some part of it only. He visits his jurisdiction once every year, and has a Court where he may inflict penance, suspend or excommunicate, and hear ecclesiastical causes, subject to an appeal to the bishop, by 24 Henry VIII. c. 12. He examines candidates for holy orders, and inducts clerks, upon receipt of the bishop's mandate. *Wood's Inst.* 30. The Law styles him the bishop's vicar or vicegerent.

Archdeaconry, a division of a diocese, and the circuit of an archdeacon's jurisdiction.

Archery, a service of keeping a bow for the lord's use in the defence of his castle.—*Co. Litt.* 157.

Arches Court [fr. *curia de arcubus,* Lat.], a court of appeal belonging to the Archbishop of Canterbury, the judge of which is called the Dean of the Arches, because his court was anciently held in the church of Saint Mary-le-Bow (*Sancta Maria de arcubus*), so named from the steeple, which is raised upon pillars, built *archwise,* like so many bent bows. It was until recently held, as also were the other principal spiritual courts, in the hall belonging to the College of Civilians, commonly called Doctors' Commons. It is now held in Westminster Hall. Its proper jurisdiction is only over the thirteen peculiar parishes belonging to the archbishop in London, but the office of Dean of the Arches having been for a long time united to that of the archbishop's principal official, the Judge of the Arches, in right of such added office, receives and determines appeals from the sentences of all inferior ecclesiastical courts within the province. There was formerly an appeal to the King in Chancery, or to a Court of Delegates, appointed under the Great Seal by 25 Hen. VIII. c. 19, as supreme head of the English church, instead of to the Bishop of Rome, who originally exercised the jurisdiction; but now the appeal is to the Judicial Committee of the Privy Council, under 2 & 3 Wm. IV. c. 92, and 3 & 4 Wm. IV. c. 41. A suit is commenced in the Ecclesiastical Court by citing the defendant to appear, and exhibiting a libel containing the complaint against him, to which he answers. Proofs are then adduced, and the judge, upon hearing the arguments of advocates, pronounces his decree, which is then carried into effect. Consult *Burn's Ecclesiastical Law.*

Archetype, the original copy.

Archidiaconal, belonging to an Archdeacon.

Archiepiscopal, belonging to an Archbishop.

Archigrapher, a chief secretary.

Archimandrite, the chief monk in the Greek Church.

Archives [fr. *arca,* Lat. a chest, or ἀρχεῖον, Gk. a council-house], a chamber or place where ancient records, charters, and evidences belonging to the Crown, the Courts of Chancery and Exchequer, or to a community, city, or family, &c., are kept. It is sometimes used for the writings themselves, thus we say the archives of a college, a monastery, &c. *Cowel.*

Archivist, a keeper of archives.

Are [Fr.], a square measure of surface, the sides of which are of the length of ten mètres, equal to 1,076,441 square feet.

Area [Lat. a threshing-floor], an enclosed yard or open place connected with a house.

A rendre [Fr. to render or yield], such as rents and services.

Arentare, to rent or let out at a certain rent.—*Blount.*

Areopagite, a lawyer or chief judge of the Arcopagus in capital matters in the city of Athens; so called after a certain street in that city dedicated to Mars, in which those judges were wont to sit. Saint Dionysius, converted to the Christian faith by Saint Paul, was one of those judges.

Arepennis, half an acre.—*Gallic.*

Areriesment, hindrance, surprise, affrightment.—*Blount.*

A rescriptis valet argumentum. Co. Litt. 11. (An argument drawn from rescripts is sound.) A rescript is a decision of the Pope or Emperor on a difficult or doubtful point of law.

Argadia or **Argathalia,** Argyleshire in Scotland.

Argent, silver, sometimes called *Luna* in the Arms of Princes, and *Pearl* in those of peers. As silver soon becomes tarnished, it is generally represented in painting by white. In engraving it is known by the natural colour of the paper.—*Heral. Term.*

Argentarius, a money dealer or banker.

Argentum Album, white money, silver coin, or pieces of bullion which anciently passed for money.—*Spelm.*

Argentum Dei, God's money, i. e. money given in earnest upon the making of any bargain, hence *arles,* earnest.—*Blount.*

Argil or **Argoil** [fr. *argilla,* Lat.], clay, lime, and sometimes gravel, also the lees of wine gathered to a certain hardness.—*Law Fr.*

Argument, in rhetoric and logic, an inference drawn from premises, the truth of which is indisputable, or at least highly probable. In reasoning, Locke observes that men ordinarily use four sorts of arguments. The *first* is to allege the opinions of men, whose parts

and learning, eminency, power, or some other cause, have gained a name, and settled their reputation in the common esteem, with some kind of authority; this may be called *argumentum ad verecundiam*. The *second* is to require the adversary to admit what they allege as a proof, or to require a better; this he calls *argumentum ad ignorantiam*. The *third* is to press a man with consequences drawn from his own principles or concessions; this is known by the name of *argumentum ad hominem*. The *fourth* the using proofs drawn from any of the foundations of knowledge or probability; this he calls *argumentum ad judicium*, and he observes that it is the only one of all the four that brings true instruction with it, and advances us in our way to knowledge.

Argumenta ignota et obscura ad lucem rationis proferunt et reddunt splendida. Co. Litt. 395.—(Arguments bring things hidden and obscure to the light of reason, and render them clear.)

Argumentativeness, reasoning in a pleading or affidavit.

Argumentosus, ingenious. *Neub.* l. i. c. 14.

Argumentum ab impossibili plurimum valet in lege. Co. Litt. 92.—(An argument deduced from an impossibility greatly avails in law.)

Argumentum ab auctoritate est fortissimum in lege. Co. Litt. 254.—(An argument from authority is most powerful in law.)

Argumentum ab inconvenienti est validum in lege; quia lex non permittit aliquod inconveniens. Co. Litt. 258.—(An argument from that which is inconvenient is good in law; because the law will not permit any inconvenience).

Argumentum à divisione est fortissimum in jure. 6 Co. 60.—(An argument from division is most powerful in law.)

Argumentum à majori ad minus negativè non valet; valet è converso. Jenk. Cent. 281.—(An argument from the greater to the less is of no force negatively, affirmatively it is.)

Argumentum à simili valet in lege. Co. Litt. 191.—(An argument from a like case avails in law.)

Ariconium, Kenchester, near Hereford.

Arida Villa de, Drayton, or Dreydon, in Shropshire.

Arierban or **Arriere-Ban** [according to Casseneuve, *ban* denotes the convening of the noblesse or vassals, who held fees immediately of the Crown, and *arriere*, those who only held of the Crown mediately], an edict of the ancient kings of France and Germany, commanding all their vassals, the noblesse, and the vassals' vassals, to enter the army, or forfeit their estates on refusal.—*Spelm.*

Arietum levatio, an old sportive exercise, supposed to be the same with running at the quintain.—*Cowel.*

Aristocracy [fr. ἄριστος, greatest, and κρατέω, Gk. to govern], a form of government which is lodged in a council composed of select members or nobles, without a monarch, and exclusive of the people; also a privileged class of persons or political party in a state.—*Paley's Polit. Phi.*; *Brougham's Polit. Phi.*

Aristo-democracy, a form of government composed of nobles and commonalty.

Arles, earnest.

Arma in armatos sumere jura sinunt. 2 Jus. 574.—(The laws permit the taking up of arms against armed persons.)

Arm of the Sea, a bay, road, creek, cove, port, or river, where the water, whether salt or fresh, ebbs and flows.

Arma dare, to dub or make a knight. The word '*arma*' is here rendered a sword, although a knight was sometimes made by giving him the whole armour.—*Ken. Paroch. Antiq.* 288.

Arma libera (*free arms*). When a servant was set free, a sword and lance were usually given to him.—*Leg. Wil.* c. 65.

Arma moluta (*arma emolita*), sharp weapons that cut, in contradistinction to such as are blunt which only break or bruise.—*Fleta*, 1. 1, c. 33. par. 6.

Arma mutare, to change arms, a ceremony observed in confirmation of a league or friendship.—*Blount.*

Arma reversata, reversed arms, a punishment for a traitor or felon.—*Cowel.*

Armaria. See ALMARIA.

Armiger, an esquire. A title of dignity belonging to gentlemen who bear arms.—*Ken. Paroch. Antiq.* 576.

Armiscara, an ancient mode of punishment, which was to carry a saddle at the back as a token of subjection.—*Spelm.*

Armistice, a cessation of hostilities between belligerents.

Armorial bearings, a device depicted on the (now imaginary) shield of one of the nobility, of which gentry is the lowest degree. The criterion of nobility is the bearing of arms or armorial bearings received from ancestry. There is nothing, however, to prevent persons assuming arbitrary insignia and armorial bearings to which they are not entitled; and all persons entitled to bear arms can register their genealogies and families at the Herald's College, Bennet's Hill, London, on payment of a moderate fee, the heralds being the examiners of these matters and the recorders of genealogies. The 43 Geo. III. c.c161, imposes an assessed tax upon armorial bearings, whether borne on plate, carriages, seals, or in any other way. The present tax

is as follows:—Any person using or wearing any armorial bearing where such person shall be chargeable with the duty for any carriage, at the rate of 3*l.* 10*s.* to pay annually 2*l.* 12*s.* 9*d.*, where such person shall not be so chargeable, 13*s.* 2*d.*—*See Planche's Pursuivant of Arms.*

Armorum appellatione, non solum scuta et gladii, et galeæ, sed et fustes et lapides continentur. Co. Litt. 162.—(Under the name of arms are included not only shields and swords and helmets, but also clubs and stones.)

Armour, and **Arms,** things which a person wears for defence, or takes in hand, or uses in anger, to strike or cast at another. Arms are also *insignia*, i. e. ensigns of honor, which were formerly assumed by soldiers of fortune, and painted on their shields to distinguish them, the ancient coat of mail not being a mark of distinction from its covering the whole body. King Richard I., during his crusade, made arms hereditary. Every subject in this realm has a right, springing from the indigenous principle of personal liberty, to carry arms for defence suitable to his condition and degree, and allowed by law, and this right is embodied in the Bill of Rights, 1 W. & M. c. 2, s. 2. The 2 Edw. III. c. 3, prohibits persons going armed under circumstances which may tend to terrify the people or indicate an intention of disturbing the public peace. The 60 Geo. III. c. 1, prohibits the training of persons without lawful authority to the use of arms, and authorises any justice of the peace to disperse any assembly of persons that he may find engaged in such occupation, and to arrest any of the persons present. Power is vested in the Crown, by 3 & 4 Wm. IV. c. 42, s. 104, to prohibit the exportation of arms, ammunition, and gunpowder out of this kingdom, and to license the importation of gunpowder for the use of the royal stores. As to arms in Ireland, see 1 W. IV. s. 44, and 6 & 7 Vict. c. 74.

Army, [fr. *armée*, Fr.], the military force of a country. The first instance of a standing army in Europe are the Companies of Ordonnance of Charles VII. of France. History teaches us that it is in the nature of sovereigns to love power, and of armies to obey sovereigns. Hence the constitutional jealousy of the military power of the Crown, and the safeguard provided by our great charters against any attempt by ill-advised sovereigns to destroy the liberties of their country. It is invariably announced by the Annual Mutiny Act, that the raising and keeping of a standing army within the United Kingdom in time of peace, unless it be with the consent of Parliament, is against law, 1 W. & M. s. 2, c. 2. Thus, while the sovereign has the sole prerogative of raising and regulating our fleets and armies, the Parliament retains the power of voting the supplies, without which they could could not be maintained. The Act of the last session upon this subject is 25 & 26 Vict. c. 5, which recites that it is adjudged necessary (and it has been necessary ever since A.D. 1689) that a body of forces shall be continued for the safety of the United Kingdom, the defence of the possessions of Her Majesty's Crown, and the preservation of the balance of power in Europe, and that the whole number of such forces should consist of 145,450 men, exclusive of 6,688 officers and men, being the depôts of regiments in India stationed in Great Britain, and exclusive of the officers and men belonging to the regiments and other corps employed in Her Majesty's East Indian possessions, but including the officers and men of the troops and companies recruiting for those regiments and corps. As to the limit of European troops of the Indian army, see 22 & 23 Vict. c. 27, & 23 & 24 Vict. c. 100, & 25 Vict. c. 5. Consult *M'Arthur* or *Simmons on Courts Martial.*

Arnaldia, a disease that makes the hair fall off, otherwise called *alopecia*, because foxes are subject to it.—*Rog. Hoved.* 693.

Arnalia, arable grounds.—*Domesday*, tit. *Essex.*

Aromatarius, a word often used for a grocer, but not held good in law proceedings.—1 *Vent.* 142.

Arpen or **Arpent,** an acre or furlong of ground. According to Domesday-Book 100 perches make an arpent.—*Blount.*

Arpentator, a measurer or surveyor of land. *Cowel.*

Arquebuss [fr. *haeck-buyse, haeck-busse*, Du., properly a gun fired from a rest, from *haeck*, the hook or forked rest on which it is supported, and *busse*; Germ., *büchse*, a fire-arm. From *haecke-busse*, it became *harquebuss*, and in It., *archibuso* or *arcobugia*, as if from *arco*, a bow. In Scotch it was called a *hagbut of croche*; Fr. *arquebus à croc.*, Jamie., Wedgw.], a short-hand gun, a caliver or pistol mentioned in some of our ancient statutes.—*Fr. Law.*

Arrack, a spirit procured from distillation of the cocoa-nut tree, rice, or sugar-cane, and imported from India, upon which a duty is payable.

Arraiatio peditum, arraying of foot soldiers. 1 *Edw. II.*

Arraiers, officers who had the care of the soldiers' armour, and whose business it was to see them duly accoutred. Commissioners were afterwards appointed for the same purpose. *Blount.*

Arraign, [fr. *arraisonner, aresner, aregnir, arraigner*, old Fr. i. e. *ad rationem ponere*, Lat. to call one to account], to bring a prisoner to the bar of the court to answer the matter charged

upon him in the indictment. The arraignment of a prisoner consists of three parts, (1) calling on him by name to hold up his hand or otherwise making it appear that he is the party indicted. Holding up the hand is a mere ceremony, and is frequently dispensed with, it being only necessary for the prisoner to admit that he is the person indicted. (2) Reading the indictment to him distinctly in English, that he may fully understand the charge. (3) Demanding whether he be guilty or not guilty, and entering his plea, and then demanding how he will be tried, the common answer to which is, By God and my country. The pleas upon arraignment are either the general issue i.e. not guilty, or a plea in abatement or in bar, or the prisoner may demur to the indictment, or he may confess the fact, upon which the Court proceeds immediately to judgment, 7 & 8 Geo. IV. c. 28, s. 1. But if the prisoner 'shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of "not guilty" on behalf of such person, and the plea so entered shall have the same force and effect as if the person had so pleaded the same.' (s. 2.)—2 *Hale's P. C.* 151; 4 *Bl. Com.* 322; *Hawk. P. C.* c. 28, s. 1.

Arrameur, an ancient port-officer, whose business was to load and unload vessels.

Arrangements between Debtors and Creditors, 7 & 8 Vict., c. 70, amended by 23 & 24 Vict. c. 147.

Arras, a marriage portion.—*Spanish.*

Array [fr. *arredare*, It. to get ready], to rank or set forth a jury of men impanelled upon a cause. To challenge the array of the panel is at once to except against all persons arrayed or impanelled, in respect of partiality or some default in the sheriff.—*Co. Litt.* 156. If the sheriff be of affinity to any of the parties, or if any one or more of the jurors are returned at the nomination of either party, or for any other partiality, the array shall be quashed.

Array, *military commission of.* Previous to the reign of Henry VIII., in order to protect the kingdom from domestic insurrections or the prospect of foreign invasions, it was usual from time to time for our princes to issue commissions of array, and send into every county officers in whom they could confide, to muster, array, or set in military order the inhabitants of every district; the form of the commission was settled by 5 Hen. IV., so as to prevent the insertion therein of any new penal clauses. *Rushworth*, pt. 3, pp. 662, 667.

Arrears, or **Arrearages,** money unpaid at the due time; as rent behind; the remainder due after payment of a part of an account; money in the hands of an accounting party. *Cowel.*

Arrectatus, one suspected of a crime.—*Offic. Coronat.*

Arrected, reckoned, considered.—1 *Inst.* 173 *b. & n.*

Arrenatus, arraigned, accused.—*Rot. Parl.* 21 *Edw.* I.

Arrendare, to let lands yearly.

Arrentation, [fr. *arrendar*, Span.], licensing the owner of lands in a forest, to enclose them with a low hedge and small ditch, according to the assize of the forest, under a yearly rent. *Saving the arrentations*, is reserving a power to give such licences.—*Ordin Forestæ*, 34 *Edw. I.* s. 5.

Arrest [fr. *restare*, Lat. *arrestare*, It. *arrester*, Fr. to bring one to stand], the restraining of the liberty of a man's person in order to compel obedience to the order of a court of justice, or to prevent the commission of a crime, or to ensure that a person charged or suspected of a crime may be forthcoming to answer it. Arrests are either in civil or criminal cases; civil arrests must be effected, in order to be legal, by virtue of a precept or writ issued out of some Court, but every person has authority to arrest criminals without warrant or precept.—*Termes de la Ley*, 52. The abuses of gaolers and sheriffs' officers towards prisoners are guarded against by 32 Geo. III. c. 28; the chief provisions of which are that an officer shall not carry a prisoner to any tavern, &c., without his consent, nor charge him for any liquor but such as he shall freely call for, nor demand for caption or attendance any other than his legal fee, nor exact any gratuity-money, nor carry his prisoner to gaol within twenty-four hours after his arrest, unless the prisoner refuse to go to some safe house (except his own), of his own choosing. Nor shall any officer take for the diet, lodging, or expenses of a prisoner, more than shall be allowed by an order of Sessions. Bailiffs must show a copy of the writ to the prisoner, and permit perusal of it, and the prisoner may send for his own victuals, bedding, &c. The two great statutes for securing the liberty of the subject against unlawful arrests and suits are *Magna Charta* and *Habeas Corpus Act*, 31 Car II. c. 2, which is amended and enforced by 56 Geo. III. c. 100. As to those persons who are privileged from arrest, read 2 *Chit. Arch. Prac. by Pren.* 683, *et seq.* The 22 & 23 Vict. c. 57, limits the power of arrest by County Court Judges.

Arrest of judgment. An unsuccessful defendant may move that the judgment for the plaintiff be arrested or withheld, notwithstanding a verdict given, on the ground that there is some substantial error appearing on the face of the record which vitiates the proceedings. Judgment may be arrested for good cause in criminal cases, if the indictment be

insufficient.—3 *Inst.* 210; *Step. Plead.* 106. If the judgment be arrested each party pays his own costs.

By 15 & 16 Vict. c. 77, ss. 143, 144, when a motion in arrest of judgment is made, the plaintiff, by leave of the court, may enter a suggestion of matter which, if true, would remedy the defect in the record, to which the defendant may plead. The issue so raised may be tried as in ordinary cases.

Arrest of inquest, pleading in arrest of taking the inquest upon a former issue, and showing cause why an inquest should not be taken.—*Bro.* tit. '*Repleader.*'

Arrestandis bonis ne dissipentur, a writ which lay for a person whose cattle or goods were taken by another, who, during a contest, was likely to make away with them, and who had not the ability to render satisfaction.—*Reg. Orig.* 126.

Arrestando ipsum qui pecuniam recepit, a writ which issued for apprehending a person who had taken the king's prest money to serve in the wars, and then hid himself in order to avoid going.—*Ibid.* 24.

Arrestee, the person in whose possession a debt or property has been attached by arrestment.—*Scotch Law.*

Arrester, the person who procures an arrestment.—*Ibid.*

Arrestment, a process of attachment prohibiting a person, in whose hands a debitor's moveables are, to pay or deliver up the same to such debitor, till a creditor, who has procured an arrestment to be laid on, be satisfied, either by caution, i. e. security or payment, according to the grounds of arrestment.—*Ibid.*

Arrestment jurisdictionis fundandæ causâ, a process to bring a foreigner within the jurisdiction of the Courts of Scotland, for a foreigner owes no obedience to the decisions of these courts, and, therefore, unless his person or effects be within such jurisdiction, a judgment of such court would be ineffective. This warrant then attaches a foreigner's person or arrests his goods, and these will not be released unless caution or security be given that the foreigner shall appear at all diets of court.—*Ibid.*

Arresto facto super bonis mercatorum alienigenorum, a writ against the goods of aliens found within this kingdom, in recompense of goods taken from a denizen in a foreign country, after denial of restitution.—*Reg. Orig.* 129. The ancient civilians called it *clarigatio*, but by the moderns it is termed *reprisalia.*

Arret [Fr.], a judgment, decree, or sentence.

Arretted, charged, imputed, or laid unto. The convening a person charged with a crime before a judge.—*Staundf. Pl. Cr.* 45. It is used sometimes for *imputed* or *laid unto*; as, no folly may be *arreted* to one under age.—*Cowel.*

Arrha, short for *arrhabo* [fr. ἀρράβων, Gk.], carnest, pledge, evidence of a completed bargain.—*Jacob.*

Arriage and Carriage, indefinite services formerly demandable from tenants, abolished by 20 Geo II. c. 50.

Arriere fee or fief, a fee dependent on a superior fee. These fees originated when dukes and counts, rendering their governments hereditary, distributed to their officers parts of the domain, and permitted those officers to gratify the soldiers under them in the same manner.—*Encyc. Lond.*

Arriere vassal, the vassal of a vassal.

Arrogation, the adoption of a person of full age, while adoption properly so called was of a person under full age.—*Sand. Just.* 124–126.

Arrows [fr. *ör*, gen. *aurra* Icel., *ör-varnar*, missiles, probably from their *whirring* through the air], all heads of, were to be well brazed and hardened at the point with steel, on pain of forfeiture and imprisonment, and marked with maker's name.—7 *Hen. IV.* c. 7.

Arrura [fr. ἄρουρα, Gk.], a day's ploughing. *Paroch. Antiq.* p. 41.

Arsenals [fr. *arzana*, *darzena*, *tarzana*, It.], dockyards, magazines, and other public stores. The wilful firing or destroying them is punished by death.— 12 *Geo. III.* c. 24.

Arsenic, regulating sale of.—14 & 15 *Vict.* c. 13.

Arser in le main, burning in the hand. The punishment of criminals, who had the benefit of clergy, which benefit was abolished by 7 & 8 Geo. IV. c. 28.—*Termes de la Ley.*

Ars fit quod à teneris primum conjungitur annis.—3 *Inst. Epil.*—(That becomes an art which is joined to us from our tender years.)

Arson [fr. *ardeo*, Lat., to burn], the malicious firing of a house or other building. The law upon this subject is to be found in 24 & 25 Vict. c. 97, ss. 1–8. As to maliciously setting fire to ships, see ss. 42–4. See *Leach's Hawk. P. C.* i. c. 39; 1 *Hale's P. C.* 569; *Archb. Consolid. Crim. Statutes*, 341; and *Greaves' Criminal Acts*, 1861, 209 and 243.

Arsur in le main, burning in the hand, the punishment of criminals that had the benefit of clergy.—*Termes de la Ley; Fr. phrase.*

Arsura, the trial of money by fire, after it was coined.—*Blount.*

Art and Part, said of a person who has committed a crime, and was a contriver of it and acted his part in it. In the negative it is *neither art nor part* (*nec artifex nec particeps*), neither contriver nor partaker.—*Scotch Law.*

Art Unions, legalising.—9 & 10 *Vict.* c. 48, and 21 & 22 *Vict.* c. 102. For protecting works of art, see 8 & 9 *Vict.* c. 44.

Arthel, Ardhel, or **Arddelio,** to avouch, as if a man were taken with stolen goods in his possession, he was allowed a lawful *arthel*, i.e. vouchee, to clear him of the felony, but provision was made against it by 28 Hen. VIII. c. 6.—*Blount.*

Article [*articulus*, Lat.], a complaint exhibited in the Ecclesiastical Court by way of libel.—3 *Bl. Com.* 109.

Articled Clerk, a pupil of an attorney or solicitor, who undertakes, by articles of clerkship, containing covenants, mutually binding, to instruct him in the principles and practice of the profession. As to the articles of service, their registration and enrolment, the mode of service, examination, admission, and fees, see 6 & 7 *Vict.* c. 73; 7 & 8 *Vict.* c. 86; 14 & 15 *Vict.* c. 88; 15 & 16 *Vict.* c. 73; 16 & 17 *Vict.* c. 63; 19 & 20 *Vict.* c. 81; 20 & 21 *Vict.* c. 39; and 23 & 24 *Vict.* c. 127; also *Wharton's Manual for Articled Clerks*, 9th ed.

Articles, divisions and paragraphs of a document or agreement. It is a common practice for persons to enter into articles of agreement, preparatory to the execution of a formal deed, whereby it is stipulated that one of the parties shall convey to the other certain lands, or release his right to them, or execute some other disposition of them.

Articles are therefore considered as a memorandum or minute of an agreement to make some future disposition or modification of real property. Such an instrument will create a trust or equitable estate, and a specific performance of it will be decreed in Chancery.

Articles are usually entered into for the purchase and sale of lands, for the taking and granting of leases, for making mortgages and settlements on marriage, and for forming partnerships. See IMPEACHMENT.

Articles, Lords of, a committee of the Scottish Parliament, which, in the mode of its election, and by the nature of its powers, was calculated to increase the influence of the Crown, and to confer upon it a power equivalent to that of a negative before debate. This system appeared inconsistent with the freedom of Parliament, and at the Revolution, the convention of estates declared it a grievance, and accordingly it was suppressed by the Act 1690, c. 3.

Articles of the Peace, a complaint exhibited either in the Queen's Bench at Westminster, Court of Oyer and Terminer, or Sessions of the Peace, when any one has just cause to fear that some one will burn his house, do him some corporal hurt, or procure a third person to perpetrate it. Upon articles setting forth the fact being sworn to by the complainant, sureties of the peace are taken for such a length of time as the Court shall think necessary, not being confined to a twelvemonth.—1 *T. R.* 696; *Bac. Ab.* tit. '*Surety of the Peace.*'

Articles of Religion, commonly called the 39 Articles, a body of divinity drawn up by the convocation in 1562, and confirmed by James I. Consult *Burnet on the 'Articles.'* The 17 & 18 Vict. c 81, ss. 43, 44, has rendered unnecessary subscription to these articles, or any oath on matriculating or on taking a degree in the University of Oxford; and 19 & 20 Vict. c. 88, ss. 45, 46, has enacted the same as to Cambridge.

Articles of Roup, the conditions under which property is exposed to sale by auction.—*Scotch Law.*

Articles of War, a code of laws for the regulation of the land forces, made in pursuance of the several annual acts against mutiny and desertion. Formerly there were also *Articles of the Navy* for the government of the royal fleet, embodied in 22 Geo. II. c. 33; but that statute and others amending it were repealed by 23 & 24 Vict. c. 123, 'The Naval Discipline Act, 1861.'

Articulate, to set down articles or conditions of agreement.

Articulate adjudication, used where there are more debts than one due to the adjudging creditor, when it is usual to accumulate each debt by itself, so that in case of an error in ascertaining or calculating one of the debts, the error may not reach any other debt.—*Scotch Law.*

Articuli cleri, statutes containing certain articles relating to the church, clergy, and causes ecclesiastical, made at Lincoln.—9 *Edw. II.* st. 1; 2 *Reeves*, c. xii. p. 290.

Articuli super chartas, the 28 *Ed. I.*, st. 3. s. 2; *Reeves*, c. ix. p. 103; and c. xi. p. 233.

Artificers, persons who are masters of their art, and whose employment consists chiefly in manual labour.—5 *Geo. IV.* c. 97, and 6 *Geo. IV.* c. 105; *Cunningham.*

Artificial person, a corporation, a body of men, a company.

Artillery Ranges Act, 1862.—25 & 26 *Vict.* c. 36.

Arundel, *the Earl of*, the only peer who holds his earldom by prescription.

Arundinetum [fr. *arundo*, Lat.], a ground or place where reeds grow.—1 *Inst.* 4.

Arundinis vadum, the ancient name of Redbridge, in Hampshire.

Aruntina vallis, the ancient name of Arundel, in Sussex.

Arvil-supper, a feast or entertainment made at a funeral in the north of England; *arvil bread* is bread delivered to the poor at funeral solemnities, and *arvil, arval,* or *arfal* are the burial or funeral rites.—*Cowel.*

Arvonica, the ancient name of Carnarvonshire.

Arura, a day's work at plough.—*Old Records.* See ARRURA.

As, a pound weight, a unit, the whole of an inheritance. As to its divisions, see *Sand. Just.* 286; *Cum. C. L.* 139 *n.* (1); and *Tayl. C. L.* 491.

Ascendants, the progenitors of a family.

Ascesterium, a monastery.—*Du Cange.*

Ascriptitius, a naturalized foreigner.—*Civ. Law.*

Ash-Wednesday, the first day of Lent. It was anciently called *Caput Jejunii,* the head of the fast; or *Dies Cinerum,* the day of ashes. It took its name from an old custom of casting ashes upon penitents, and then thrusting them from the church.—*Wheatley on the Com. Pray.* c. v. s. 11.

Asper, a Turkish coin value 5 farthings.

Asphyxia [fr. *ά* not and *σφύξις,* Gk., pulse], suspended animation produced by the non-conversion of the venous blood of the lungs into arterial.—*Dunglison.*

Asportation, carrying away or removing goods. In all larcenies, there must be both a taking and a carrying away *(cepit et asportavit).*—4 *Bl. Com.* 431; *Arch. Consolid. Crim. Stat.* 153.

Assach, or **Assath,** a custom of purgation formerly used in Wales, by which an accused party cleared or purged himself of the accusation by the oaths of three hundred men. Abolished by 1 Hen. V. c. 6. Consult 27 *Hen. VIII.* c. 7.—*Spelm.*

Assart, or **Essart** [fr. *Assartum* in Lat.], an offence committed in the forest, by pulling up the trees by the roots, that are thickets and coverts for deer, and making the ground plain as arable land. It differs from waste, in that waste is the cutting down of coverts which may grow again, whereas assart is the plucking them up by the roots and utterly destroying them, so that they can never afterward grow. This is not an offence if done with license to convert forest into tillage ground. Consult *Manwood's Forest Laws,* part 1, p. 171.

Assassination [*Hashish* is the name of an intoxicating drug, prepared from hemp, in use among the natives of the East. Hence Arab '*Haschischin,*' a name given to the members of a sect in Syria, who wound themselves up by doses of *hashish* to perform, at all risk, the orders of their Lord, known as the Sheik, or Old Man of the Mountain. As the murder of his enemies would be the most dreaded of these behests, the name of *Assassin* was given to one commissioned to perform a murder.—*Wedgw.*], murdering a person by lying in wait for hire.—*Jacob.*

Assault [fr. *salire,* Lat., to leap; *saillir, assaillir,* Fr., to assail; *insultus,* Lat.], an attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him with or without a weapon. No words, how provoking soever they be, will amount to an assault. Assault does not always necessarily imply a hitting or blow; because in trespass for *assault and battery,* a person may be found guilty of the assault, but not guilty of the battery. But *battery* always includes an assault.—1 *Hawk. P.C.* c. lxii. s. 1. As to aggravated assaults, see 24 & 25 *Vict.* c. 100, s. 43.

Assay [fr. *exigere,* Lat., to test] *of weights and measures,* the examining of weights and measures by clerks of markets, &c.—*Blount.*

Assayer of the King, an officer of the Mint, who tried the silver: he was indifferently appointed by the Master of the Mint and the Merchants, who carried silver thither for exchange.—*Ibid.*

Assayers, persons who test or prove metals, &c.

Assaysaire, to associate or take as fellow judges; used in old charters.—*Cowel.*

Assecurare, to secure by pledges; a solemn interposition of faith.—*Hov.* 1174.

Assedation, possession by a tack or lease, &c.—*Scotch Law.*

Assembly [fr. *simul,* Lat., together; hence *ensemble, assembler,* Fr., to draw together], **General,** the highest ecclesiastical court in Scotland, composed of a representation of the ministers and elders of the church, regulated by the Act 5th, Assembly, 1694.

Assembly, Unlawful, a meeting of three or more persons to do an unlawful act—3 *Inst.* 9; 1 *Hawk.* 155. See OFFENCE.

Assent, or **Consent,** agreeing to, or recognising a matter, as an executor's assent to a legacy, or the assent of a corporation to bye-laws, &c. See ROYAL ASSENT.

Assertory Covenant, an affirming promise under seal.

Assess [fr. *assessum,* Lat., setting a tax], to rate or ascertain.

Assessed taxes, duties charged upon persons in respect of articles in their use or keeping, as houses, servants, carriages, horses, dogs, hair-powder, armorial bearings, and game certificates. They are under the management of the Commissioners of Inland Revenue.—12 & 13 *Vict.* c. 1, and 16 & 17 *Vict.* c. 51, s. 9.

Assessor, an associate in judgment.

Assessors, literally those who sit by the side of another; persons appointed to ascertain and fix the value of taxes, rates, &c. Also persons sometimes associated with judges of courts to advise and direct the decisions of such judges.

Assets [fr. *assetz,* Nor.-Fr. i. e. *satis,* Lat.; *assez,* Fr., sufficient; in Old English it was commonly written *asseth*], the property of a deceased person, which is chargeable with, and

applicable to, the payment of his debts and legacies.

Assets are either *per descent*, or real; or *enter maines* of an executor, or personal.

The following kinds of property, descended from a person seised in fee, are *real* assets:—freeholds; ancient demesnes; gavelkind; Borough-English; land descended from an ancestor, between whom and the heir there is an intermediate descent; lands descended on the part of the father and of the mother; a trust estate in fee-simple; tithes in the hands of laymen; advowson in fee appendant to a manor; advowson in fee in gross; whether the descent is of a trust estate, or the legal estate, equity will decree a sale, for the payment of judgment, and specialty debts; an estate *pur autre vie* limited to the ancestor and his heirs (1 Vict. c. 26, s. 6); a reversion in fee descended.—*Ram on Assets*, c. ix. s. 2.

The following kinds of property are *personal* assets:—an estate *pur autre vie* in freehold land and limited to the testator merely, or to him, his executors and administrators; a rent-charge *pur autre vie*, and limited to the grantee merely, without naming his heirs, executors, or administrators; an estate *pur autre vie* by a lease limited to A. and his heirs, and in a settlement made by A. converted into a personal estate, and afterwards devised by him; the right of the next presentation to a church, which is full, and which right has been granted to a person, who dies possessed of it; timber growing on the estate of a lunatic, and cut under an order of the Court of Chancery, founded on the report, that it would be for the benefit of the lunatic, and sold, the produce of the sale being paid into court on account of the lunatic; damages recovered by an executor in an action of trespass or trespass on the case (3 & 4 Wm. IV. c. 42, s. 2); all personal property which devolves upon executors.—*Ram on Assets*, c. ix. s. 1.

Again, assets are distributed into legal and equitable; a distinction which is of importance, where there are specialty and simple contract debts, and the assets are insufficient to pay all the creditors in full; for there it becomes necessary to determine whether the assets are legal or equitable; as, in the former case, specialty creditors are entitled to priority; in the latter case, they will only be paid rateably with simple contract creditors.

The distinction is this—the property of a deceased person, which is in the hands of an executor or administrator *virtute officii*, and which can be reached for the purpose of satisfying a creditor by an action at law, is commonly termed *legal* assets, and will be applied, both at law and in equity, in the ordinary course of administration, which gives debts of a certain nature a priority over others; where, however, the assets are such as are recognised only in equity, they are termed *equitable* assets, and according to the well-known maxim that *equality is equity*, will, after satisfying those who have liens on any specific property, be distributed amongst the creditors of all grades equally, i.e. *pari passu*; or should the funds fall short, then rateably by way of dividend, without any regard to legal priority, all debts being equal when conscientiously considered. Equitable assets are of three kinds:—(1) those created by the acts of the testator, by charging or devising his land for payment of debts; (2) those which, not being recognised or attainable at law, are created in equity—such as an equity of redemption or the separate estate of a deceased wife; and (3) those so declared by statute.

The order in which Equity administers assets, partly legal and partly equitable, is this:—

(1st) Personalty, not exempted by a testator either by express words or manifest intent, from the payment of debts or not specifically bequeathed. Neither a charge upon land, nor a direction to sell, nor the creation of a term for payment of debts, will, however, exempt the personal estate.—*Duke of Ancaster* v. *Mayer*, 1 *Bro. C. C.* 454 (1783–1785); 1 *White and Tudor's Lead. Cases*, 415-439. The question, then, in each particular case resolves itself into this: Does there appear upon the whole testamentary disposition taken together an intention on the part of the testator so expressed as to convince a judicial mind that it was meant not merely to charge the real estate, but so to charge it as to exempt the personal estate? for it is not upon an intention to charge the real, but an expressed intention also to discharge the personal estate, that the question is to be decided, and every testator must be presumed to have been cognizant of the law.

This being legal assets, is to be applied in a course of administration for the payment of debts and legacies, according to their legal priorities.

After the exhaustion of the unexempted personalty, which is the natural and first fund for the payment of debts, then

(2nd) A real fund created for the exclusive purpose of satisfying debts.

(3rd) Real estates, devised or ordered to be sold for payment of debts, not merely charged with such payment, and whether the inheritance, or a term carved out of it, be so limited.

These being equitable assets are to be applied in the payment of debts, *pari passu*. And in case the creditors are paid out of the personal estate, in payment of legatees *pro tanto*, whether specific or otherwise.

(4th) Real estates descended, whether free-

hold or copyhold, and whether in the possession of the devisor at the date of his will, or subsequently acquired.

These being legal assets are to be applied to the payment of debts, and then of legacies *pari passu*, whether specific or pecuniary.

(5th) Realty or personalty devised or bequeathed, charged with and subject to the payment of debts, and specifically disposed of subject to such debts.

These being equitable assets are to be applied in payment of debts *pari passu*, and should the creditors be paid out of the personal estates, in payment of legatees *pro tanto*. Personalty given charged with debts seems equally liable with realty given so charged, in favor of general legatees, but as legal assets.

As to what amounts to a charge of debts, it is a rule, that a mere general direction by a testator, that his debts should be paid, effectually charges them upon his real estate. To this rule there are two exceptions: (1) Where the testator, after a general direction for payment of his debts, has specified a particular fund for the purpose; because the general charge by implication is controlled by the specific charge made in the subsequent part of the will; (2) Where the debts are directed to be paid by executors; for, in that case, it will be presumed, unless land be devised to them, that the debts are to be paid exclusively out of the assets which come to them as executors.

Where a testator gives his real estate to A. and his heirs, *charged* with his (the testator's) debts; that is a devise for a particular purpose, but not for that purpose only. If, however, the devise be, on trust to pay the testator's debts, that is a devise for a particular purpose, and nothing more. The wide difference of effect is this:—the first mode is a devise of an estate of inheritance for the purpose of giving the devisee the beneficial interest, subject to a particular purpose; the latter is a devise for a particular purpose with no intention to give him any beneficial interest. When, therefore, the whole legal interest is given for the purpose of satisfying trusts expressed, and those trusts do not exhaust the whole, so much of the beneficial interest as is not exhausted belongs to the heir; but where the whole legal interest is given for a particular purpose, with an intention to give to the devisee of the legal estate the beneficial interest, if the whole be not exhausted by the particular purpose, the surplus goes to the devisee, as it was intended to be given to him.—1 *Hov. on Frauds*, 360.

(6th) General pecuniary legacies *pro ratâ*.

(7th) Real estate devised, not charged with debts, and personal estate specifically or demonstratively bequeathed, each contributing rateably, unless one is made primarily liable.

The 3 & 4 Wm. IV. c. 104, provides that when any person shall die seised of or entitled to any estate or interest in lands, tenements, or hereditaments, corporeal or incorporeal, or other real estate, whether freehold, customary-hold, or copyhold, which he shall not by his last will have charged with or devised subject to the payment of his debts, the same shall be assets to be administered in Equity for the payment of the just debts of such persons, as well debts due on simple contract as on specialty; and that the heir or heirs-at-law, customary heir or heirs, devisee or devisees of such debtor, shall be liable to all the same suits in Equity at the suit of any of the creditors of such debtor, whether creditors by simple contract or by specialty, as the heir or heirs-at-law, devisee or devisees of any person or persons who died seised of freehold estates was or were before the passing of the act liable to in respect of such freehold estates at the suit of creditors by specialty in which the heirs were bound: provided always, that, in the administration of assets by Courts of Equity under and by virtue of this act, all creditors by specialty in which the heirs are bound shall be paid the full amount of the debts due to them before any of the creditors by simple contract or by specialty in which the heirs are not bound shall be paid any part of their demands.

These assets are not administered in payment of legacies.

(8th) Realty and Personalty, which the testator had power to appoint, and which he has appointed by his will.

(9th) The testator's widow's paraphernalia.

Where assets are partly legal, and partly equitable, though equity cannot take away the legal preference on legal assets, yet, if one creditor have been paid out of such legal assets, when satisfaction comes to be made out of equitable assets the court will postpone him till there is an equality in satisfaction to all other creditors, out of the equitable assets, proportionable to so much as the legal creditor has been satisfied out of the legal assets pursuant to the maxim that he who seeks equity shall do equity.

In commerce the term is used to designate the stock in trade and the entire property of all sorts, belonging to a merchant, or to a trading association.

Asseveration [fr. *assevero*, Lat., to affirm earnestly, fr. *severus*, serious], an appeal to a witness for the truth of a representation.

Assewiare, to draw or drain water from marsh grounds.—*Cowel.*

Assidere, or **Assedare**, to tax equally. Sometimes used in the sense of assigning an annual rent to be paid out of a particular farm, &c.—*Mat. Par. anno* 1232.

Assign, variously applied; generally, to set over a right to another, or appoint a deputy; specially, to set forth or point at, as to assign error, false judgment, &c. The judges are said to be assigned to take assizes.

Assignation, anything simply ceded, yielded, and assigned to another.—*Scotch Law.*

Assignatus utitur jure auctoris.—(The assignee makes use of the right of his assignor.)

Assignee, or **Assign,** a person appointed by another to do any act or perform any business; also a person, who takes some right, title, or interest in things by an assignment from an assignor. They are divided into: (1) assignees by *deed*, as when a lessee of a term sells or assigns it to another; and, (2) assignees by *law*, as when property devolves upon an executor, without any specific appointment, the executor is assignee in law to the testator. Assignees in Bankruptcy are those persons in whom the property of a bankrupt vests by virtue of their appointment. They are either *official* assignees, officers appointed by the Lord Chancellor, one of whom is nominated by the Court of Bankruptcy to act in each particular case, or *creditors'* assignees, elected by the creditors who prove debts under the bankruptcy to the value of 10*l.* or upwards, at the first public sitting, and confirmed by the commissioners. As to their duties, rights, and liabilities, consult *Archbold's Law of Bankruptcy*; 12 & 13 *Vict.* c. 106; and 24 & 25 *Vict.* c. 134. As to assignees of insolvents, see 1 & 2 *Vict.* c. 110, s. 45, *et seq.*; and 7 & 8 *Vict.* c. 96, s. 3.

Assignment, a transfer of the whole of a particular estate, the operative verbs being 'assign, transfer, and set over.' An assignee is liable for the breach of all covenants running with the land broken during the subsistence of the assignment, but he may assign over to a mere beggar to get rid of his continuing liability under such covenants; although he cannot thus escape from liability on his covenant for indemnity.

Assignment of dower, the ascertaining and setting out of a widow's portion of her deceased husband's realty for her thirds or dower.

Assignment of errors, the formal statement of the objection or error in the record complained of. See ERROR.

Assignor, a person who transfers or makes over property to another.

Assimulare, to connect highways.—*Leg. Hen. I.* c. 8.

Assisa, a law.—1 *Reeves*, c. iv., p. 215.

Assisa cadere, to be nonsuited, as when there is such a plain and legal insufficiency in an action, that the plaintiff cannot successfully proceed any further in it.—*Fleta*, lib. 4, c. xv.; *Bracton*, lib. 2, c. vii..

Assisa cadit in juratam, to submit a controversy to trial by jury.—*Ibid.*

Assisa continuanda, an ancient writ addressed to the justices of assize for the continuation of a cause, when certain facts put in issue could not have been proved in time by the party alleging them.—*Reg. Orig.* 217, and *Termes de la Ley* '*Continuance.*'

Assisa Panis et Cerevisiæ, the power or privilege of assizing or adjusting the weight and measure of bread and beer.—51 *Hen. III.*; *Cowel*; 2 *Reeves*, c. viii. p. 56. Repealed by 6 & 7 *Wm. IV.* c. 37.

Assisa proroganda, an obsolete writ, which was directed to the judges assigned to take assizes, to stay proceedings, by reason of a party to them being employed in the king's business.—*Reg. Orig.* 208.

Assisa utrum. See ASSISE DE UTRUM.

Assise, or **Assize** [fr. *assideo*, Lat. to sit together, whence *assire*, O. Fr. to set, *assis*, set, seated, sealed], a jury, who sit together for the purpose of trying a cause, or rather a court or jurisdiction, which summons a jury by a commission of assize *to take the assizes.* Hence the judicial assemblies held by the Queen's commission in every county as well to take indictments as to try causes at *Nisi Prius*, are commonly termed the assizes. There are two commissions. (I.) *General*, which is issued twice a year to the judges of the Superior Courts of Common Law at Westminster; two of whom are assigned to every circuit. See CIRCUITS. The judges have four several commissions: (1) Of *oyer* and *terminer*, directed to them and many other gentlemen of the county, by which they are empowered to try treasons, felonies, &c. This is the largest commission. (2) Of *gaol delivery*, directed to the judges and the clerk of assize associate, empowering them to try every prisoner in the gaol committed for any offence whatsoever, so as to clear the prisons. (3) Of *Nisi Prius*, directed to the judges, the clerks of assize and others, by which civil causes, in which issue has been joined in any one of the Superior Courts, are tried on circuit by a jury of twelve men of the county, in which the venue is laid, and on return of the verdict to the Court above, usually on the first day of the term following, the Court gives judgment on the fifth day after, allowing the four intermediate days to either party, if dissatisfied with the verdict, to move for a new trial. These causes by the practice of the courts are usually appointed to be tried at Westminster in some Easter or Michaelmas Term, by a jury returned from the county, in which is laid the venue, but with this proviso—'*Nisi Prius*' (unless before) the day appointed the judges of assize come into the county in question. This they are sure to do in the preceding vacation, and the trial is there had instead of at Westminster. (4) A commission of the

peace, by which all justices are bound to be present at their county assizes, besides the sheriffs, to give attendance to the judges, or else suffer a fine. There used to be another commission, that of *assise*, directed to the judges and clerk of assise, to take assises and do right upon writs of assize brought before them, by such as were wrongfully thrust out of their possessions. These writs are abolished, and recourse is had to an action of ejectment, tried at *Nisi Prius*. (II.) The other division of commissions is *special*, granted to certain judges to try certain causes and crimes.—*Bracton*, lib. 3; 3 *Bl. Com.* 60, 269.

Assise of Arms, 27 Hen. II. A.D. 1181.

Assise of Bread, the sealed rate for the sale of bread.

Assise of Darrein Presentment, or last presentation; it lay when a person, or his ancestors, under whom he claims, had presented a clerk to a benefice, who was duly instituted, and afterwards, upon the next avoidance, a stranger presents a clerk, thus disturbing the right of the lawful patron; upon this, the patron issued this writ, directed to the sheriff to summon an assise or jury, to inquire who was the last patron that presented to the church now vacant, of which the plaintiff complains that he is deforced by the defendant.—*Termes de la Ley*, 473. It is, however, abolished, and recourse must be had to the action of *quare impedit*.—3 & 4 *Wm. IV.* c. 27.

Assise of Mort d'Ancestor, a writ which lay where a person's father, mother, brother, sister, uncle, aunt, &c. died, seized of land and a stranger abated. It is abolished by 3 & 4 Wm. IV. c. 27.

Assise of Novel Disseisin, an action similar in its nature to the one above, although it differed in many points. It is abolished by 3 & 4 Wm. IV. c. 27.

Assise of the Forest, a statute touching orders to be observed in the king's forests.—*Manwood*, 35. For the learning of assise generally, consult *Com. Dig.* tit. '*Assise.*'

Assise de Utrum, an obsolete writ, which lay for the parson of a church whose predecessor had alienated the lands and rents of it.—*F. N. B.* 48.

Assiser, an officer who has the care and oversight of weights and measures.

Assises de Jerusalem, a monument of feudal jurisprudence, composed by Gottfried of Bouillon, for the government of the Holy City after its conquest by the crusaders. It was revised in the 13th and 14th centuries for the use of the Latin kingdom of Cyprus.—1 *Colq. R. C. L.* s. 80, p. 86; 1 *Hall. Lit. Hist. Eur.* 28.

Assisors, Scottish jurors.

Assistance, Writ of, appears to have been first employed in the reign of James I.; from that time, though in general parlance it is said that the decree of the Court of Chancery acts only *in personam*, yet, if the possession of lands be decreed or ordered and the defendant refuse to perform the decree, the Court directs this writ of execution to the sheriff, to enforce its decree.—*Consolid. Ord.* xxix. r. 5.

Assistant-Judge of Middlesex Sessions, appointed by 7 & 8 Vict. c. 71, may appoint a deputy.—14 & 15 *Vict.* c. 55, s. 14. See 22 & 23 *Vict.* c. 4.

Assistant Overseers, appointed by 2 & 3 Vict. c. 84 and 7 & 8 Vict. c. 101, ss. 61, 62.

Assisus, rented or farmed out for such an assize or certain assessed rent in money or provisions.—*Blount.*

Assithment [fr. *ad* and *sithe*, Sax., vice], a weregeld or compensation by a pecuniary mulct.—*Cowel.*

Assize. In the practice of the criminal courts of Scotland, the fifteen men who decide on the conviction or acquittal of an accused person are called the assize, though in popular language and even in statutes they are called the jury.

Associate, an officer in each of the Courts of Common Law. He is appointed by the chief judge of the court, and holds his office *dum bene se gesserit* (15 & 16 Vict. c. 73). His duties are to superintend the entry of causes; to attend the sittings at *Nisi Prius*, and there receive and enter verdicts; to draw up the *posteas*, and any orders of *Nisi Prius*.

Association, a writ or patent sent by the Crown to the justices appointed to take assizes to have others (serjeants-at-law, for instance) associated with them; it is usual where a judge becomes unable to attend to his circuit duties or dies.—*Reg. Orig.* 201. Also a public company or partnership.

The association of the people formed by 7 & 8 Wm. III. c. 27, s. 3, for the protection of the king and government, was put an end to by 1 Anne, st. 1, c. 22, s. 3.

Associations, Unlawful. See SOCIETIES.

Assoile [fr. *absolvere*, Lat.; *absolver*, *absoiller*, *assoiller*, O. Fr.], to deliver from excommunication; to acquit or absolve.—*Staundf. Pl. Cr.* 72.

Assoilzie, to acquit a defendant, or to find a person not guilty of a crime.—*Scotch Law.*

Assuetude, custom.

Assumpsit [fr. *assumo*, Lat. to take upon oneself]. The action of *assumpsit*, or, as it is usually denominated in practice, of promises, was originally a kind of action of trespass on the case; but in modern times it is treated as a substantive and independent species of action. It lies for the recovery of damages for loss or injury sustained by reason of the breach or

non-performance of a promise, either expressed or implied, the promise not being under seal, but yet founded on a proper consideration.

The ordinary division of this action is into (1) common or *indebitatus assumpsit*, brought for the most part on an implied promise; and (2) special *assumpsit*, founded on an express promise.—1 *Selw. N. P.* 42; *Steph. Plead.* 18, 40.

Assumption, the day of the death of a saint, *quia ejus anima in cælum assumitur* (because his soul is taken into heaven).—*Du Cange.* Also a usurpation.

Assurance. See INSURANCE.

Assurances, the legal evidences of the transfer of property, called *common* assurances, by which every man's property is secured to him, and controversies, doubts, and difficulties prevented and removed.—2 *Bl. Com.* 294.

Assured, a person insured or indemnified against certain events.

Assurer, an insurer against certain perils and dangers; an underwriter; an indemnifier.

Assysers (jurors), persons who, in an inquest, serve a man, heir, or judge, the probation in criminal causes.—*Scotch Law.*

Assythment, a reparation made for mutilation or slaughter.—*Ibid.*

Assyth the King, to cause malefactors to pay a modified fine.—*Ibid.*

Asteism [fr. ἀστεῖος, Gk.], in rhetoric, an ingenious irony, or polite way of deriding another.

Aster, or **homo aster,** a resident.—*Brit.* 151.

Astipulation [fr. *astipulor*, Lat.], a mutual agreement, assent and consent between parties; also a witness or record.

Astrarius hæres [fr. *astre*, Fr., the hearth of a chimney], an heir apparent, who has been placed, by conveyance, in possession of his ancestor's estate, during such ancestor's lifetime.—*Co. Litt.* 8.

Astriction [fr. *astrictio*, Lat.] **to a mill,** a servitude, by which grain growing on certain lands or brought within them, must be carried to a certain mill to be ground, a certain multure or price being paid for the same.—*Jacob.*

Astrihilibet, a forfeiture of double the damage.

Astrum, a house or place of habitation.—*Cowel.*

A summo remedio ad inferiorem actionem, non habetur ingressus, neque auxilium.—Fleta, 1, vi.—(From the highest remedy to the lower action there is neither ingress nor assistance.)

Asyle, a sanctuary, or place of refuge for offenders to fly into.

Asylum [fr. Ἄσυλον, Gk., a place free from violence], a sanctuary of refuge, also a place set apart for the treatment and habitation of persons of unsound mind. See 16 & 17 *Vict.* cc. 96, 97; 18 & 19 *Vict.* c. 105; and 19 & 20 *Vict.* c. 87.

Atains du fet [Fr.], convicted of the fact, caught by it, having it brought home to one.—*Roquef; Wedgw.*

Atavia, a great grandmother's grandmother.

Atavus, the great grandfather's or great grandmother's grandfather; a fourth grandfather. The ascending line of lineal ancestry runs thus:—Pater, Avus, Proavus, Abavus, Atavus, Tritavus, the seventh generation in the ascending scale will be Tritavi-pater, and the next above it Proavi-atavus.—*Juv. Sat.* iii. 312.

Ategar [fr. *aeton*, Sax., to throw, and *gar*, a weapon], a hand-dart.—*Spelm.*

Athanation, the ancient name of the island of Thanet, in Kent.

Athe, atha, or **ath** [Sax.], an oath.—*Blount.*

Athe, or **adda,** a privilege of administering an oath in cases of right and property.—*Ibid.*

Atheism, the disbelief of a God. The Scottish Law ranks it under the head of blasphemy, and punishes it with death.

Atheling. See ÆTHELING.

Athesis fluvium, the ancient name of the river Tees, in Cumberland.

Atia, an ancient writ of inquiry whether a person be committed to prison on just cause of suspicion.—*Cowel; Ash.*

Atilia, utensils or country implements.—*Blount.*

Atonement, an agreement, union, or reconciliation. The word seems to be compounded of *at* and *one*, as it were a making at one, and thence to have acquired the meaning of suffering the pains of whatever sacrifice is necessary to bring about a reconciliation.

Atrium, a court before a house, or a churchyard.—*Cowel.*

Attach [fr. *attaccare*, It., to fasten], to take or apprehend by commandment of a writ or precept. It differs from arrest, because it takes not only the body, but sometimes the goods, whereas an arrest is only against the person; besides, he who attaches keeps the party attached in order to produce him in court on the day named, but he who arrests lodges the person arrested in the custody of a higher power, to be forthwith disposed of.—*Fleta*, lib. 5, c. xxiv.

Attaché, a person associated with a foreign legation.

Attachiamenta bonorum, a distress formerly taken upon goods and chattels, by the legal *attachiators* or bailiffs, as security to answer an action for personal estate or debt.—*Blount.*

Attachiamenta de spinis et boscis, a privilege granted to the officers of a forest to take to their own use thorns, brush, and windfalls, within their precincts.—*Kenn. Par. Antiq.* 209.

Attachment, a process from a Court of Record, awarded by the judges at their discretion on a bare suggestion, or on their own knowledge, against a person guilty of a contempt, who is punishable in a summary manner. Contempts may be thus classed: (1) Disobedience to the Queen's Writs; (2) Contempts in the face of a court; (3) Contemptuous words or writings concerning a court; (4) Refusing to comply with the rules and awards of a court; (5) Abuse of the process of a court; and, (6) Forgery of writs, or any other deceit tending to impose on a court.—*Leach's Hawk. P. Cr.* c. xxii. s. 33.

Attachment, foreign, a process under which the goods of foreigners found in some liberty are taken to satisfy creditors.—*Com. Dig.* tit. '*Attachment, Foreign.*' Also a judicial proceeding, by means of which a creditor may obtain the security of the goods or other personal property of his debtor, in the hands of a third person, for the purpose, in the first instance, of enforcing the appearance of the debtor to answer an action; and afterwards, upon his continued default, of obtaining the goods or property in satisfaction of the demand. It is also called *garnishment.*

Attachment of the Forest, one of the three courts formerly held in forests. The highest court was called Justice in Eyre's seat; the middle, the Swainmote; and the lowest, the Attachment.—*Manwood*, 90, 99.

Attachment of Privilege. When a person by virtue of his privilege, calls another into that court to which he himself belongs, to answer some action as an attorney, &c. It is also a power to apprehend a person in a privileged place.—*Termes de la Ley*, 59. The 2 Wm. IV. c. 39 (commonly called the Uniformity of Process Act), virtually abolished this proceeding, and the 1 & 2 Vict. c. 110, enacts that all personal actions in any of the Superior Courts of Common Law at Westminster shall be commenced by writ of summons.

Attainder [fr. *attaindre*, Fr. (*attainder*, O. Fr.—*Roquef*), *attingo*, Lat., which signify the apprehension of the object of a chase], the stain or corruption of the blood of a criminal capitally condemned: it is the immediate inseparable consequence by the common law, sentence of death being pronounced, or of outlawry for a capital offence. The criminal then becomes dead in law, technically called *civiliter mortuus.* It differs from conviction, in that it is *after* judgment, whereas, conviction is upon the verdict of guilty, but *before* judgment pronounced, and may be quashed upon some point of law reserved, or judgment may be arrested. The consequences of attainder are forfeiture of property and corruption of blood.—4 *Bl. Com.* 380.

A descendant may now trace through an attainted ancestor; for 'when the person from whom the descent of any land is to be traced shall have had any relation who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated in consequence of such attainder, before the 1st of January, 1834.'—3 & 4 *Wm. IV.* c. 106, s. 10.

Attainte d'une cause [Fr.], the gain of a suit.

Attaint, Writ of, issued to inquire whether a jury of twelve men gave a false verdict, that so the judgment following thereupon might be reversed. This writ was abolished by 4 Geo. IV. c. 50, ss. 60, 61. A corrupt juror is punishable by fine and imprisonment, upon an indictment or information.

Attainture, legal censure.

Attal sarisin [i. e. the leavings of the *Sarasins, Sassins,* or *Saxons*], an old deserted mine, so called by the Cornish miners.—*Cowel.*

Attegia, a little house.—*Blount.*

Attempt [fr. *tentare*, Lat.; *tenter, temter, tempter*, O. Fr., to try], an endeavour to commit a crime or unlawful act.

Attendant, one who owes a duty or service to another, or depends upon another.—*Termes de la Ley*, 61.

Attendant Term, terms for years in real property are created for many purposes, e. g. to furnish money for the payment of debts, to secure rent-charges or jointures, to raise portions for younger children, daughters, &c. Now although the purpose for which the term was originally created has been satisfied or has failed, yet, not being surrendered, it continued to exist, the legal interest remaining in the trustees, to whom it was at its creation limited, or, if deceased, in their personal representatives, but the person entitled to the inheritance then became, according to equitable principle, entitled to the beneficial interest in such term, and the termor was held to be such person's trustee. This beneficial interest was subordinate to and merely attendant upon the higher estate possessed by the owner of the inheritance, and yet completely consolidated with it, following the inheritance in all the various modifications and changes to which it might be subjected by act of law or arrangements of the owner. The advantage of preserving these terms and assigning them to trustees (thus preventing the legal presumption of surrender), with an express declaration that they shall attend upon the inheritance was this: If it had at any time appeared that *prior*

to the purchase or mortgage, but *posterior* to the creation of the term, there had been an intermediate alienation or incumbrance of the fee in favour of another person, to which the then trustee of the term had not been a party, and of which the purchaser or mortgagee had had no notice when he paid the purchase or mortgage-money, he would be protected against it, through the medium of the term so assigned, which being the elder title would have taken the priority in point of legal effect. Hence the expression 'protecting against mesne (middle) incumbrances.' The estate was thus defended from being defeated or injured by such titles or charges, however valid they might have been, or by any subsequent disposition of the vendor or mortgagor; it thus conduced to the safety of honest purchasers or mortgagees, to whom it afforded a protection not very unlike that of the Registry Acts; whereas, if he neglected to take such assignment he exposed himself to the risk of some other person (whose title or interest might even have been acquired subsequently to his own) obtaining the assignment of the term, and using such benefit to his detriment. Besides, by such assignment he could in many instances carry back his title to the possession for a much longer period than he could show a clear title to the inheritance, and thus a defective title might have been cured. It was sometimes usual, where an assignment of a term had been generally in trust to attend upon the inheritance, and the old trustees were approved of, and the new purchaser or mortgagee had the possession of all the title-deeds, to rely upon a declaration of trust of such term, but this was a dangerous practice, and for this simple reason:—a mere declaration of trust would not protect the inheritance against a subsequent *bonâ fide* purchaser or mortgagee without notice of it, who procured a proper assignment of the term to his own trustees. As to the point of notice of intermediate incumbrances, it was not necessary that a person should be unaffected with notice, when he procured an assignment of an outstanding term, if he had been without notice at the time of his purchase, mortgage, or other charge, for Equity allowed him in such case to avail himself of any protection against defect of title or charge, which he might have subsequently discovered; an outstanding term or legal estate being considered *tabula in naufragio*, to the full benefit of which the first who acquired it was entitled. There were instances in which a term became attendant on the inheritance by equitable construction, the great principle governing which was, that where a legal and equitable estate became vested in the same person, the one a term of years, and the other an estate of inheritance, though there could be no merger (as that can only occur upon the union of two estates of the same nature, i. e. both legal or both equitable, in the same person, in the same right, without any intermediate estate), yet, by analogy to the Common Law doctrine of merger, the term would have been considered in Equity as attendant, in the absence, of course, of any sufficient indication that the contrary was intended by the parties. For the authorities and arguments upon this subject, consult 3 *Sugden's Vendors and Purchasers*, tit. '*Assignment of Terms*,' 10th edit.; *Burt. Comp.* pl. 914; 1 *Step. Com.* 378; 1 *Saunders on Uses and Trusts*; 316; and *Watkins's Prin. of Conv.* c. ii. As to the assignment of attendant terms, see 8 & 9 *Vict.* c. 112, which renders it unnecessary by abolishing them.

Attentates, proceedings in a court of judicature, pending suit, and after an inhibition is decreed and gone out. Those things which are done after an extra-judicial appeal may be styled *Attentates.*—*Ayliffe.*

Attermining, granting time for payment of a debt.—*Blount*; 27 *Edw. I.*

Attestation, testimony, evidence, justification, the execution of a deed or will in the presence of witnesses.—2 *Bl. Com.* 307.

Attestation clause, the sentence subscribed to a written instrument signed by the witnesses to its execution, stating that they have witnessed it.

Attested copy, a verified transcript of a document.

Attesting Witness, a person who has seen a party execute a deed, or sign a written agreement. He then subscribes his signature for the purpose of identification and proof at any future period.

Attic, Laws of Descent. For a notice of these, see *Hale's History*, p. 294.

Attile, the rigging or furniture of a ship.—*Fleta*, lib. 1, c. xxv.

Attornare rem, to turn over money or goods, i. e. to assign or appropriate them to some particular use or service.—*Ken. Par. Antiq.* 283.

Attornato faciendo vel recipiendo, an obsolete writ, which commanded a sheriff or steward of a county or hundred court to receive and admit an attorney to appear for the person who owed suit of court.—*F. N. B.* 156.

Attorney [fr. *tournée*, Fr.; or fr. *attornatus*, Mid. Lat., substituted], one who is appointed by another to do something in his absence, and who has authority to act in the place and turn of him by whom he is delegated. He is of two kinds.

(1) *Attorney at Law*, a public officer belonging to the Superior Courts of Common Law at Westminster, who conducts legal proceedings on behalf of others, called his clients, by whom he is retained: he answers to the Solicitor in the Courts of Chancery, and the Proctor of the

Admiralty, Ecclesiastical, Probate, and Divorce Courts. It is a popular error (entertained, however, by many) that the term '*Solicitor*' is more honourable than or superior to '*Attorney.*' The late Lord Tenterden repeatedly animadverted upon the absurdity of using the term 'Solicitor' when applied to any one conducting an action or other proceeding in Courts of Law.

There is not any distinction whatever in the degree of respectability between them; in fact, both the terms are generally found combined in the same gentleman. Consult *Merrifield's Law of Attornies*; 1 *Chit. Arch. Prac. by Pren.* c. v. tit. '*Attornies*;' and especially the *Attornies and Solicitors' Act*, 6 & 7 Vict. c. 73.

(2) *Attorney in Fact*, including all agents employed in any business or to do any act *in pais* for another; also a person acting under a special agency, whose authority must be expressed by deed, commonly called a power of attorney.—1 *Bac. Abr.* tit. '*Attorney.*'

Attorney of the Duchy Court of Lancaster, the second officer in that Court next to the Chancellor, whose assessor he is.—*Blount.* He is styled 'Attorney-general.'

Attorney of the Wards and Liveries was the third officer of the Duchy Court.—*Ibid.*

Attorney-General, a great officer of state, appointed by letters-patent, and the legal representative of the Crown in the Courts of Law and Equity. He exhibits informations, prosecutes for the Crown in criminal matters, files bills in the Exchequer in revenue causes, and informations in Chancery, where the Crown is interested.—*Termes de la Ley*, 63; 4 *Reeves*, c. xxv. p. 122. The Prince of Wales and a Queen-Consort have each an Attorney-General.

Attorneyship, the office of an agent or attorney.—4 *Reeves*, c. xxxii. p. 574.

Attornment [fr. *tourner*, Fr., to turn], the acknowledgment of a new lord on the alienation of land, and the assent or agreement of the tenant to attorn, as 'I become tenant to the purchaser.'—*Co. Litt.* 309. The 4 Anne, c. 16, ss. 9, 10, enacted that all grants and conveyances of manors, lands, rents, reversions, &c. should be good without the attornment of the tenants, but notice of the grants must be given to the tenants, before which they shall not be prejudiced by the payment of any rent to the grantor, or of breach of the condition for non-payment; and by 11 Geo. II. c. 19, s. 11, attornments made by tenants to strangers claiming title to the estate of their landlord shall be null and void, and their landlord's possession not affected thereby; but it does not extend to vacate any attornment made pursuant to a judgment at law, or with the consent of the landlord, or to a mortgagee on a forfeited mortgage.—*Woodf. Land and Ten. by Horn*, 221.

Attraper, taken or seized.—*Law Fr.*

Attrebatii, the ancient name of the inhabitants of Berkshire.

Avage, or **Avisage,** a rent or payment by tenants of the manor of Writtle, in Essex, upon St. Leonard's day, the 6th of November, for the privilege of pannage in the lord's woods.—*Blount.*

Avail [fr. *valoir*, Fr.; *valere*, Lat., to be worth], profit of land.

Avail of Marriage [fr. *valor maritagii*, Lat.], the right of marriage, which the lord or guardian in chivalry had of disposing of his infant ward in matrimony. A guardian in socage had also the same right, but not attended with the same advantage.—1 *Step. Com.* 194.

Avails, profits or proceeds.

Aval [Fr.], surety for payment.

Avalonia, the ancient name of Glastonbury, in Somersetshire.

Avalum, a written guarantee.

Aubaine. See DROIT D'AUBAINE.

Au besoin (*in case of need*).

Auca, de, the ancient name of Orve.

Auctionariæ, catalogues of goods for public sale or auction.

Auctionarii, sellers, regraters, retailers, more properly brokers.—*Jacob.*

Auctioneers, licensed agents appointed to sell property and to conduct sales or auctions. Consult *St. Leon, Vend. and Pur.* 34, *et seq.*, for the extent of their power and authority as to real property. They differ from brokers, in that the latter may both buy and sell, whereas auctioneers can only sell; also brokers may sell by private contract only, and auctioneers by public auction only. Auctioneers can only sell goods for ready money, but factors may sell upon credit.

An auctioneer is deemed the agent of both parties; he can bind *virtute officii* the seller and the purchaser of realty by his memorandum of the sale under the Statute of Frauds; but he is only the agent of the seller at the sale.

The 8 Vict. c. 15, repeals the duties of excise on sales by auction, and imposes a new duty on auctioneers' licenses in the United Kingdom. The 1st sec. repeals all existing duties, and a duty of 10*l.* is imposed on all auctioneers' licenses throughout the kingdom, which are to be renewed annually (ss. 2—4). The 6 Geo. IV. c. 81, s. 8, is repealed by s. 6, which substitutes one uniform license. Sec. 7 enacts, that every auctioneer, before he commences any sale, shall affix, in some conspicuous part of the auction-room, a ticket or board, containing his full Christian and surname and place of residence, otherwise to forfeit 20*l.* He must produce his license on demand, or make a deposit of 10*l.* on pain of one month's imprisonment.

Auction, signifies generally an increasing, an enhancement, and hence is applied to a public sale of property usually conducted by biddings, which augment the price. A spear used to be raised by the Romans as the sign of a public auction.—*Livy*, xxiii. 37; *Smith's Dict. of Antiq.* See DUTCH AUCTION.

Auctor, a seller, or vendor.

Auctoritates philosophorum, medicorum, et poetarum, sunt in causis allegandæ et tenendæ.—Co. Litt. 264.—(The opinions of philosophers, physicians, and poets, are to be alleged and received in causes.)

Aucupia verborum sunt judice indigna.—Hob. 343.—(Catching at words is unworthy of a judge.)

Audience, a hearing; an interview.

Audience Court, belonging to the Archbishop of Canterbury, having the same authority with the Court of Arches, but inferior to it in dignity and antiquity. The Dean of the Arches is the official auditor of the Audience. The Archbishop of York has also his Audience Court.—*Termes de la Ley*, 63.

Audiendo et terminando, a writ or commission to certain persons to appease and punish any insurrection, or great riot.—*F. N. B.* 110.

Audit, an examining of accounts.

Auditâ querelâ defendentis [Lat.] (so called because a plaintiff cannot have it) is a writ commencing an equitable action after an adverse judgment recovered, for the purpose of preventing the unconscientious demand of a double satisfaction. It is in the nature of a trespass, and seems to have been invented, lest in any case there should be an oppressive defect of justice, where the party has a good defence, but had not, nor has any other means to take advantage of it. It is directed to the court, stating that the complaint of the defendant hath been heard (*auditâ querelâ defendentis*), and then setting out the matter of the complaint, it enjoins the court to call the parties before it, and, having heard their allegations and proofs, to cause justice to be done between them. It does not lie, where there is any other remedy at law, either by plea or otherwise; and only the party grieved can bring it, which he can do of common right, and *ex debito justitiæ*. The writ is sometimes judicial, issuing out of the same court in which the record, upon which it is founded, remains; and sometimes original, issuing out of Chancery, and returnable into such court.

The process in *auditâ querelâ*, when it is grounded on a matter of fact, or the party is not in execution, or it is issued *quia timet*, is a *venire facias*, *distringas*, *alias* and *pluries distringas*, and if *non est inventus* or *nihil* be returned, the plaintiff in the writ may have a *capias* against the defendant in the writ. But when the writ is founded on a record, or the party is in execution, the process is *scire facias*, and bail must be given when the party in prison seeks to be discharged. An *auditâ querelâ* not preventing the issuing of execution, a *supersedeas* should be forthwith moved for. Where the defendant confesses the matter alleged, the plaintiff has judgment and discharge by confession; but if the defendant deny it, the parties proceed to issue in fact or in law, as in other cases. It is said that costs are not recoverable in this action. By the indulgence of the courts, a summary relief upon motion is in most cases of evident oppression granted, and this occasioned the remedy by *auditâ querelâ* to be seldom resorted to.—2 *Saund.* 137 *n.*, *et seq.*; 17 & 18 *Vict.* c. 125, s. 84. By *Rules H. T.* 1853, r. 79, no writ of *auditâ querelâ* is allowed, unless by rule of court or order of a judge.

Auditor [Lat.], one who examines accounts and evidences of expenditure; an officer of the Royal household, or of some other great establishment, who examines the accounts of all under officers, and keeps a general book, shewing the difference between their receipts and charges and their several allowances, commonly called allocations; as the auditors of the Exchequer take the accounts of the receivers, who collect the revenues.—4 *Inst.* 106. Receivers-general of fee-farm rents, &c., are also termed auditors, and hold their audits for adjusting the accounts at certain times and places. There are also auditors assigned by the Court of Audit, and also to settle accounts in actions of account, &c.—1 *Brown*, 24.

Auditor of the Receipts, an officer of the Exchequer, who files the teller's bills, and having made an entry of them, he gives the Lord Treasurer, &c., a weekly account of the money received.—4 *Inst.* 107; 46 *Geo. III.* c. 1.

Auditores, the catechumens, or those newly-instructed in the mysteries of the Christian religion before admission to baptism. *Auditorium*, now called the *nave*, is the place in the church where they stand to hear and be instructed.—*Blount.*

Auditors of the Imprest, officers in the Exchequer, who formerly had the charge of auditing the accounts of the customs, naval and military expenses, &c., now performed by the Commissioners for auditing public accounts. *Prac. Exc.* 83.

Avenage, a certain quantity of oats paid by a tenant to his landlord as a rent or in lieu of some other duties.—*Blount.*

Avenor, an officer belonging to the royal stables, who provided oats for the horses.—13 *Car. II.* c. 8.

Aventuræ, adventures or trials of skill at arms; military exercises on horseback.—*Brady's Append. Hist. Eng.* 250.

Aventure, or **Adventure,** a mischance causing the death of a man, as where a person is suddenly drowned or killed by any accident, without felony.—*Co. Litt.* 391.

Aver [fr. *avoir*, Fr.; *habere*, Lat., to have; or *haber*, Sp.], a beast of the plough; money.

Aver (to) [fr. *avérer*, Fr.; fr. *verus*, Lat.], to maintain as true.

Avera, a day's work of a ploughman, formerly valued at 8*d.*—*Domesday Book.*

Average, a medium, a mean proportion, used in five senses:—

(1) A service which a tenant owes to his lord by doing work with his *avers.*

(2) A contribution, which merchants and others make towards their losses, when they have their goods cast into the sea, for the safety of a ship, or of the other goods and lives of persons during a tempest. It is apportioned and allotted after the rate of every man's goods carried. So if goods insured for a voyage reach their destination, but are in some degree injured by any of the accidents insured against, this is an *average loss,* and the insurers are bound to compensate the insured in the proportion which the average loss bears to the whole insurance.—*Park on Insurance.* In this sense average is derived fr. *haferei,* Germ., sea-damage, fr. *haf, hav,* Scan., the open sea. This in Fr. became *avaris,* decay of merchandise; *avarie,* damage suffered by a ship. *Avaria,* Ital., is the calculation and distribution of the loss arising from goods thrown overboard.—*Wedgw.*

(3) Also a small duty paid to masters of ships, when goods are sent in another man's ship, for their care of the goods over and above the freight.—2 *Sel. Nisi Prius,* 952.

(4) Stubble, or remainder of straw and grass left in corn fields after harvest. In Kent it is called *gratten,* and in other parts *roughings.*

(5) Average prices, such as are computed on all the prices of any article sold within a certain period or district.

A verbis legis non est recedendum.—5 *Co.* 118. (From the words of the law there should not be any departure.)

This maxim directs the construction to be put upon Acts of Parliament, against the express letter of which the Courts will not sanction any interpretation, for the meaning of the Legislature cannot be so well explained as by its own direct words, since *index animi sermo* (language conveys the intention of the mind), and *maledicta expositio quæ corrumpit textum* (an exposition which corrupts the text is bad). 4 *Co.* 35.

Avers, draught cattle; carthorses.

Aver-Corn, a reserved rent in corn paid to religious houses.—*Blount.*

Aver-Land, that which tenants ploughed and manured for the proper use of a monastery or the lords of the soil.—*Mon. Angl.*

Aver-Penny (or *average penny*), money paid towards the king's averages or carriages, and so to be freed thereof.—*Rastal.*

Aver-Silver, a custom or rent formerly so called.—*Cowel.*

Averia, cattle, which was the principal possession in early times.—*Spelman.* Also chattels generally.

Averia carrucæ, beast of the plough.

Averia elongata, cattle eloigned, i.e. carried off.

Averiis captis in Withernam, a writ granted to one whose cattle were unlawfully distrained by another and driven out of the county in which they were taken, so that they could not be replevied by the sheriff.—*Reg. Orig.* 82.

Averium, the best live beast due to the lord as an heriot on his tenant's death.—2 *Bl. Com.* 424.

Averment [fr. *verificatio,* Lat.], an advancement or affirmation of any new matter in a pleading, and when new matter was introduced the pleading concluded with a verification, except in the anomalous case of the general plea of bankruptcy under 6 Geo. IV. c. 16. Verifications or averments were of two kinds: *common* and *special.* Common were applied to ordinary cases, and were in the following form:—'And this the plaintiff (or defendant) is ready to verify.' Special were used where the matter pleaded was intended to be tried by record or by some other method than a jury. They were in the following forms:—'And this the plaintiff (or defendant) is ready to verify, by the said record,' or, 'And this the plaintiff (or defendant) is ready to verify, when, where, and in such manner as the Court here shall order, direct, or appoint.' Consult *Steph. Plead.* as to the origin of this rule, &c., p. 479.

Needless averments are not now permitted in pleadings, and a formal conclusion is no longer necessary.—15 & 16 *Vict.* c. 76, ss. 49 & 67.

Averrare, a duty required from some customary tenants, to carry goods in a waggon or upon loaded horses.—*Blount.*

Avetting (or abetting), helping or assisting. *Scotch Law.*

Augea, a cistern for water.—*Blount.*

Augmentation, the name of a court (now abolished), erected 27 Hen. VIII., to determine suits and controversies relating to monasteries and abbey-lands.—*Termes de la Ley,* 68.

Augmentation of Stipends. In order to secure a better provision for the reformed clergy of the Church of Scotland, the Court of Sessions has power to modify or increase stipends to the clergy out of the teinds of the parish in which the minister officiates.—*Scotch Law.*

Augusta, the ancient name of London.

Augusta legibus soluta non est.—(The wife of the emperor is not exempted from the laws.)

Avia, a grandmother.

A vinculo matrimonii (*from the chain of wedlock*). It was a total divorce obtained from the Ecclesiastical Court, on some canonical impediment existing *before* marriage and not arising *afterwards*, for the marriage was declared void, as having been absolutely unlawful *ab initio*, and the parties were, therefore, separated, *pro salute animarum* (for the safety of their souls), the issue (if any) were illegitimate, and the parties might have contracted another marriage.

Though this divorce could not have been obtained in the regular course of law, where the marriage was not void *ab initio*, yet it was frequently granted on the ground of adultery by a private Act of Parliament; as it had become the practice of the Legislature to exercise its authority in this matter by way of extraordinary relief to the injured party. The proceeding originated in the House of Lords, and, to prevent collusion, the petitioner for a divorce bill must have attended upon its second reading, to be examined at the bar; the adultery was proved by witnesses. Evidence must also have been given in committee on the bill, that a sentence of divorce had been obtained in the Spiritual Court, and (where the husband was the petitioner) that judgment had been given for the husband in some Court of Law, in an action for damages brought by him against the seducer. Where no such proceedings had taken place, Parliament required some satisfactory reason to be given for the omission, as that the husband had been unable to discover the adulterer, or that he died before a verdict could be obtained against him. In passing the bill, the Legislature usually made some provision for the wife out of the husband's estate. A dissolution of marriage by the Court for Divorce and Matrimonial Causes has superseded this kind of Divorce.—20 & 21 *Vict.* c. 85, s. 27.

Avisamentum, advice or counsel.—*Blount.*

Avitous [fr. *avitus*, Lat.], left by a person's ancestors.

Aula, a Court Baron.—*Watkins on Copyholds.*

Aula, de, Hall.

Aula Regis or **Regia,** a court established by William the Conqueror in his own hall: it was composed of the great officers of state, resident in the palace, and followed the King's household in all his expeditions. The trial of common causes in it was, on this account, very burdensome to the people, and accordingly the 11th chapter of *Magna Charta* thus enacted:—'*communia placita non sequantur curiam nostram sed teneantur in aliquo loco certo.*' This certain place was established in Westminster Hall, where it has ever since continued under the name of the Court of Common Pleas, or Common Bench.—*Brac. L.* 3, tr. 1, c. 7; 3 *Bl. Com.* 39.

Aula ecclesiæ, a nave or body of a church where temporal courts were anciently held.—*Eadm.* lib. 6, p. 141.

Aulnager [fr. *ulna*, Lat., an ell], an ancient officer appointed by the king, whose business it was to measure all woollen-cloth made for sale, that the Crown might not be defrauded of customs and duties.—*Termes de la Ley*, 37.

Aumeen, trustee, commissioner; a temporary collector or supravisor, appointed to the charge of a country on the removal of a zemindar, or for any other particular purpose of local investigation or arrangement.—*Indian.*

Aumil, agent, officer, native collector of revenue; superintendent of a district or division of a country, either on the part of the government, zemindar, or renter.—*Ibid.*

Aumildar, agent; the holder of an office; an intendant and collector of the revenue, uniting civil, military, and financial powers, under the Mahomedan government.—*Ibid.*

Aumone, Service in, where lands are given in alms to some church or religious house, upon condition that a service or prayers shall be offered at certain times for the repose of the donor's soul.—*Brit.* 164.

Auncel weight, an ancient manner of weighing by the hanging of scales or hooks at either end of a beam or staff, which, when suspended by the middle, discovered the equality or difference between the weight at one end and the thing weighed at the other. This weighing being subject to great deceit, was prohibited, and the even balance commanded in its stead. But, notwithstanding, it is still used in some parts of England, and what are now called *stilliards*, which show the pounds by certain notches on a beam, are very similar to the *auncel weight.*—*Termes de la Ley*, 66.

Aunciatus, antiquated.—*Blount.*

Auncient Demesn. See ANCIENT DEMESNE.

Aunt [fr. *amita* Lat.], the sister of one's father or mother, and a relation in the third degree, correlative to niece or nephew.

Avocat, a French barrister, or advocate.

Avoidance [fr. *vuide*, *vide*, Fr., empty, wide, free from], when a benefice is void of an incumbent, in which sense it is opposed to plenarty.—*Jacob.* Also an evitation or making void, by new matter, an opponent's pleading.

Avoidance of a decision. When a motion has been made in parliament, upon which the house happens to be unwilling to come to a vote, there are formal modes of avoiding a decision, amongst which are, passing 'to the other orders,' or moving 'the previous question.'

The former means that the house should, casting aside and taking no further notice of the matter then before it, proceed to the other business appointed for that day; the latter, that a vote be previously taken as to the expediency of coming to any decision on the question raised. If 'the previous question' of expediency be negatived, the motion to which it referred is only got rid of for the time, whereas a direct negative to the motion itself would be a proscription of it for the remainder of the session, as well as a denial of its principle. With respect to a bill, moving that it 'be read this day six months,' or 'this day three months,' is a mode of throwing it out without coming to an express declaration against the principle of the measure.—*Dod's Parl. Comp.*

Avoir-du-poise, avoirs-de-pois, or **Aver-du-pois** [O. Fr.], (*to have full weight*), a certain method of weighing goods, allowing 16 ounces to the pound, whilst Troy-weight allows but 12.

Avona, the ancient name of Bungay, in Suffolk, and Hampton Court.

Avonæ Vallis, the ancient name of Avondale, or Oundale, in Northamptonshire.

Avoucher, the calling upon a warrantor to fulfil his undertaking.

Avoué, a French attorney.

Avow. See ADVOW.

Avowant, one who makes an avowry.

Avowee. See ADVOWEE.

Avowry, or **Advowry,** a pleading in the action of replevin, which states the nature and merits of the defence, and justifies or avows taking the distress in his (the defendant's) own right, which, if established, will entitle him to a judgment *de retorno habendo.* An avowry is in the nature of a declaration, the avowant being a plaintiff (*actor*). In an avowry for rent, the landlord-defendant need not set out his title by 11 Geo. II. c. 19, s. 22; but this does not extend to *damage feasant.*—*Woodf. Land and T. by Horn,* 681, *et seq.*

Avowterer, Avouterer, an adulterer. The crime being called *Avowtry.*

Aureney, Aurney, Aurigny, the ancient name of Alderney, an island in the English Channel.

Aureo Vado, de, the ancient name of Guldeford, or Guildford, in Surrey.

Aures, a Saxon punishment by cutting off the ears, inflicted on those who robbed churches, or were guilty of any other theft.—*Fleta,* lib. 1, c. xxxviii. par. 10.

Auricularius, a secretary.—*Mon. Ang.* 10.

Aurum Reginæ, queen's gold. A royal revenue belonging to every queen consort during her marriage with the king, and due from every person who has made a voluntary offering or fine to the king, amounting to ten marks or upwards, for and in consideration of any privileges, grants, licenses, pardons, or other matters of royal favour conferred upon him by the king. It is due in the proportion of one-tenth part over and above the entire offering or fine made to the king, and becomes an actual debt of record to the queen's majesty by the mere recording of the fine.—2 *Step. Com.* 455.

Auscultare, to hear monks read and to direct them how and in what manner they should do it with a graceful tone of accent to make an impression on their hearers. This was required before they were admitted to read publicly in the church.

Australian Colonies, see 13 & 14 Vict. c. 59; and 18 & 19 Vict. c. 56; and 25 Vict. c. 8.

Australia (South), see 4 & 5 Wm. IV. c. 95; 1 & 2 Vict. c. 60; 5 & 6 Vict. c. 61; and 18 & 19 Vict. c. 56.

Australia (Western), see 10 Geo. IV. c. 22; and 9 & 10 Vict. c. 35.

Austurcus, and **Osturcus,** a goshawk, whence a falconer keeping such kind of hawks is called *ostringer. Unum austurcum* used to be reserved as a rent to the lord, as may be seen in some ancient deeds.—*Blount.*

Auter, or **Autre, action pendant** [O. Fr.], (*another action pending*).

Auter, or **Autre droit,** in right of another, e. g. a trustee holds trust-property in right of his *cestui que trust.* A *prochein amy* sues in right of an infant.—2 *Bl. Com.* 176.

Authentic, an undoubted original.

Authentic Act, that which has been executed before a notary or other public officer, duly authorised, or which is testified by a public seal, or has been rendered public by the authority of a competent magistrate, or which is certified as being a copy of a public register.—*Civil Law.*

Authentication, an attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed so to do.

Authentics, a collection of the Novels of Justinian, made by an anonymous author. So called on account of its authority.—*Civil Law.*

There is another collection so called, compiled by Irnier, of incorrect extracts from the Novels, and inserted by him in the Code, in the places to which they refer.

Authorities, the citations which are made of laws, acts of the Legislature, precedents, and decided cases, and opinions of elementary writers.

Authority, a right; an official or judicial command; also a legal power to do an act given by one man to another. Consult *Vin. Abr.* tit. '*Authority,*' and *Sugden on Powers.*

Autochiria, Autoctonia, Autophonia, suicide.—*Dunglison.*

Autocracy, an irresponsible monarchy, such as that of Russia.

Autograph, the real hand-writing of any penman or author.

Autonomasy [fr. *αὐτός*, self, and *ὄνομα*, Gk., name], in rhetoric a word of general signification, used for the name of a particular thing.

Autrefois [Fr.], formerly; at some other time.

Autrefois acquit (formerly acquitted), a plea in criminal cases; when a person is indicted for an offence and acquitted, he cannot be afterwards indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted on it; and if he be thus indicted a second time, he may plead *autrefois acquit*, which will be a good bar to the indictment. The true test by which the question, whether such a plea is a sufficient bar in any particular case, may be tried, is, whether the evidence necessary to support the second indictment would have been sufficient to procure a legal conviction upon the first.—*R.* v. *Emden*, 9 *East*, 437; 14 & 15 *Vict.* c. 100, s. 28.

Autrefois attaint (formerly attainted), a plea in criminal cases. Before 7 & 8 Geo. IV. c. 28, s. 4, if a man were attainted of treason or felony, whilst the attainder remained in force, he could not, with certain exceptions, be indicted for another felony, whether such other felony were committed before or after his attainder; because, being already attainted, and, therefore, dead in contemplation of law, and his property forfeited, a prosecution for any other offence was considered useless. But now attainder is no bar, unless for the same offence as that charged in the indictment, and in effect this plea is at an end.—4 *Bl. Com.* 337.

Autrefois convict (formerly convicted). Before 6 Geo. IV. c. 25, a man convicted of a clergyable felony, and who had prayed the benefit of clergy, might plead such conviction and prayer of clergy in bar of any subsequent indictment, either for the felony of which he was convicted, or for any other clergyable felony committed by him previously to his conviction. This statute restricted the benefit of the allowance of clergy to the charge upon which it was allowed, and now a previous conviction can only be pleaded in bar of any subsequent indictment for the felony of which the defendant has previously been convicted. The 7 & 8 Geo. IV. c. 28, s. 6, abolished the benefit of clergy in all cases of felony; 14 & 15 Vict. c. 100, s. 28.

Autre vie, *tenant pur* (tenant for another's life). An estate for the life of another is an estate of freehold, though it is the lowest or least estate of freehold which the law acknowledges. An estate for the life of another is not so great as an estate for one's own life. See *Watkins's Principles of Conveyancing*, c. iv.

Autumn, the decline of summer. Some continental nations compute their years by autumns; but the Anglo-Saxons by winters.

Autumnalia, fruits that ripen during the autumnal harvest.

Avulsion [fr. *avulsio*, Lat.], lands torn off by an inundation or current from property to which they originally belonged, and gained to the estate of another; or where a river changes its course, and instead of continuing to flow between two properties, cuts off part of one and joins it to the other property. The property of the part thus separated continues in the original proprietor, in which respect *avulsion* differs from *alluvion*, i. e. where an addition is insensibly made to a property by the gradual washing down of the river, for such an addition becomes the property of the owner of the lands to which it is made.

Avunculus, an uncle by the mother's side.

Avunculus magnus, a great uncle.

Avus, a grandfather.

Auxesis [fr. *αὔξησις*, Gk.], a figure in rhetoric, by which anything is magnified too much.

Auxilium ad filium militem faciendum et filiam maritandam, an ancient writ which was addressed to the sheriff to levy compulsorily an aid towards the knighting of a son and the marrying of a daughter of the tenants *in capite* of the crown.—*Abolished.*

Auxilium curiæ, a precept or order of Court citing and convening a party, at the suit and request of another, to warrant something.—*Ken. Paroch. Antiq.* 477.

Auxilium facere alicui in curia regis, to become another's friend and solicitor in the Queen's Courts, an office undertaken for and granted by some courtiers to their dependents in the country.—*Ibid.* 126.

Auxilium regis, the King's aid or money levied for the royal use and the public service, as taxes granted by Parliament.—1 *Bl. Com.* c. viii.

Auxilium vicecomiti, a customary aid or duty anciently payable to sheriffs out of certain manors, for the better support of their offices.—*Mon. Angl.*

Await [fr. *awaiti*, Wall., to watch, *waiti* to look], waylaying, a lying in wait to execute some mischief.—13 *Ric. II.* st. 2.

Award [the primative sense of *ward* is shown in the It. *guardare*, Fr. *regarder*, to look. Hence, Prov. Fr. *eswarder* (answering in form to award), to inspect goods, and, incidentally, to pronounce them good and marketable; *eswardeur*, an inspector.—*Hecart.* An award is, accordingly, in the first place, the taking a matter into consideration and pronouncing judgment upon it; but in later times the designation has been transferred exclu-

sively to the consequent judgment.—*Wedgw.*], a document containing the determination of commissioners, under an Inclosure Act, or other public statute; also an instrument embodying an arbitrator's decision on a matter submitted to him. It must follow the submission, but need not be necessarily in writing, unless prescribed. A parol award, however, is objectionable. Joint arbitrators should execute the award at the same time and in the presence of each other. An award is generally considered as published as soon as the arbitrator has done some act whereby he becomes *functus officio*, and has declared, and can no longer change, his final mind. As soon as the award is executed, notice thereof should be given to all the parties that it is made and ready to be delivered; and if the submission direct that it be delivered to the parties by a certain day, in order to be valid it must be so delivered accordingly. It is usual for an arbitrator to keep the award until his costs are paid. The award must be duly stamped.

Any words expressive of a decision is an award. Recitals are unnecessary. The award must be entire, final, on all the matters referred, or it will be void *in toto*; unconditional, but it may be alternative; without reservation or delegation, except as to ministerial acts; certain, mutual, possible, and consistent, without palpable mistake; when partly good and partly bad, the good part, if separable from the bad, will be valid.

An award is a final and conclusive judgment as between the parties, on all matters referred by the submission, and a court has not any power to alter or amend it. The award should be performed by all the parties within a reasonable time.

An award may be enforced by an action at law, which is the only remedy for disobedience thereto, where the submission cannot be made a rule of court, and no statute provides for a special mode of enforcement. *Assumpsit* lies when the submission is not under seal; and debt on award of money, and on an arbitration bond. Covenant will lie when the submission is by deed for the breach of any part of the award; and case for the non-performance of a duty awarded.

Equity will enforce specific performance of an award, when there is not any complete remedy at Common Law.

When the submission has been made a rule of court, the party who refuses or neglects to perform what the award orders is considered as disobedient to the rule of court, as much as if the award were part of the rule, and is consequently guilty of a contempt of that court by which the rule has been made. The process, therefore, by which the courts punish contempts, called an attachment, will be issued against him to compel his obedience to the directions of the arbitrator, under the penalty, in ordinary cases, of imprisonment until he comply.

The 1 & 2 Vict. c. 110, s. 18, gives to a rule of court for the payment of money the effect of a judgment, and affords a simple and summary method of obtaining execution for the amount awarded.

Where a cause is referred, the award may be enforced by issuing execution in the cause for the money or costs awarded. In this case, a personal demand of payment is not necessary, as it is in proceeding for an attachment or a rule, under the statute of Victoria, on the award itself.

Any award made on a compulsory reference, under 17 & 18 Vict. c. 125, may, by authority of a judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed (s. 10).

When any award made on any submission, document, or order of reference, directs that possession of any lands or tenements capable of being the subject of an action of ejectment, shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the court of which the document authorising the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same, claiming under, or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff, as on a judgment in ejectment (s. 16).

All applications to set aside any award made on a compulsory reference, under 17 & 18 Vict. c. 125, shall and may be made, within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, and if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties (s. 9).

Where a rule to show cause is obtained to set aside an award or annuity, the several objections thereto, intended to be insisted upon at the time of moving, to make such rule absolute, shall be stated in the rule to show cause.—*General Rules*, 169.

Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.—*General Rules*, 170.

The grounds for setting aside an award are these:—

(1) When the conduct of the arbitrator is corrupt or irregular;

(2) When the award discloses a mistaken decision in law or fact;

(3) When the award is a nullity;

(4) When it is not final;

(5) When it is uncertain;

(6) When the arbitrator has exceeded his authority;

(7) When a party or a witness is in fault, or new matter has been discovered.

Equity has jurisdiction to set aside an award, on any of the enumerated grounds, when the submission cannot be made a rule of a Common Law Court.

When an action has been referred, and the reference fails, the action proceeds.—*Russell on Arbitration*, pt. iii.

Away-going crops, crops sown during the last year of a tenancy, but not ripe until after its expiration. The right which an outgoing tenant has to take an away-going crop is sometimes given to him by the express terms of the contract, but where that is not the case, he is generally entitled to do so by the custom of the county: such custom or usage has been held reasonable and valid, and to apply equally to tenants by parol agreement as well as by deed or written contract of demise, and this for the benefit and encouragement of agriculture.—*Woodf. Land. and Ten. by Horn*, 534. See *Wigglesworth* v. *Dallison*, *Doug.* 201; and 1 *Smi. L. C.* 453–469. For the customs of the various counties in England, respecting the most important of the rights and liabilities which exist between an outgoing and incoming tenant, consult *the Table of Customs* given in *Woodf. Land. and Ten. by Harrison*, p. 513–518.

Awm, **Aume**, or **Awame**, a measure of Rhenish wine containing forty gallons, mentioned in some old statutes.—*Blount.*

Awnhinde. See THIRD-NIGHT AWNHINDE.

Axelodunum, the ancient name of Hexham, in the bishopric of Durham.

Ayant cause, a receiver; also a successor or one to whom a right has been assigned, either by will, gift, sale, exchange, or the like.—*French Law.*

Aye [fr. *ἀεί*, Gk., always], an affirmative particle synonymous with *yea* or *yes*; a Lacedemonian oration, spoken sometimes all at once by two-thirds of the House of Commons, who seldom say anything more.—*Pear. Pol. Dict.*

Ayle [fr. *avus*, Lat.], a grandfather. See AIEL.

Ayuntamiento, Justicia, Concejo, Cabildo, Regimiento, the names given in Spain to the councils of the towns and villages; also a congress of officials.

Azaldus, a poor horse or jade.—*Blount.*

Azure [fr. *azzurro*, *azzuolo*, It.; *azul*, Sp., Port., Fr.; Pers. *lazur*, whence *lapis lazuli*, the sapphire of the ancients.—*Diez.*], bright blue, sometimes called *Inde*, from the sapphire, which is found in the East. Heralds who blazon by planets call it *Jupiter*, and when the names of jewels are employed, it is called *Sapphire.* Engravers represent it by an indefinite number of horizontal lines.—*Heraldic Term.*

B a Certificate granted by the Court of Bankruptcy to the assignees or a creditor, when it had refused any further protection to a bankrupt, or had refused or suspended his certificate, which had the effect of a judgment until the certificate was allowed, and was enforcable by a *ca. sa.* It was cancelled by the allowance of the certificate, and called B a, because the form is contained in schedule B a of the 12 & 13 Vict. c. 106; see s. 257. This certificate was abolished by 24 & 25 Vict. c. 134.

Baca, an iron hook, a line with a hook at the end of it.—*Old Records.*

Baccinium, or **Bacina**, a basin or vessel to hold water for washing the hands. There was formerly a service of holding the basin, or waiting at the basin, on the day of the King's coronation.

Bachelacanæ Sylvæ, the woods of Bagley.

Bacheleria, commonalty or yeomanry, in contradistinguishment to baronage.—*Old Records.*

Bachelor [a word of uncertain etymology; *Junius* derives it from *βάκηλος*, Gk., foolish, whence the Italian, *Baccalare*, a coxcomb; *Menage*, from *bas chevalier*, Fr., a knight of the lowest rank; *Spelman*, from *baculus*, Lat., a staff; *Cujos*, from *buccella*, an allowance of provision; others from *bacca-laureus*, Lat., the berry of a laurel or bay, because anciently bachelors had their heads adorned with a garland of bay berries; but the most probable derivation seems to be from *bachgen*, Wel., a boy, fr. *bach*, little, and probably *geni*, to be born. One would suspect that the word might be of Basque origin.—*Wedgw.*], a man who takes the degree of apprentice or student of arts, but not yet a master, at the Universities, introduced in the 13th century by Pope Gregory IX.—*Encyc. Lond.* Also, an unmarried man.

Backadation, a consideration given to keep

back the delivery of stock when the price is lower for time than for ready money.—*Stock Exchange.*

Backberinde, Backverinde, or **Backberend,** bearing upon the back or about a man. Where a thief is apprehended with the things stolen in his possession, also called being taken with the *mainour*, as having the goods in his hand.—2 *Inst.* 188. It was one of the four circumstances wherein a forester might have arrested the body of a trespasser in a forest; viz. *dog-draw*, i.e. drawing after a deer that he has hurt; *stable-stand*, i.e. at his standing with a knife, gun, bow, or greyhound, ready to shoot or course; *back-berend*, i.e. carrying away upon his back the deer which he had killed; *bloody-hand*, i.e. when he had shot or coursed, and was imbrued with blood.—4 *Inst.* 294.

Back-bond, a deed, which in conjunction with an absolute disposition, constitutes a trust. It expresses the nature of the right actually held by a person to whom the disposition is made. It is equivalent to the English deed of declaration of trust.—*Scotch Term.*

Backgammon [fr. *batcke*, Dan. (also *batcke-bord*) a tray, and *gammen*, a game.—*Wedgw.*] a lawful game.—4 *Step. Com.* 339.

Backing *a warrant* of a justice of the peace. Where a warrant which has been granted in one jurisdiction is required to be executed in another, as where a felony has been committed in one county, and the offender is lurking in another county, then, on proof of the handwriting of the justice who granted the warrant, a justice in such other county endorses or writes his name on the back of it, and then gives authority to execute the warrant in such other county.—23 *Geo. II.* c. 26, s. 11; 24 *Geo. II.* c. 55; 13 *Geo. III.* c. 31; 44 *Geo. III.* c. 92. See also 6 & 7 *Vict.* c. 34; 11 & 12 *Vict.* c. 42; ss. 11 to 15, and c. 43; 14 & 15 *Vict.* c. 55; and 16 & 17 *Vict.* 118.

Backside, a term formerly used in conveyances and even in pleadings, and still adhered to with reference to ancient descriptions in deeds, in continuing the transfer of the same properties; it imports a yard at the back part of or behind a house, and belonging thereto; but though formerly used in pleading, it is now unusual to adopt it, for the word 'yard' is preferred.—*Exodus*, iii. 1; 1 *Chit. Gen. Prac.* 177; and *Hale's Hist.*, c. i. p. 12.

Baco, a bacon hog, used in old charters.

Badge [fr. *bode* or *bade*, a messenger, corrupted from *badage*, the credential of a messenger.—*Junius.* Or from *baghe*, Dut., a jewel; or *bague*, Fr., a ring.—*Skinner and Minshew.* It seems to come from *bajulo*, Lat., to carry. See *Wedgw.*], a mark or cognizance worn to shew the relation of the wearer to any person or thing; the token of any thing; a distinctive mark of office or service.—*Encyc. Lond.*

Badger [fr. *bagage*, Fr., a bundle, whence *bagagier*, a carrier of goods; or fr. *bladier*, Fr., a corn-dealer.—*Wedgw.*], a person who buys corn or victuals in one place, and carries them to another to sell and make profit by them. The 5 Eliz. c. 12, empowered magistrates to license badgers for one year, upon their entering into certain recognisances. The 7 & 8 Vict. c. 24, abolished the offence of badgering, and repealed the statutes passed in relation to it, as being pernicious and in restraint of trade.

Badiza, an ancient name of Bath, in Somersetshire.

Badonicus mons, an ancient name of Barnes Down, near Bath.

Bædling (*mollis*), 'Molles (inquit Alcuinus de Offic. Divin.) sunt effeminati, qui vel barbas non habent, sive qui alterius fornicationem sustinent.' These are the μαλακοί mentioned by St. Paul, 1 Corinth. vi. 9, οὔτε μαλακοὶ, οὔτε ἀρσενοκοῖται, κ. τ. λ. The derivation of the Saxon term is very uncertain.—*Theod. Lib. Pœnit.* xxxviii. 3; *Ecgb. Pœnit.* iv. 68; *Anc. Laws of England.*

Bag [fr. *balg*, *bolg*, *bag*, Gael., a wattel], a certain and customary quantity of goods and merchandise in a sack.—*Lex. Merc.*

Baga, a bag or purse. Thus there is the Petty-Bag-Office in the Common Law Jurisdiction of the Court of Chancery, because all original writs relating to the business of the crown were formerly kept in a little sack or bag, *in parvâ bagâ.*—1 *Madd. Prin. Chan.* 4.

Bagavel, Edward I. granted to the citizens of Exeter, by charter, the collection of a certain tribute or toll upon all manner of wares brought to that city to be sold, to be applied towards the paving of the streets, repairing the walls, and maintaining the city, which was commonly called in old English, *begavel*, *bethugavel*, and *chipping-gavel.*—*Antiq. of Exeter.*

Bahadum, a chest or coffer.—*Fleta*, lib. 2, c. xxi.

Bajardour, a bearer of any weight or burden.—*Old Records.*

Bail [fr. *bailler*, Fr., to hand over; fr. *bajulare*, in the sense of making one a *bail* or keeper of the thing handed over, giving it into his bail or control], to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, in order that he may be safely protected from prison. Bail and mainpernors are often confounded, but there is this marked distinction between them:—*mainpernors* are merely a person's sureties who cannot imprison him themselves to secure his appearance, but *bail* may, for they are regarded as his gaolers,

to whose custody he is committed, and therefore, they may take him upon a *Sunday* and confine him until the next day, and then render him to the proper prison. The word 'bail' is never used with a plural termination.

There are several kinds of bail at Common Law:—

(1) Common bail, or bail below, is given to the sheriff, after arresting a person, on a bail bond, entered into by two sureties, on condition that the defendant appear at the day and in such place as the arresting process commands.

(2) Special bail, or bail above, or bail to the action, are persons who undertake generally that if the defendant be condemned in the action, he shall satisfy the debt, costs, and damages, or render himself to the proper prison, or that they will do it for him.

(3) Bail in error: upon any judgment to be given in any action, execution shall not be stayed or delayed by proceedings in error, or *supersedeas* thereupon, without the special order of the court or a judge, unless the person in whose name such proceedings in error be brought, with two, or, by leave of the court or a judge, more than two sufficient sureties, such as the court (wherein such judgment is or shall be given) or a judge shall allow of, shall, within four clear days after lodging the memorandum alleging error, or after the signing of the judgment, whichever shall last happen, or before execution executed, be bound unto the party for whom any such judgment is or shall be given, by recognizance to be acknowledged in the same court, in double the sum adjudged to be recovered by the said judgment (except in case of a penalty, and in case of a penalty in double the sum really due, and double the costs), to prosecute the proceedings in error with effect, and also to satisfy and pay (if the said judgment be affirmed, or the proceedings in error be discontinued by the plaintiff therein) all and singular the sum or sums of money and costs adjudged or to be adjudged upon the former judgment, and all costs and damages to be also awarded for the delaying of execution, and shall give notice thereof to the defendant in error or his attorney. 15 & 16 Vict. c. 76, s. 151. The recognizance of bail in error is conditioned, not alternatively, to pay *or* to render the principal, but if the judgment should be affirmed, or error discontinued, to pay the amount adjudged upon the former judgment, together with the costs and damages. Bail in error, then, unlike any other bail, cannot render their principal in discharge of liability, but must, in the event of his not paying, pay the amount recovered with costs. Bail in error may be taken in the country by 22 Vict. c. 16, s. 5.

(4) Bail on an attachment. When a defendant is arrested upon a writ of attachment, he is brought before a court or a judge and sworn to answer interrogatories, and then committed, unless, by leave of a court or a judge, he enter into a recognizance with sureties, for his appearance in court from day to day, to answer interrogatories concerning such matters as may be objected against him. An attachment for non-payment of money or non-performance of an award is not bailable.

(5) As to bail in actions of ejectment brought by landlords, see 15 & 16 *Vict.* c. 76, ss. 213, 215, and 216.

(6) As to bail on appeals against decisions of the courts refusing or granting new trials, see 17 & 18 *Vict.* c. 125, s. 38.

(7) As to bail upon the removal of a cause from an inferior court, see 2 *Chit. Arch. Prac. by Pren.* pt. v. c. v. p. 1261, *et seq.*

In the Court of Chancery, equitable bail can be given by a defendant upon his being arrested on a writ of *ne exeat regno*, and the sheriff may take bail in cases of attachment for not appearing or answering.

In all cases of felony, and in certain misdemeanors, the magistrates may take bail at the time of the examination; and in all cases where a person charged with an indictable offence is committed to prison to take his trial for the same, it is lawful at any time afterwards, and before the first day of the sessions or assizes at which he is to be tried, for the magistrate who signed the warrant for his commitment to admit him to bail. The justices, however, have no power to admit any person to bail for treason, nor shall bail in that case be allowed, except by order of a secretary of state, or by the Court of Queen's Bench, or a judge thereof in vacation, while, on the other hand, they are bound to admit to bail in all cases of misdemeanor, except such as the Act of 11 & 12 Vict. c. 42, s. 23, particularly enumerates; and as to all felonies, as well as to the misdemeanors so enumerated, they have a discretionary power either to admit to bail, or to commit to prison.

The Court of Queen's Bench, or any judge thereof in time of vacation, may bail for any crime whatever.

Bail-Bond, an instrument prepared in the sheriff's office after an arrest, executed by two sufficient sureties and the person arrested, and conditioned for his causing special bail to be put in for him in the court out of which the arresting process issued.—*Bayley's Prac.* 357.

Bail Court, now called the Practice Court, attached to the Court of Queen's Bench. It hears and determines ordinary matters, and disposes of common motions.

Bailable. An arresting process is said to be bailable when bail can be given, and the per-

son arrested may obtain his liberty in consequence, e. g. a *capias* on *mesne* process is bailable; a *capias ad satisfaciendum* is non-bailable.

Bailee, a person to whom goods are entrusted for a specific purpose.

Bailies, magistrates of burghs, possessed of certain jurisdictions and having the same powers within them as sheriffs of counties. Also officers or persons named by proprietors to give infefftment.—*Scotch Law.*

Bailiff, a keeper or protector, an officer who puts in force an arresting process, a land-steward. There are several kinds of bailiffs, whose offices and employments greatly differ from one another, yet they agree in that the keeping or protection of something belongs to them all.—*Encyc. Lond.*

Bailiff-errant, a bailiff's deputy. See OUTRIDER.

Bailis, letters to raise fire and sword.—*Scotch Law.*

Bailiwick [fr. *bailli*, Fr., and *wic*, Sax.], the jurisdiction of a bailiff. A county. A liberty exempted from a sheriff, over which a bailiff is appointed by the lord of the liberty or franchise, with such powers within his precinct as an under-sheriff exercises under a sheriff.—*Wood's Inst.* 206.

Bailment [fr. *bailler*, Fr. to deliver], a compendious expression to signify a contract resulting from delivery. Sir William Jones has defined bailment to be 'a delivery of goods on a condition, express or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purpose for which they are bailed shall be answered.' He has again, in the closing summary of his essay, defined it in language somewhat different, as, 'A delivery of goods in trust, on a contract expressed or implied, that the trust shall be duly executed and the goods re-delivered, as soon as the time or use for which they were bailed shall have elapsed or be performed.' Each of these definitions seems redundant and inaccurate, if it be the proper office of a definition to include those things only which belong to the genus or class. Both of these definitions suppose that the goods are to be restored or re-delivered. But in a bailment for sale, as in the case of a consignment to a factor, no re-delivery is contemplated between the parties. In some cases, no use is contemplated by the bailee; in others, it is of the essence of the contract; in some cases, time is material to terminate the contract; in others, time is necessary to give a new accessorial right. Mr. Justice Blackstone has defined a bailment to be 'a delivery of goods in trust, upon a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee;' and in another place, as a 'delivery of goods to another person for a particular use.' It may perhaps be doubted, whether (although generally true) a faithful execution (if by faithful be meant a conscientious diligence or faithfulness, adequate to a due execution) or a particular use (if by use be meant an actual right of user by the bailee), constitutes an essential or proper ingredient in all cases of bailment. Mr. Chancellor Kent, in his Commentaries, has blended, in some measure, the definitions of Jones and Blackstone. Without professing to enter into a minute criticism, it may be said that a bailment is a delivery of a thing in trust for some special object or purpose, and upon a contract express or implied, to conform to the object or purpose of the trust.

In the celebrated case of *Coggs* v. *Bernard* (Ld. Raym. 909; 1 Smi. L. C. 147–184), Lord Holt divided bailments thus:—

(1) *Depositum*, or a naked bailment of goods, to be kept for the use of the bailor.

(2) *Commodatum*. Where goods or chattels that are useful are lent to the bailee *gratis*, to be used by him.

(3) *Locatio rei*. Where goods are lent to the bailee to be used by him for hire.

(4) *Vadium*. Pawn.

(5) *Locatio operis faciendi*. Where goods are delivered to be carried, or something is to be done about them, for a reward to be paid to the bailee.

(6) *Mandatum*. A delivery of goods to somebody, who is to carry them, or do something about them, *gratis*.

Bailments are properly divisible into three kinds:—(1) Those in which the trust is exclusively for the benefit of the bailor, or of a third person, when the bailee is liable for gross negligence only. (2) Those in which the trust is exclusively for the benefit of the bailee, who is then bound to the very strictest diligence; and (3) Those in which the trust is for the benefit of both parties, or of both or one of them, and a third party; when the bailee must exercise an ordinary and average degree of diligence. The first embraces deposits and mandates; the second, gratuitous loans for use; and the third, pledges or pawns, and hiring and letting to hire.—*Story's Bailments.*

Bailor, or **Bailer,** a person who commits goods to another party (the bailee) in trust for a specific purpose.

Bail-piece, a piece of parchment containing the names of special bail, with other particulars, which, being signed by a judge, is filed in the court in which the action is pending, and notice of the bail having justified is then given to the opposite party.—*Bayley's Prac.* 361.

Bair-man, a poor insolvent debtor, left bare and naked, who was obliged to swear in court

that he was not worth more than five shillings and five pence.—*Obs.*

Bairns' part, a third part of a defunct's free movables, debts deducted, if his wife survive, and a half if she do not, due to his children.—*Scotch Law.*

Bala-ghaut, above the ghauts, in contradistinction to *Payeen-ghauts*, below the ghauts. The terms are generally applied to the high table-land in the centre of India, towards its southern extremity.

Balance, that which expresses the difference between the debtor and creditor sides of an account; also used commercially to express the difference between the value of the exports from and imports into a country. The balance is said to be favorable, when the value of the exports exceeds that of the imports, and unfavorable when the value of the imports exceeds that of the exports.—*McCull. Comm. Dict.*

Balance-sheet, a statement of an account or business between merchants and others.

Balance of power. When a number of separate and sovereign states have grown up beside each other, the entire system which they constitute may be conceived to be evenly balanced, so long as no single state is in a condition to interfere with the independence of any of the rest. But as in such a system of states there are generally a few which may be considered as leading powers, it is by these being made to counterpoise each other that the balance is maintained. It is in this way only that the safety of the smaller states can be secured. See *Hume's Essays*, 7, part ii.

Balcanifer, or **Baldakinifer,** [fr. *baldanum*, low Lat.], the standard-bearer of the Knights Templars.

Balconies, [fr. *bâla khaneh*, Pers., an upper chamber], small galleries of wood or stone on the outside of houses. The erection of them is regulated in London by the Building Acts.

Bale [fr. *bal*, Sw.; *balla*, Ital.; *balle, bal*, Fr.], a pack or certain quantity of goods or merchandise, wrapped or packed up in cloth and corded round very tightly, marked and numbered with figures corresponding to those in the bills of lading for the purpose of identification.

Balenger, a barge or water-vessel, a man-of-war.

Baleuga, a territory or precinct.

Balistarius, a balister or cross-bow man.

Balistics, the science of throwing missive weapons by means of an engine.

Balk [fr. *valicare*, Ital., to pass over.—*Skinner*], a ridge of land left unploughed between the furrows or at the end of a field.—*Encyc. Lond.*; 2 *Selw. N. P.* 1297 *note* (*t*).

Ballare, to dance.

Ballastage, a toll paid for the privilege of taking up ballast from the bottom of a port or harbour.

Balliers (*inutilis sarcina*), or bail-load (*bag-læs*, Prov. Dan.), persons who, standing on a balk or ridge of ground, give notice of something to others.

Balliva, a bailiwick or jurisdiction.—*Old Records.*

Ballivo Amovendo, an ancient writ to remove a bailiff from his office for want of sufficient land in the bailiwick.—*Reg. Orig.* 78.

Ballot [fr. *balla*, It.; *bala*, Sp.; *balle*, Fr.], a little ball or ticket used in giving votes.

Ballot, to vote for or choose a person into an office by means of little balls of several colors, which are put into a box privately, according to the inclination of the chooser or voter, or by writing the name or names of the candidates upon small pieces of paper and rolling them up, so that they cannot be read, which are put into a box, and when the time limited for the voting is over, are taken out one by one by an indifferent person. The names are then read over, and the number of votes taken, and the candidate who has the majority of votes in his favour is declared duly elected. The ballots for the militia are further suspended by 22 & 23 Vict. c. 15, and 23 & 24 Vict. c. 120.

The ballot rule of building societies provides that when there is a balance at the banker's beyond a certain amount, which is not wanted for advances or other claims, the directors may require the investing members of the society to withdraw, by ballot, the value of as many shares as will be sufficient to exhaust such portion of the money in hand as they shall think proper. The investing members on whom the ballot falls, will receive the value of their shares, including compound interest at the rate on which the society has been formed.

The effect of this rule is to keep the money, as it accumulates, constantly employed in the most advantageous manner for the benefit of the members of the society, and more especially for those who are borrowers. Indeed the ballot rule operates as a safety-valve to dispose of the surplus funds when necessary.—*Stone's Build. Soc.* 34.

Ballot-box, a case made of wood for receiving ballots.

Balnearii, stealers of the clothes of persons bathing in the public baths.—*Civil Law.*

Ban, or **Bann** [Teut.], a proclamation or public notice, or summons or edict, whereby a thing is commanded or forbidden. It is most especially used in the publication of intended marriages, which must be done on three several Sundays, immediately after the second lesson, previous to the marriage, to the end that if any can shew just cause against such marriage, they may have opportunity to make their objections. But the Spiritual

Judge, by a license, may dispense with the formality of publication. If any persons be married without either publication of banns or license, the marriage will be void, and the officiating minister is liable to transportation.—26 *Geo. II.* c. 33.

Banc, Sittings in [fr. *bancus*, Lat., a seat or bench of justice]. Thus *Bancus Reginæ*, or *Bank la Reine*, is the Queen's Bench. *Bancus Communium Placitorum*, or *Bench le Common Pleas*, is the Court of Common Pleas, or the Common Bench. The meeting of four of the judges of a Common Law Court.—11 *Geo. IV.* and 1 *Wm. IV.* c. 70, s. 1, and *Common Law Procedure Act*, 1854, s. 95.

Bancale, a covering of ease or ornament for a bench or other seat.

Banco [Ital.], a commercial term, used to distinguish bank money from the common currency; also, a seat or bench of justice.

Bancus Superior, abbrev. *Banc. Sup.* [Lat.], the Upper Bench, the King's Bench was so called during the Protectorate.

Bandit, a man outlawed, put under the ban of the law.

Bane, [fr. *banja*, Goth., a blow, a wound; *bana*, O. Fl. G., death-blow; *bane*, Mid. Fl. G., destruction; *bana*, A. S., murderer; *bana*, Icel., to slay, *bana-sott*, death-sickness, *bana-sar*, death-wound, &c.; *ben*, a death-wound, now a wheal. Referred by Diefenbach to the root *bang*, a blow; *banga*, *banka*, Icel., to strike. So the verb *schlagen*, which in G. signifies to strike, becomes in Eng. to slay. *Drepa*, Icel., to slay, seems identical with Eng. *drub*, to beat; *vega*, to slay, with *whack*], destruction, overthrow. 'I will be the *bane* of such a person' is a popular saying. When a person receives a mortal injury by anything, such thing is his *bane*. He who is the cause of another's death, is *le bane*, i. e. malefactor.

Baneret, or **Banneret** [Fr.], a knight made in the field, by the ceremony of cutting off the point of his standard, and making it, as it were, a banner. Knights so made are accounted so honorable that they are allowed to display their arms in the royal army, as barons do, and may bear arms with supporters. They rank next to barons; and were sometimes called *vexillarii*.

Bani, deodands.

Banishment [fr. *bannire*, *bandire*, M. Lat., to proclaim, denounce, was formed the O. Fr. compound *fer-bannir* (*bannire foras*), to publicly order one out of the realm, and the simple *bannir* was used in the same sense.—*Wedgw.*], a forsaking or quitting the realm; a kind of civil death inflicted on an offender. It is of two kinds:—one, voluntary and upon oath, called abjuration, the other upon compulsion for some offence. For the Greek and Roman Laws on this subject, consult *Smith's Dict. of Antiq.* tit. '*Banishment.*'

Bank, commercially it is a place where money is deposited for the purpose of being let out to interest, returned by exchange, disposed of to profit, or to be drawn out again as the owner shall call for it. See 7 & 8 *Vict.* c. 32, and 8 & 9 *Vict.* c. 76, s. 5; and also *Joint-stock Banks and Limited Liability.*

The three great national banks are (1) the Bank of England, regulated by 3 & 4 Wm. IV. c. 98; 7 & 8 Vict. c. 32; and 19 & 20 Vict. c. 20; and see 21 Vict. c. 1, and 24 Vict. c. 3. The Bank of England conducts the whole banking business of the British Government. It acts not only as an ordinary bank, but as a great engine of state. It receives and pays the greater part of the annuities which are due to the creditors of the public; it circulates Exchequer bills, and it advances to Government the annual amount of the land and malt taxes, which are frequently not paid until some years thereafter. As to its origin, see 3 *Hall. Const. Hist.* p. 135. (2) The Bank of Scotland, established by Wm. III. Parl. 1, s. 5; 44 Geo. III. c. 23; 9 Geo. IV. c. 65. (3) The Bank of Ireland.—*McCull. Comm. Dict.*

Bank-book, a book kept by a customer of a bank, shewing the state of his account with it.

Bank-credits, accommodations allowed to a person on proper security given to a bank, to draw money on it to a certain extent agreed upon.

Bank-notes, or **Bank-bills,** written or printed promises for money, to be paid by a banking company. They are uniformly made payable on demand. They are not like bills of exchange, mere securities or documents for debt, nor are they so esteemed, but are treated as money in the ordinary course and transactions of business by the general consent of mankind, and on payment of them, whenever a receipt is required, it is always given as for money, not as for securities or notes. *Per* Lord Mansfield, *Miller* v. *Race*, 1 Burr. 457. See 17 & 18 *Vict.* c. 83, s. 11. *Bank of England notes* were made a legal tender by the 5th sec. of 3 & 4 Wm. IV. c. 98, everywhere, except at the Bank and its branches, for all sums above five pounds.

Bankable, discountable, receivable at a bank, as bills of exchange, &c.

Banker, one who receives money in trust to be drawn again as the owner has occasion for it. As to embezzlement and frauds by bankers, see 7 & 8 *Geo. IV.* c. 29, and 20 & 21 *Vict.* c. 54.

Bankers' cash notes, formerly called goldsmiths' notes, because bankers were originally goldsmiths. Written promises given by bankers to their customers as acknowledgments of having received money for their use. They are payable to bearer on demand and considered as money, and transferable from one person to

another by delivery. They are now seldom made except by country bankers, their use having been superseded by the introduction of cheques.

Bankers' cheques, or **Drafts,** written orders or requests, addressed to persons carrying on the business of bankers, and drawn upon them by a party having money in their hands, requesting them to pay on presentment to a person therein named, or to bearer, a certain sum of money.

A stamp duty of one penny is chargeable by 21 and 22 Vict. c. 20, upon 'all drafts or orders for the payment of any sum of money to the bearer on demand, which being drawn upon any banker, or any person or persons acting as a banker, and residing or transacting the business of a banker within fifteen miles of the place where such drafts or orders are issued, have been hitherto exempt from stamp duty.'

It will be prudent to draw all cheques payable to 'order,' since the payee must endorse his signature, which then becomes tantamount to a receipt for the money.

The 21 & 22 Vict. c. 79, enacts that 'whenever a cheque or draft on any banker, payable to bearer, or to order, on demand, shall be issued, crossed with the name of the banker, or with two transverse lines with the words "and company," or any abbreviation thereof, such crossing shall be deemed a material part of the cheque or draft, and, except as hereafter mentioned, shall not be obliterated or added to or altered by any person whomsoever, after the issuing thereof; and the banker upon whom such cheque or draft shall be drawn shall not pay such cheque or draft to any other than the banker with whose name such cheque or draft shall be so crossed, or if the name be crossed as aforesaid without a banker's name, to any other than a banker' (s. 1). 'Whenever any such cheque or draft shall have been issued uncrossed, or shall be crossed with the words "and company," or any abbreviation thereof, and without the name of any banker, any lawful holder of such cheque or draft, while the same remains so uncrossed, or crossed with the words "and company," or any abbreviation thereof, without the name of any banker, may cross the same with the name of a banker; and whenever any such cheque or draft shall be uncrossed, any such lawful holder may cross the same with the words "and company," or any abbreviation thereof, with or without the name of a banker; and any such crossing as in this section mentioned shall be deemed a material part of the cheque or draft; and shall not be obliterated or added to or altered by any person whomsoever after the making thereof; and the banker upon whom such cheque or draft shall be drawn, shall not pay such cheque or draft to any other than the banker with whose name such cheque or draft shall be so crossed as last aforesaid' (s. 2). 'If any person shall obliterate, add to, or alter any such crossing with intent to defraud, or offer, utter, dispose of, or put off with intent to defraud, any cheque or draft on a banker, whereon such fraudulent obliteration, addition, or alteration has been made, knowing it to have been so made, such person shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported (*sic.*) beyond the seas for life, or to such other punishment as is enacted and provided for those guilty of forgery of bills of exchange, in the statute in that case made and provided' (s. 3). 'Any banker paying a cheque or draft which does not at the time when it is presented for payment plainly appear to be or to have been crossed as aforesaid, or to have been obliterated, added to, or altered as aforesaid, shall not be in any way responsible or incur any liability, nor shall such payment be questioned by reason of such cheque having been so crossed as aforesaid, or having been so obliterated, added to, or altered as aforesaid, and of his having paid the same to a person other than a banker, or other than the banker with whose name such cheque or draft shall have been so crossed, unless such banker shall have acted *malâ fide*, or been guilty of negligence in so paying such cheque' (s. 4).

This Act of Parliament was occasioned by the case of *Simmonds* v. *Taylor* (2 C. B. (N. S.) 528), which ruled that the enactment in 19 & 20 Vict. c. 25, that the additions, in that statute mentioned, across the face of a draft on a banker, shall have the force of a direction to the bankers, that the same is to be paid only to or through some banker, did not apply to the time when the draft was issued, but to the time when it was presented. Therefore where a crossing made by the drawer was before presentment fraudulently erased, and the bankers without negligence paid it over the counter, and not to or through a banker, they were held entitled to debit the amount to the drawer. It also decided that the crossing was no part of the cheque, and therefore the erasure of it did not amount to a forgery of another and different cheque.

Banking, a trading in money.

Bankrupt [fr. *bancus*, or *banque*, the table or counter of a tradesman, and *ruptus*, Lat., broken, denoting thereby one whose shop or place of trade is broken and gone.] A debtor who does certain acts, tending to defeat or delay his creditors, may be adjudged bankrupt, and so made liable to the bankruptcy laws. Before the 'Bankruptcy Act, 1861,' 24 & 25 Vict. c. 134, traders only were liable to be

made bankrupts. That act has, however, rendered non-traders, in certain cases, liable to be made bankrupts. See ACT OF BANKRUPTCY.

With respect to traders, the statutory general description of persons liable to the Bankrupt Laws, is this:—All persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and all persons who, either for themselves, or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire; or by the workmanship of goods and commodities. (12 & 13 Vict. c. 106, s. 65.) The particular traders specified by the statute are:— Alummakers, apothecaries, auctioneers, bakers, bleachers, brokers, brickmakers, builders, calenderers, carpenters, carriers; cattle, or sheep salesmen, coach proprietors, cowkeepers, dyers, fullers, keepers of inns, taverns, hotels or coffee-houses, lime-burners, livery-stable keepers, market-gardeners, millers, packers, printers, shipowners, shipwrights, victuallers, warehousemen, wharfingers; persons using the trade or profession of a scrivener, receiving other men's monies or estates into their trust or custody; persons insuring ships, or their freights, or other matters, against perils of the sea (s. 65). Peers and members of Parliament, if traders within the meaning of the Bankrupt Laws, although they are privileged from arrest, except for felonies or misdemeanors, are liable to be made bankrupt (s. 66). And so are aliens and denizens (s. 277), unmarried women, wives of convicted felons, or trading independently of their husbands, according to the custom of London; executors or other persons carrying on business as trustees in pursuance of a will of a deceased trader, in respect of such business; infants, holding themselves out as adults and *sui juris*, and trading as such; lunatics, if act of bankruptcy committed during a lucid interval; servants of foreign ambassadors; clergymen (for although their trading is prohibited by 57 Geo. III. c. 99, yet they cannot take advantage of the breach of one law, to exempt themselves from the liabilities of another); public officers, if traders; attornies or solicitors, acting as money-brokers; and a man retired from business, in respect of debts contracted during or before trading.

The cases decide the following trades to be within the spirit of the Bankrupt Laws:— Brewers, shipbrokers, pawnbrokers, butchers, clothiers, goldsmiths, shareholders in any joint-stock company carrying on a trade which would subject the shareholders, if individually carrying on such trade, to the Bankrupt Laws, such companies not being incorporated by charter or Act of Parliament (but the shares must not have been purchased for the purpose of founding a bankruptcy); lodging-house keepers, if they be in the habit of supplying their lodgers, and making a profit; newsmen, if they buy newspapers, and sell them at a profit on their own account; papermakers, plumbers, shoemakers, smiths, sugarbakers, tailors, and tanners. The illegality of the trading makes no difference, for a smuggler or unlicensed horse-dealer can be bankrupted. The trading will be sufficient if carried on *to* instead of *in* England. A mere buying only, or selling only, will not suffice; but a buying with intent to sell will, and so will a single instance of trading, when an intent to trade generally is proved. The following persons are not liable to be made bankrupt:—Farmers, graziers, common labourers, or workmen for hire; receivers-general of the taxes, or members of or subscribers to any incorporated, commercial, or trading company, established by charter or Act of Parliament as such (s. 65). Also, according to the cases, the following:—Commissioners of the navy, excise officers, as such; farmers of the customs, fishermen who only sell what they catch, schoolmasters, owners of mines, and an owner of land making bricks upon it for sale.

The Bankrupt Law is a system of positive statute regulations, its character being peculiar and anomalous, and designed for the special benefit of persons with whom debts are contracted in the course of trade. It is distinguished from the ordinary law between debtor and creditor, as involving these three general principles:—(1) a summary and immediate seizure of all the debtor's property; (2) a distribution of it among the creditors in general, instead of merely applying a portion of it to the payment of the individual complainant; and (3) the discharge of the debtor from future liability for the debts then existing.

The execrable atrocity of the early Roman laws, with respect to bankruptcy, is well known. According to the usual interpretation of the law of the twelve tables, which Cicero has so much eulogised (*De Orat.* l. 1), the creditors of an insolvent debtor might, after some preliminary formalities, cut his body in pieces, each of them taking a share proportioned to the amount of his debt; and those who did not choose to resort to this horrible extremity were authorised to subject the debtor to chains, stripes, and hard labour, or to sell him, his wife and children, to perpetual foreign slavery, *trans Tyberim*. This law, and the law giving fathers the power of inflicting capital punishments on their children, strikingly illustrate the ferocious and sanguinary character of the early Romans.

There is reason to think, from the silence of

historians on the subject, that no unfortunate debtor ever actually felt the utmost severity of this barbarous regulation; but the history of the Republic is full of accounts of popular commotions, some of which led to very important changes, that were occasioned by the exercise of the power given to creditors of enslaving their debtors and subjecting them to corporal punishments. The law, however, continued in this state till the year of Rome 427, 120 years after the promulgation of the twelve tables, when it was repealed. It was then enacted, that the persons of debtors should cease to be at the disposal of their creditors, and that the latter should merely be authorised to seize upon the debtor's goods, and sell them by auction, in satisfaction of their claims. In the subsequent stages of Roman jurisprudence further changes were made, which seem generally to have leaned to the side of the debtor, and it was ultimately ruled, that a man who had become insolvent, without having committed any fraud, should upon making a *cessio bonorum*, or a surrender of his entire property to his creditors, be entitled to an exemption from all personal penalties.—*Terasson, Hist. de la Jurisp. Romaine*, 117.

Bankruptcy, the state or condition of a bankrupt.

Bank-stock, shares in the property of a bank.

Bannimus, the form of an expulsion of a member from the University of Oxford, by affixing the sentence in some public place, as a denunciation or promulgation of it.

Banning, an exclamation against, or cursing of another.

Bannire ad placita, ad molendinum, to summon tenants to serve at the lord's cots, to bring corn to be ground at his mill.

Bannition, expulsion.

Bannitus, or **Banniatus,** an outlaw; a banished man.

Bannock, a thick cake of oatmeal, being a perquisite of a mill-servant in thirlage.

Bannum, or **Banleuga,** the utmost bounds of a manor or town.—*Seld. Hist. of Tithes*, 75.

Banyan, a Hindoo merchant or shopkeeper. The word is used in Bengal to denote the native who manages the money-concerns of a European, and sometimes serves him as an interpreter. At Madras the same description of person is called *Dubash*, which signifies one who can speak two languages.

Baptism [fr. *βάπτισμα*, Gk.] See BIRTHS.

Bar, a place set apart in a Court of Law or Equity for the barristers to plead; also the place where criminals stand or sit during their trial.

Bar-fee, a payment taken by a sheriff from an acquitted prisoner.

Bar, Plea in, a pleading shewing some ground for barring or defeating an action at Common Law. A plea in bar is, therefore, distinguished from all pleas of the dilatory class, as impugning the right of action, altogether, instead of merely tending to divert the proceedings to another jurisdiction, or suspend them, or abate the particular writ or declaration. It is, in short, a substantial and conclusive answer to the action. It follows from this property, that, in general, it must either deny all, or some essential part of the averments of fact in the declaration, or, admitting them to be true, allege new facts which obviate or repel their legal effect. In the first case the defendant is said, in the language of pleading, to *traverse* the matter of the declaration; in the latter, to *confess and avoid* it. Pleas in bar are consequently divided into (1) pleas by way of traverse, and (2) pleas by confession and avoidance.— *Step. Plead.* 57.

In Equity, a plea in bar is a defence, resorted to when there is no defect apparent on the face of the plaintiff's bill, alleging affirmative matter, and reducing the case to a particular point, seeking to displace the plaintiff's equity.

Pleas in bar may be ranked under three heads:—

(1) Pleas founded on some bar created by statute, subdivided into:—

(α) The Statutes of Limitations.

(β) The Statute for the Prevention of Frauds and Perjuries, 29 Car. II. c. 3.

(γ) Any other statute, public or private, which has created a bar, as the ship-registry acts for example.

(δ) The plea of a statute fine and non-claim.

(2) Pleas founded on matter of record, or as of record, in some court, divided into:—

First, Matters of record, technically so called; subdivided into:—

(α) A common recovery.

(β) The plea of a judgment at law in a Court of Record.

Second, Matters as of record, subdivided into:—

(α) The sentence or judgment of a foreign court.

(β) A decree of a Court of Equity, signed and enrolled, for the same matter, and substantially between the same parties.

(3) Pleas of matter purely *in pais*, as it is termed, that is, upon matter of fact, not of record. Pleas of this sort go sometimes both to the discovery sought and to the relief prayed by the bill, or to some part of it; sometimes only to the discovery, or part of the discovery, and sometimes only to the relief, or a part of the relief. The principal of them are:—

(α) A release.

(β) A stated account.
(γ) A settled account.
(δ) An award.
(ϵ) A purchase for a valuable consideration.
(ζ) Title in the defendant, generally founded on a will, conveyance, or long, peaceable, and adverse possession.—*Story's Equity Plead.* ch. xiv.

Bar, trial at, the trial of a difficult cause before the four Judges of the Superior Court in which the action commenced, instead of at *Nisi Prius*. It is entirely discretionary with the Court to grant it at all, unless the Crown be actually and immediately interested, when the Attorney-General may demand it as of right. It is moved for after issue joined, and ten days' notice of trial must be given to the parties after notice to the masters of the Court. A special jury of the county in which the venue is laid, is impanelled, unless the Court imposes the terms of trying by a Middlesex or Surrey jury, or the parties consent to the contrary. Paper books of the issue are delivered to the Judges four days before trial.—1 *Chit. Arch. Prac. by Pren.* 355.

Barber-chirurgeons, a corporation of London, instituted by Edw. IV. The barbers were separated from the surgeons by 18 Geo. II. c. 15, and the latter were erected into a royal college of surgeons at the commencement of the present century.—*Dunglison.*

Barbican [fr. *barbacane*, M. Lat.], a watch-tower or bulwark.

Barbicanage, money given towards the maintenance of a barbican; a tribute for repairing or building a bulwark.

Barcarium, a sheep cote; a sheep walk.

Bargain and sale [the word *bargain* is from *barguigner*, O. Fr., to chaffer, bargain, or more properly (says Cotgr.) to wrangle, haggle, brabble in the making of a bargain. The proper meaning of the word is contest, debate, and it was frequently used in O. E. and Sc. in the sense of fight, skirmish], a species of conveyance.

It is of two kinds:—

(1) *Improper.* This is a Common Law conveyance, and is resorted to in order to execute a Common Law power or authority to sell or mortgage realty, given to an executor by a will, or to carry out a power to dispose of property conferred by statute. The operative words are 'bargain and sell.' The estate passes by force of the will or statute, the bargain and sale merely nominating the transferee, and thus ascertaining a purchaser. It does not require enrolment, unless specially directed. See 2 *Hayes's Com.* 80, *n.* (64), and 5 *Eliz.* c. 26, as to Bargains and Sales of Lands in Lancashire, Chester and Durham; 25 *Geo. III.* c. 35, as to extended lands of Crown-debtors; and 12 & 13 *Vict.* c. 106, ss. 208, 209, and 210, as to a bankrupt's entails and copyholds.

(2) *Proper.* This is an equitable conveyance by which the bargainee, who is entitled to the use, becomes immediately seised of the possession or legal estate pursuant to the Statute of Uses, without any other ceremony than the delivery of the deed. There must be a pecuniary, although it may be but a nominal, consideration to raise a use upon this assurance. The appropriate operative words are 'bargain and sell.' A bargain and sale of freeholds must be enrolled within six lunar months from its date, in one of the Courts of Record at Westminster, or with the *custos rotulorum* of the county, under the 27 Hen. VIII. c. 16, which does not, however, extend to any hereditaments lying within any city, borough, or town corporate, wherein the mayors, recorders, or other officers have authority to enrol deeds. An examined copy of the enrolment of the bargain and sale is admissible in evidence, notwithstanding the existence of the original (10 Anne, c. 18, s. 3). A bargain and sale of chattel interests does not require enrolment, and when a bargain and sale is adopted as a disentailing assurance (which by the way is not advisable, since it does not transmute the seisin), such assurance although not enrolled within the time prescribed by 27 Hen. VIII. c. 16, will, if enrolled in Chancery within six calendar months of its execution, be good and valid (3 & 4 Wm. IV. c. 74, s. 41). A chief difference between a proper and an improper bargain and sale, is that in the former a use cannot be limited upon the legal estate in the bargainee, so as to be executed and become a legal estate by the statute, for it must be a trust; but in the latter a seisin is raised, on which uses, which the statute will execute, may be limited.—2 *Sand. Uses*, 53, and *Watkins's Conv.* c. xii.

Bargainee, a person to whom a bargain and sale is made.

Bargainer, or **Bargainor,** a person who makes a bargain and sale.

Barkary, a tan-house, or a place to keep bark in for the use of tanners.

Barleycorn, the third of an inch.

Barmote, Barrmote, or **Barghmote,** a court, not of record, within the Hundred of the Peak in Derbyshire, for the regulation of groves, possessions, and trade of the miners, and lead.

Baron [fr. *beorn*, a S. noble], the fifth and lowest degree of nobility next to a viscount, and above that of a knight or baronet. In the Salic Law it signifies free born. The present barons are—(1) by prescription; for that they and their ancestors have immemorially sat in the Upper House. (2) Barons by patent, having obtained a patent of this dignity to them and their heirs male, or otherwise. (3)

Barons by tenure, holding the title as annexed to land; it is said that it is the possession of their ancient landed territories which imparts the barony to the bishops, thereby giving them a place in the Upper House, although they hold by succession, not by inheritance; but it is rather thought that they sit in the Upper House by immemorial usage. There are also Barons *by office*, as the

Barons of the Exchequer, the Judges of the Court of Exchequer. They were formerly Barons of the realm, but now are persons learned in the laws, who preside in the common law court, called 'The Exchequer of Pleas' at Westminster; their office is also to look into the Crown accounts, for which reason they have auditors under them. See EXCHEQUER, COURT OF.

Barons of the Cinque Ports, members of the House of Commons, elected by those ports, two for each.

Baron Court. See COURT BARON.

Baron and feme [Fr.], husband and wife. A wife being under the protection and influence of her *Baron*, lord, or husband, is styled a *feme-covert* (*fœmina viro cooperta*), and her state of marriage is called her *coverture*. By marriage, the husband and wife are one person in law, that is, the very being or legal existence of the woman is suspended during the marriage; or at least is incorporated into that of her husband, under whose protection and cover she acts; therefore, if an estate be granted or conveyed to a husband and wife, and their heirs, they do not take by moieties, as other joint-tenants, but the entire estate is in both; and if an estate be granted to a husband and wife and another person, the husband and wife have but one moiety, and the other person the other moiety. For the law of Husband and Wife, consult *Roper* or *Bell* on the subject.

Baronet [fr. *Baron*, Fr. and *et*, diminutive termination], the holder of a dignity of inheritance created by letters-patent, and descendible to the issue male. He has precedency before all knights, except Knights of the Garter; and would even take precedency of them, were it not that Knights of the Garter are always privy counsellors. The order was instituted in 1611, by James I., who conferred the dignity in consideration of the payment of 1,000*l.* to the Crown, the money so raised being applied to pay the troops sent to quell an insurrection in the province of Ulster in Ireland. The number was at first 200, but has since much increased. Baronets are allowed to charge their coat with the arms of Ulster, which are a sinister hand, erect, open, and couped at the wrist, *gules* (red), in a field *argent* (white). The title 'Sir' is prefixed to their name. The first baronet ever created was Sir Nicholas Bacon, of Redgrave in Suffolk, whose successor is therefore styled *Primus Baronetorum Angliæ*.—1 *Bl. Com.* 403.

The feudal tenants next below the degree of a baron were called *baronetti*, *baronuli*, *baronculi*, *baroncelli*, but as the same class of tenants were also termed *bannerets*, the two names, from their resemblance, were sometimes confounded, and in several instances, where *baronetti* is written in the printed copies, Spelman found *bannereti* in the MS. rolls of Parliament. Still he shows conclusively, by early examples, that *baronettus* is not a mere corruption of *bannerettus*, but was used in the sense of a lesser baron.—*Wedgw.*

Barony, or **Baronage**, the honor and territory which give title to a baron; also the body of barons and peers.

Barony of Land, a quantity of land amounting to 15 acres.

Barrator, or **Barretor** [fr. *barrateur*, Fr., a deceiver], a common mover of suits and quarrels in disturbance of the peace, either in courts or elsewhere; one who is himself never quiet, but is at variance with others, taking or detaining possession of houses and lands or goods by false invention, &c. He is the most dangerous oppressor in the law, for he oppresses the innocent by color of law, which was made to protect them from oppression. The punishment is fine and imprisonment; and if the offender belong to the profession of the law, he is disabled from practising for the future.—12 *Geo. I.* c. 29; 21 *Geo. II.* c. 3. No one can be a barrator in respect of one act only, it must be several.

Barratry, or **Barretry** [fr. *barratrare*, Ital., to cheat, or *baret*, Ang.-Nor., a quarrel], a quarrel or contention; the act of a barrator. It used to be applied to the obtaining benefits at Rome. In marine insurance, it is the commission of any fraud upon the owners or insurers of a ship by the master or crew, as deserting her, sinking her, or doing any act which may subject her to arrest, detention, loss, or forfeiture, &c. It is the practice in most countries to insure against barratry. Many foreign jurists hold, that it comprehends every fault which the master and crew can commit, whether it arise from fraud, negligence, unskilfulness, or mere imprudence. But in this country it is ruled, that no act of the master or crew shall be deemed barratry, unless it proceed from a criminal or fraudulent motive.—*Park on Insurance*, c. v.; *Marshall on Insurance*, b. 1. c. xii. s. 6; *Arnould on Insurance.*

In Scotland, it is the crime of a judge who is induced, by bribery, to pronounce a judgment; and it is also applied to the simony of clergymen, going abroad to purchase benefices from the see of Rome.—*Jamieson.*

Barrel, a measure of 36 gallons.

Barren money, money not put out at interest.

Barrister, or **Barrastor,** a councillor or advocate learned in the law, admitted to plead at the bar, and there to take upon himself the protection and defence of clients. He is termed *jurisconsultus* and *licentiatus in jure.* As to his fees in the 15th century, see 3 *Hall.* M. A. p. 371.

A counsel can maintain no action for his fees, which are given not as a salary or hire, but as a mere *honorarium* or gratuity, which a barrister cannot demand without doing wrong to his reputation. Even an express promise by a client to pay money to counsel for his advocacy is not binding. See *Kennedy* v. *Brown,* 9 *Jurist N. S.* 119, where the whole law on the subject of counsels' fees is elaborately discussed. Hence the employment of counsel would be called in the civil law a mandate. Moreover, the payment of a fee does not depend upon the event of a cause; and for the purpose of promoting the honor and integrity of the bar, it is expected that all their fees should be paid when their briefs are delivered. On the other hand he is not liable to an action for negligence or unskilfulness.

In order to encourage due freedom of speech in the lawful defence of clients, and at the same time to give a check to unseemly licentiousness, a counsel is not answerable for any matter by him spoken relative to the cause in hand and suggested in his client's instructions, although it should reflect upon the reputation of another, and even prove absolutely groundless; but, if he speak an untruth of his own invention, or even upon instructions, if it be impertinent to the cause in hand, he is then liable to an action by the party injured. It is a great principle, that no action can be maintained for slander, uttered by counsel in the course of judicial proceedings, if it be pertinent to the subject-matter of discussion.

Barristers are either utter or *outer* barristers, who plead without the bar; or Queen's counsel and serjeants-at-law, who plead within the bar.

Domat remarks (2 *Dom.* b. 2, tit. 6, c. ii.), that the duties of advocates may be comprehended in two maxims: (1) Never to defend a cause which is unjust. (2) Never to defend just causes, but by the dictates of truth and justice. See *Hutchinson* v. *Stephens,* 1 K. 668.

Barrow [fr. *beorg,* Sax., a heap of earth], a large hillock or mound, found in many parts of England, said to be a Roman *tumulus,* or sepulchre.—*Encyc. Lond.*

Barter [fr. *baratar,* Sp., to overreach or circumvent], to exchange one commodity for another, or truck wares for wares.

Barton, Berton, or **Burton** [fr. *beretun, berteun, bere wic,* A. S., a court-yard, corn-farm; fr. *bere,* barley, and *tun,* inclosure, or *wic,* dwelling. A. S.—*Bosw.*], demesne lands of a manor, a great farm, a manor-house, out-houses, fold-yards, a court-yard.

In the 2 & 3 Edw. VI. c. 82, barton lands and demesne lands are used as synonymes. *Blount* says it always signified a farm distinct from a mansion; and *bertonarii* were farmers or husbandmen who held bartons at the will of the lord. In the west of England they call a great farm a *barton,* and a small farm a *living.*—*Encyc. Lond.*

Bas-Chevaliers, low or inferior knights, holding military fees by a base tenure, as distinguished from bannerets, chief or superior knights. Simple knights are called knights bachelors, *bas-chevaliers.*

Base-court, an inferior court, not of record, as a court-baron, court-leet, &c.

Base-estate, lands held by base tenants, who performed villeinous services to their lords; but there is a difference between a base estate, and villenage, for to hold in pure villenage is to do all that the lord commands; and if a copyholder have but a base estate, he not holding by the performance of every commandment of his lord, cannot be said to hold in villenage.—*Kitch.* 41.

Base-fee, this species of inheritable freehold is marked, as to its duration or time of continuance, by an event beyond which it is not to endure. The event is the qualification which gives a name to this estate, and ascertains its determination. A fee qualified is frequently called a fee-base, i. e. impure, defective, and circumscribed. There is hardly any event, provided it be lawful, and do not violate the rule against perpetuity, which may not be made the cause of the determination of this fee.

The following events are specimens of qualifications, which may be expressly annexed to this estate.

A limitation to A. and his heirs;

(1) Peers of the realm;

(2) Lords of the manor of Blackacre;

(3) Tenants of the manor of Dale;

(4) During the time whilst a particular tree shall stand;

(5) Till the marriage of a certain person takes place;

(6) Till certain debts be paid;

(7) Till default be made in payment of a given debt, at a certain time;

(8) Until a minor shall attain his majority.

When these events terminate, or the acts are done or omitted to be done, according to the meaning of the given restrictions, the fee-qualified will cease; but it may possibly, as is obvious, continue for ever, in those instances especially where the qualification is not certain to take place. The estates will then continue

to all eternity, precisely in the same manner, as if no collateral event, giving to the estate a determinate character, had been annexed to it. A base-fee may arise in the absence of any express qualification when it is made determinable by construction of law, on a certain event. As where a tenant-in-tail, with remainder to a stranger, conveys the fee-simple to another in the property entailed upon him, such other takes a qualified fee by legal construction, determinable on the death of the tenant-in-tail, and failure of the issue under the entail. Another example of such an estate is, when a tenant-in-tail, not being himself entitled to the immediate remainder or reversion in fee, conveys without the consent of the protector of the settlement, he then transfers a base-fee, determinable on the failure of his issue in tail (3 & 4 Wm. IV. c. 74, s. 34). A qualified fee is confined in its extent, and confers a limited power of alienation, entitling the owner to give an interest of the same extent and continuance only to another person which he has in himself. So that the estate will, notwithstanding the transfer, be determinable, and into whose hands soever it may come, will cease on the happening of the event upon which such qualified fee depends.

Base-infeftment, a disposition of lands by a vassal, to be held of himself.—*Scotch Law.*

Base-rights, those by which a granter creates a subinfeudation in favor of a vassal, to be held of himself.—*Ibid.*

Baselard, or **Basillard,** a weapon, a poignard.—*Speight's Chaucer*; 12 *Ric. II.* c. 6.

Basels, coins abolished by Hen. II. A.D. 1158.

Basileus [Gk.], a king.

Basilica, imperial constitutions.—*Civil Law.*

Basket tenure, lands held by the service of making the king's baskets.

Basnetum, a helmet.

Bassa tenura, a base tenure, was a holding by villenage or other customary service, opposed to *alta tenura*, the highest tenure *in capite*, or by military service.

Basset, an unlawful game.

Bassinet, a skin used by soldiers for coverings.

Bastard [fr. *βασσαρίς*, Gk., a concubine; or *bastaerd*, Brit., *nothus*, *spurius*; or *bastard*, fr. *bas*, low, and *start* (*steort*, A. S.), risen, upstart, or fr. *baos*, Gael., fornication], a child not born in lawful wedlock (i. e. whose parents are not married to one another), or not born within a competent time after the determination of wedlock by judicial dissolution or death. A bastard, by the law of England, is incapable of inheriting land, being accounted *filius nullius*, the son of nobody.—1 *Steph. Com.* 440. See NATURAL CHILD.

Bastardy, the state of a person not born in lawful wedlock.

Bastardy-bonds, to indemnify parishes as to natural children likely to be born, are made void by 4 & 5 Wm. IV. c. 76 s. 70.

Bastard eigné, an elder son born before marriage; thus, if a man have a natural son, and afterwards marry the mother, and by her have a legitimate son, the latter is called *mulier puisné*, and the elder son *bastard eigné*.—*Watk. Descent*, c. v.

Bastart, one born in concubinage, a bastard.

Baston, a staff or club.

Bas-ville, suburbs of a town.

Batable-ground, land that is in controversy, or about the possession of which there is a dispute, as the lands which were situated between England and Scotland before the Union.

Bath, Knights of the, a military order of knighthood, instituted by Richard II., who limited their number to four. Henry IV. increased them to 36. The order received its denomination from a formerly observed custom of bathing before the knights received the golden spur. The badge or symbol is a sceptre, rose, thistle, and three imperial crowns, conjoined within a circle, upon which is the motto—'*Tria juncta in uno*,' alluding to the three cardinal virtues—faith, hope, and charity. George I. revived the order by the solemn creation of a great number of knights. The order was newly regulated by a notification in the *London Gazette* of 25th May, 1847, and 16th Aug. 1850.

Batta, deficiency, discount, allowance to troops in the field.—*Indian.*

Battel, Wager of, a form of trial formerly used in military cases, arising in the court of chivalry and honour, in appeals of felony, in criminal cases, and in the obsolete real action called a writ of right. The question at issue was decided by the result of a personal combat between the parties, or, in the case of a writ of right, between their champions. See 4 *Steph. Com.* 496. Abolished by 59 *Geo. III.* c. 46; 1 *Hall. M. A.* c. ii. pt. 2, p. 242.

Battersea Park, see 14 & 15 Vict. c. 77.

Battersega, the ancient name of Battersea, in Surrey.

Battery [*batterie* Fr. fr. *battre*, to beat], beating and wounding. To beat, also, in the legal acceptation of the term, means not merely to strike forcibly with the hand, or a stick, or the like, but includes every touching or laying hold, however trifling, of another's person or clothes, in an angry, revengeful, rude, insolent, or hostile manner. It is a good defence to prove that the alleged battery happened by misadventure, or that it was merely an amicable contest, or that it was the correcting of a child by its parent, the correcting of a servant or scholar by his master, or the punishment of

the criminal by a proper officer, or that the prosecutor assaulted or beat the defendant first, and that the defendant committed the alleged battery merely in his own defence. So a husband may justify a battery in defence of his wife, a wife in defence of her husband, a parent in defence of his child, a child in defence of his parent, a master in defence of his servant, and a servant in defence of his master, or that it was committed in defence of possession, or that the defendant, as an officer of justice, arrested the prosecutor by virtue of a certain writ or process, which is the alleged battery complained of; or that the complaint has been disposed of by two justices either by conviction or dismissal of the case, provided, in the former case, the defendant has paid the penalty, and suffered the imprisonment awarded; and, in the latter, the magistrates have dismissed the case, because it was justified, or so trifling as not to merit punishment, and this be forthwith certified under their hands. As to the criminal proceedings for battery, see 24 & 25 *Vict.* c. 100, ss. 42 and 43.

Battlings [fr. *batellus*, Lat., a small measure, fr. *batus*, measure of allowance], an allowance of money, as "*battles*,' or '*battels*,' is an allowance of provisions, and '*to battle*,' to take that allowance.—*Encyc. Lond.*

Bawdy-house [*lupanar*, *fornix*, Lat., fr. *bawd*, dirt], a house of ill-fame, kept for the resort and commerce of lewd people of both sexes. It is a common nuisance. See 25 *Geo. II.* c. 36, made perpetual by 28 *Geo. II.* c. 19; 58 *Geo. III.* c. 70, ss. 7, 8; and 3 *Geo. IV.* c. 114.

Bay, or *pen*, a pond-head made up of a great height to keep in water for the supply of a mill, &c., so that the wheel of the mill may be turned by the water rushing thence, through a passage or flood-gate.—27 *Eliz.* c. 19. Also an arm of the sea surrounded by land except at the entrance.

Bazar, daily market or market-place.

Beacon [fr. *beacen* A. S., a sign, whence *beckon*, to nod], a light-house or sea-mark, formerly used to alarm the country, in case of the approach of an enemy, but now used for the guidance of ships at sea, by night as well as by day. The Trinity House is empowered to set up any beacons or sea-marks wherever they shall be deemed necessary.—8 *Eliz.* c. 13. See 17 & 18 *Vict.* c. 104, ss. 2 & 389—416; and 17 & 18 *Vict.* c. 120, sch.

Beaconage, money paid towards the maintenance of beacons.

Bead [fr. *bede*, Sax., bead], a prayer; to say over beads is to say over one's prayers. They were most commonly in use before printing, when poor people could not afford to buy a manuscript book, though they are still used in Roman Catholic countries. They are not permitted to be brought into England, or any other superstitious things.—13 *Eliz.* c. 2.

Beadle [fr. *beodan*, A. S., to bid], a church-servant who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings, to execute its orders, to attend upon inquests, and to assist the constables.

Beam [fr. *beam*, Sax., tree], the part of a stag's head, whence the horns spring, like branches out of a tree. A common balance of weights in cities and towns.

Beams, and **Balance**, instruments for weighing goods and merchandize, mostly used in the city of London.

Bearer, a person who carries anything.

Bearers, persons who oppress others, usually called maintainers; justices have power to inquire into their actions, &c.—4 *Edw. III.* c. 11.

Bearrocsira, the ancient name of Berkshire.

Beasts *of chase* [*feræ campestres*, Lat.], there are five, viz. the buck, doe, fox, marten, and roe.—*Co. Litt.* 233.

Beasts *of the forest* are the hart, hind, hare, boar, and wolf. They are also called beasts of venary.—*Ibid.*

Beasts *and fowls of the warren* are the hare, coney, pheasant, and partridge.

Beau-pleader (to plead fairly), an obsolete writ upon the Statute of Marlbridge (52 Hen. III. c. 11), which enacts that neither in the circuits of the justices nor in counties, hundreds, or courts-baron, any fines shall be taken for fair-pleading, i. e. for not pleading fairly or aptly to the purpose; upon this statute, then, this writ was ordained, addressed to the sheriff, bailiff, or him who shall demand such fine, prohibiting him to demand it; an *alias*, *pluries*, and attachment followed.—*Nat. Br.* 596. It used to be had as well in respect of *vicious* as *fair* pleading, by way of amendment.—2 *Inst.* 122; 2 *Reeves*, c. viii. p. 70.

Bebba, the ancient name of Bamburgh, in Northamptonshire.

Beck [fr. *becc*, Sax.], a small brook.

Bed of justice [*lit de justice*, Fr.], the seat or throne upon which the King of France sat when personally present in Parliament; hence it signified the Parliament itself.

Bedel, or **Beadle** [fr. *bydel*, Sax.], a crier or messenger of a court, who cites men to appear and answer; an inferior officer of a parish or liberty. Many other kinds of subordinate officers are so called.

Bedelary, the jurisdiction of a bedel.

Bederepe, or **Biderepe**, a service which certain tenants were anciently bound to perform, as to reap their landlord's corn at harvest.

Bedeweri, banditti, profligate and excommunicated persons.

Bedford level, a tract of fenny land in the

counties of Norfolk, Suffolk, Cambridge, Huntingdon, Northampton, and Lincoln; drained by the Earl of Bedford, in 1649. By the Bedford Level Act, 15 Car. II. c. 17, all conveyances and charges, except leases for seven years, are required to be registered. The practice is to register the instrument at length. The registry does not include wills; but conveyances omitted to be registered are valid for all purposes, except for entitling the grantees to the privileges conferred by the act on the owners of lands within the level. See 11 *Geo. III.* c. 78; 36 *Geo. III.* c. 73; and 1 & 2 *Geo. IV.* c. 64.

Beer [fr. the root *pi*, drink, extant in *piti*, Bohem., to drink, imper. *pi*, whence *pievo*, beer.—*Wedgw.*], a liquor compounded of malt and hops. The selling of it at beer-shops, &c. is principally regulated by 17 & 18 Vict. c. 79.

Bega, a land measure used in the East Indies. In Bengal it is equal to about a third part of an acre.

Beggars [fr. *bag*, Span.], persons who solicit alms. See 5 *Geo. IV.* c. 83; 11 *Geo. IV.* and 1 *Wm. IV.* c. 5; 1 & 2 *Vict.* c. 38. See VAGRANTS.

Begging the question. See PETITIO PRINCIPII.

Begum, a lady, princess, woman of high rank.—*Indian.*

Behaving as heir, conduct by which an heir renders himself liable to the debts of his ancestor, as by taking possession of title-deeds, recovering rent, &c.—*Scotch Law.*

Behoof [fr. *behofian*, A. S., to be fit, *beheve*, advantage], use, service, profit, or advantage.

Belgæ, the ancient name of the inhabitants of Somersetshire, Wiltshire, and Hampshire; also of the city of Wells, in Somersetshire.

Belisama, the ancient name of Rhibelmouth, in Somersetshire.

Bella aqua, de, the ancient name of Bellew and Belleau.

Bella fide, de, the ancient name of Beaufoy.

Bellinus sinus, the ancient name of Billingsgate, in the city of London.

Bello campo, de, the ancient name of Beauchamp.

Bello fago, de, the ancient name of Beaufo.

Bello foco, de, the ancient name of Beaufeu.

Bello loco, de, the ancient name of Beaulieu, in Hampshire.

Bello marisco, de, the ancient name of Beaumarsh.

Bellomariscus, the ancient name of Beaumaris, the county town of Anglesey.

Bello monte, de, the ancient name of Beaumont, a town in the department of the Nord, France.

Bello prato, de, the ancient name of Beaupré.

Bello situ de, the ancient name of Bellasise.

Bello clivum, Bello desertum, Bellus locus, the ancient names of Beaudesert, in Staffordshire.

Bench [fr. *bænce*, A. S.], or **Banc** [Fr.], a tribunal of justice.

Bencher, a senior in the Inns of Court, entrusted with their government or direction. The benchers have the absolute and irresponsible power of punishing a barrister guilty of misconduct, by either admonishing or rebuking him, by prohibiting him from dining in the hall, or even by expelling him from the bar, called disbarring. They might also refuse admission to a student, or reject his call to the bar.

Bench warrant, an attachment issued by order of a criminal court against an individual, either for a contempt, or for the purpose of arresting a person accused, when a true bill has been found against him by a grand jury.

Bench warrant, one signed by a judge, or two justices of the peace to apprehend a prisoner charged with an offence.

Benefactis de, the ancient name of Benfield. *Benedicta est expositio quando res redimitur à destructione.*—4 *Co.* 26.—(Blessed is the exposition when anything is saved from destruction.)

Benefice [fr. *beneficium*, M. Lat., a kindness], an ecclesiastical living and promotion, a rectory or vicarage; all church preferments except bishoprics; also a fief in the feudal system.

Beneficiary, he that is in possession of a benefice; also a *cestui que* trust.

Beneficiary privileges, patent-rights and copyrights.

Beneficio primo ecclesiastico habendo, an ancient writ, which was addressed by the King to the Lord Chancellor, to bestow the benefice that should *first* fall in the royal gift, above or under a specified value, upon a person named therein.—*Reg. Orig.* 307.

Beneficium abstinendi, the power of an heir to abstain from accepting the inheritance. *Sand. Just.* 313; *Cum. C. L.* 156.

Beneficium cedendarum actionum, the privilege by which a surety could, before paying the creditor, compel him to make over to him the actions which belonged to the stipulator, so as to avail himself of them.—*Sand. Just.* 456.

Beneficium competentiæ, a right of certain persons which saves them from being condemned beyond such an amount as they can pay without depriving themselves of the necessaries of life.—*Cum. C. L.* 350.

Beneficium inventarii, the privilege which an heir had by an inventory of the testator's property to protect himself from the debts.—*Cum. C. L.* 159.

Beneficium ordinis, or excussionis, or **discussionis,** a privilege by which a creditor was bound to sue the principal debtor first, and could only sue the sureties for that which he

could not recover from the principal.—*Sand. Just.* 456.

Beneficium separationis, the right to have the goods of an heir separated from those of the testator in favour of creditors.—*Civil Law.*

Beneficium non datum nisi propter officium.—*Hob.* 148.—(A remuneration not given, unless on account of a duty performed.)

Beneficium principis debet esse mansurum.—*Jenk. Cent.* 168.—(The benefit of a prince ought to be lasting.)

Benefit Building Societies, certain associations which have been established in different parts of the kingdom, principally amongst the industrious classes, for the purpose of raising by small periodical subscriptions a fund to assist the members thereof in obtaining a small freehold or leasehold property. The legislature has afforded encouragement and protection to such societies by 6 & 7 Wm. IV. c. 32.

Benefit of Clergy [*privilegium clericale*, Lat.], an arrest of judgment in criminal cases. The origin of it was this: Princes and States, anciently converted to Christianity, granted to the clergy very bountiful privileges and exemptions, and particularly an immunity of their persons in criminal proceedings before secular judges. The clergy afterwards increasing in wealth, number, and power, claimed this benefit as an indefeasible right, which had been merely matter of royal favor, founding their principal argument upon this text of Scripture; 'touch not mine anointed, and do my prophets no harm.' They obtained great enlargements of this privilege, extending it not only to persons in holy orders, but also to all who had any kind of subordinate ministration in the church, and even to laymen if they could read, and applying it to civil as well as criminal causes. In criminal proceedings the prisoner was first arraigned, and then he might have claimed his benefit of clergy, by way of declinatory plea, or, after conviction, by way of arrest of judgment. He was then, if a layman, burnt with a hot iron in the brawn of his left thumb, in order to shew that he had been admitted to this privilege, which was not allowed twice to a layman. If a clerk he was handed over to the ecclesiastical court, and after the solemn farce of a mock trial, he was usually acquitted, and was made a new and an innocent man. These exemptions at length grew so burthensome and scandalous, that the legislature, from time to time, interfered, until the 7 & 8 Geo. IV. c. 28, s. 6, abolished benefit of clergy.—2 *Hale's Hist.* 323; 4 *Steph. Com.* 524, *n.*

Benefit Societies, friendly associations, chiefly among the industrious and lower classes of society for the purpose of affording each other relief in time of sickness, and their widows and children assistance at their death. Regimental Benefit Societies were dissolved by 12 & 13 Vict. c. 71. The 23 Vict. c. 13, provides that members of Benefit Societies shall not incur forfeiture by enrolment as volunteers or by service in any corps of yeomanry. See FRIENDLY SOCIETIES.

Benefit of discussion, is that, whereby the antecedent heir, such as the heir of line in a pursuit against the heir of tailzie, &c. must be first pursued to fulfil the defunct's deeds and pay his debts. This benefit is likewise competent in many cases to cautioners.—*Scotch Law.*

Benerth, an ancient service which a tenant rendered to his lord with plough and cart.

Benevolence, a voluntary gratuity given by subjects to their king. It is now yielded with consent of the House of Commons, in pursuance of the petition of right, 3 Car. 1, and 1 W. & M. st. 2, s. 2. Also an aid granted by a tenant to his lord, in times of difficulty and distress, which is abolished by 12 Car. II. c. 24.

Benevolentia regis habenda, the form of purchasing the royal pardon and favor, in ancient fines and submissions, to be restored to estate, title, or place.—*Paroch. Antiq.* p. 172.

Benignè faciendæ sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat, quam pereat; et verba intentioni, non è contra, debent inservire.—*Co. Litt.* 36.—(Constructions are to be made liberally, on account of the simplicity of the laity, that the thing may rather avail than perish; and words ought to serve the intention, not contrarywise.)

This maxim relates to the mode of interpreting written instruments. The judges will rather apply the words of a document to fulfil its lawful intent, than destroy such intent because of insufficient language, for to the intention, when once discovered, all technical forms of expression must give way. Words of art, which, in the understanding of conveyancers, have a peculiar meaning, are not to be scanned and construed too strictly, if, by so doing, one part of an instrument be made inconsistent with another, rendering the whole incongruous and unintelligible; the Courts will, therefore, treat such words as used in their popular sense, and interpret the language of the parties *secundum subjectam materiem*, referring particular expressions to the subject-matter of the agreement, in order to give to the whole full and complete force.

Benignior sententia in verbis generalibus seu dubiis, est præferenda.—4 *Co.* 15.—(The more favorable construction is to be placed on general or doubtful expressions.)

Bequeath [fr. *becwæthan*, fr. *cwæthan*, A. S., to say], to leave personalty by will to another.

Bequeathment, a legacy.

Bequest, a gift of personal property by will; a legacy.

Berbiage, a rent paid for the depasturing of sheep.—*Cowel.*

Berbicaria, a sheep down, or ground to feed sheep.

Bercaria, a sheep-fold, or other enclosure to keep sheep.

Berceia, Bercheria, the ancient names of Berkshire.

Berechingum, the ancient name of Barking, in Essex.

Berefellarii, the seven churchmen, who formerly belonged to the church of St. John of Beverley.

Berewicha, or **Berewica,** a village or hamlet belonging to some town or manor.—*Domesday Book.*

Berghmaster [fr. *berg.*, Sax., a hill], a bailiff or chief officer among the Derbyshire miners, who also executes the office of coroner; a mountaineer or miner.

Berghmoth, or **Berghmote** [fr. *berg.*, Sax., a hill, and *gemote*, an assembly], an assembly or court upon a hill, held in Derbyshire, for deciding pleas and controversies among the miners.—*Squire on the Anglo-Saxon Government.*

Beria, Berie, or **Berry,** a large open field. Those cities and towns in England which end with this word are built on plain and open places, and do not derive their names from boroughs, as *Spelman* imagines. Most of our glossographers, in the names of places, have confounded the word *berie* with that of *bury* and *borough* as the appellatives of ancient towns; whereas the true sense of the word *berie* is a flat wide campaign, as is proved from sufficient authorities by the learned *Du Fresne*, who observes that *Beria Sancti Edmundi*, mentioned by *Mat. Paris*, sub ann. 1174, is not to be taken for the town, but for the adjoining plain. To this may be added, that many flat and wide meads and other open grounds are called by the name of *berries* and *berryfields*; the spacious meadow between Oxford and Isley was in the reign of King Athelstan, called *Bery*, as is now the largest pasture ground in Quarendon, in the county of Bucks, known by the name of *Beryfield*: and, though these meads have been interpreted *demesne*, or manor meadows, yet they were truly any flat or open meadows contiguous to a villa or farm.—*Encyc. Lond.*

Bermundi Insula, the ancient name of Bermondsey, in Surrey.

Bernet [fr. *byran*, Sax.], to burn.

Berra, a plain open heath.

Berry, or **Bury** [fr. *beorg*, Sax., a hill or castle], a villa or seat of habitation of a nobleman; a dwelling or mansion house; a sanctuary.

Bersa, a limit or bound.

Bersare [fr. *bersn*, Ger.], to shoot or hunt.

Berwick-upon-Tweed, a town which was originally part of Scotland, but is now part of the realm of England, and bound by all Acts of the British Parliament, whether specially named or otherwise (20 Geo. II. c. 42, s. 3). It is a county of a town corporate, and is no part of the county of Northumberland. See *Hale's Hist.* p. 257.

Besaile, or **Besayle** [fr. *besaïeul*, Fr.], a father of a grandfather, i.e. a great grandfather.

Bescha [fr. *bescher*, Fr., to dig], a spade or shovel.

Besoin, need. See AU BESOIN.

Bestials, beasts or cattle of any sort.

Betaches, laymen using glebe lands.

Bethlehem, a royal lunatic hospital. See 16 & 17 Vict. c. 96, s. 35.

Better equity. It thus arises:—if a *prior* incumbrancer did not take a security which effectually protected him against any subsequent dealing to his prejudice by the party who had the legal estate, a *second* incumbrancer taking a security, which in its nature afforded him that protection, had 'the better equity.'—*Deark* v. *Hall and others*; 3 *Russ.* 1–65.

Betting-Houses, the act for the suppression of, 16 & 17 Vict. c. 119.

Beverches, bed works, or customary services done at the bidding of the lord by his inferior tenants.

Bewared, expended. Before the Britons and Saxons had introduced the general use of money, they traded chiefly by exchange of wares.

Bewray [fr. *vrohjan*, Goth., to accuse; *wrongia*, *wrogia*, *wreia*, Fris.; *vregan*, *vregian*, A. S.; *roja*, Sw., to discover; *rügen*, G.], properly to accuse, and then to point out or discover.—*Wedgw.*

Biæum [fr. *βίαιον*, Gk.], in rhetoric, a kind of counter argument, whereby something alleged for the adversary is retorted against him and made to conclude a different way; for instance, *Occidisti, quia adstitisti interfecto.* *Βίαιον, Immo quia adstiti interfecto, non occidi; nam si id esset, in fugam me conjecissem.* 'You killed the person, because you were found standing by the body. *Biæum*, Rather, I did not kill him, because I was found standing by his body; since, if that had been so, I should have run away.'

In the Grecian law, it was an action brought against those who ravished women, or used violence to man.—*Encyc. Lond.*

Biathanatoi [fr. *βία*, Gk., violence, and *θάνατος*, death], suicides or persons who meet violent deaths.

Bice Vaisya, a man of the third Hindu cast, who by birth is a trader or husbandman.

Bid [fr. *beidan*, Goth.; *bidan*, *abidan*, A. S., to look for: *sed qu.*], an offer to give a price for an article about to be sold at an auction.

Bidal, or **Bidall** [fr. *biddan*, Sax., to pray or supplicate], an invite of friends to drink ale at the house of some poor man, who hopes thereby to be relieved by charitable contribution. It is something like '*house-warming*,' i.e. a visit of friends to a person beginning to set up house-keeping.—26 *Hen. VIII.* c. 6.

Bidder, a person who makes an offer at an auction, which he may retract before acceptance, although there may be a condition prohibiting it.

Bidding of the beade, a charge or warning given by the parish priest to his parishioners at some special time, to come to prayers upon any festival or saint's day, according to the canons of the church; also asking the banns is called bidding.—*Rubric.*

Biddings, raising the price of a thing at a sale or auction. The French call this *enchérir*. It answers to what the Romans called *licitari*; they used to bid by holding up the hand or finger.

Bidentes, two yearlings, tags, or sheep of the second year.—*Paroch. Antiq.* 216.

Biduana, a fasting for the space of two days. *Matt. West.* 135.

Biens, property; this term comprehends not merely goods and chattels, as in the common law, but also real estate, according to the sense attached to it by the civilians and continental jurists.—*Story's Conf. Laws*, 13.

Biga, a cart, wain, or wagon; a chariot drawn by two horses, harnessed side by side; or, properly, a cart with two wheels, sometimes drawn by one horse.

Bigamus, a person guilty of the offence of bigamy.

Bigamus seu trigamus, &c. est qui diversis temporibus et successivè duas seu tres uxores habuit.—4 *Inst.* 88.—(A bigamus or trigamus, &c. is one who at different times and successively has married two or three wives.)

Bigamy, the felonious offence of a husband or wife marrying again during the life of the first wife or husband. It is not strictly correct to call this offence *bigamy*; it is more properly denominated *polygamy*, i.e. having a plurality of wives or husbands at once; while bigamy, according to the canonists, consists in marrying two virgins successively, one *after* the death of the other, or in once marrying a widow. The 24 & 25 Vict. c. 100, s. 57, provides that 'Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or Ireland, or elsewhere, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour; and any such offence may be dealt with, inquired of, tried, determinated, and punished in any county or place in England or Ireland where the offender shall be apprehended or be in custody, in the same manner in all respects as if the offence had been actually committed in that county or place; provided that nothing in this section contained shall extend to any second marriage contracted elsewhere than in England or Ireland, by any other than a subject of Her Majesty, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who at the time of such second marriage shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.' A prosecution for this crime must be supported by evidence of the first and second marriages of the prisoner, and of the existence of the first wife or husband at the time of the second marriage. If the first marriage be void, an indictment for bigamy cannot be sustained. Thus, if a woman marry A, and in the lifetime of A, marry B, and after the death of A, and whilst B is alive, marry C, she cannot be indicted for bigamy in her marriage with C, because her marriage with B was a mere nullity. Proof, however, of a marriage which is voidable merely will support an indictment for bigamy. The first wife or husband is not a competent witness to prove any part of the case, but the second wife or husband is, after the first marriage is established, for she or he is not legally a wife or husband. See *Roscoe's Crim. Law.*

Bilagines, by laws of corporations, &c.

Bilanciis deferendis, an obsolete writ addressed to a corporation for the carrying of weights to such a haven, there to weigh the wool anciently licensed for transportation.—*Reg. Orig.* 270.

Bilateral contract, a contract in which both the contracting parties are bound to fulfil obligations reciprocally towards each other; as a contract of sale, where one becomes bound to deliver the thing sold, and the other to pay the price of it.—*Civil Law.*

Bilboes [fr. *boja*, Lat.; *boia*, Prov.; *buie*, O. Fr., fetters], a punishment at sea answering to the stocks on land.

Bilinguis, one who uses two tongues or languages; also a jury, part Englishmen and part foreigners, to try a foreigner for a crime.

Bill [fr. *bulla*, M. Lat., a seal], an account; also a document submitted to parliament, in which are contained certain propositions for its consideration. If approved of, it is passed, and becomes law in the shape of a statute.

The business which occupies nearly the whole attention of both Houses of Parliament (except the hearing of appeals by the Lords, and the trial of controverted elections by the Commons) is the passing of bills and the presentation of petitions. Bills are the drafts or skeletons of statutes. They are either (1) *public*, affecting the general interests of the state; or (2) *private*, enabling private individuals, associated together, to undertake works of public utility at their own risk, and, in a degree, for their own benefit; and also relating to naturalisation, change of name, or for perfecting titles to estates, &c. Public bills may originate in either house, unless they be for granting supplies of any kind, or unless they involve directly or indirectly the levying or appropriation of any tax or fine, for then they must be initiated in the Commons; so must all private bills, which authorise the levying of local tolls or rates. Estate, peerage, and naturalisation bills are commenced in the Lords. To bring a private bill into parliament, certain notices and advertisements must be given, and certain plans and documents deposited, according to the standing orders of the houses; a petition must then be presented by a member, which usually sets forth the object desired. This petition is referred to an officer, who reports to the house that the standing orders have been complied with, when leave is given to bring in the bill. A public bill is brought into the House of Commons upon motion made to the house for leave to bring it in; but in the House of Lords a previous permission is unnecessary. The bill is presented to the house and then printed. In the House of Lords, if the bill begin there, it is, when of a private nature, referred to two of the judges to examine and report the state of the facts alleged, to see that all necessary parties consent, and to settle all points of technical propriety. A public bill is read a first time, and, at a convenient interval, a second time; and, after each reading, the Speaker states when the next stage will be taken. The introduction of the bill may be opposed at once, as the bill itself may at any stage. If the opposition succeed the bill must be dropped for that session. After the second reading the bill is considered in committee of the whole house. It is there debated clause by clause, amendments may be made, the blanks supplied, and sometimes it is entirely remodelled. After it has gone through the committee the chairman reports it to the house, with such amendments as the committee have made, and then the house reconsiders the whole bill, and the question is put upon every amendment. When the house has agreed or disagreed to the amendments of the committee, and sometimes added new amendments of its own, the bill is ordered to be reprinted, after which it is read a third time, and amendments are sometimes even then made to it and further clauses added. The Speaker then puts the question whether the bill shall pass. If this is agreed to the title to it is settled. After this the bill as passed is printed, and a deputed member, attended by several more, carries it to the bar of the Lords, delivers it to their speaker, and desires their concurrence. It there passes through the same forms as in the other house, and, if rejected, no more notice of it is taken, but the matter passes *sub silentio*, to prevent unbecoming altercations. But if it be agreed to, the Lords send a message to the Commons that they have agreed to the bill. The bill remains with the Lords if they have made no amendment to it; but if any amendments be made such amendments are sent down with the bill to receive the concurrence of the Commons. If the Commons disagree to the amendments a conference usually follows between members deputed from either house, who, for the most part, settle and adjust the difference; but if both houses remain inflexible, the bill is then dropped. If the Commons agree to the amendments the bill is sent back to the Lords, by one of the members, with a message to acquaint them therewith. The same forms are observed, *mutatis mutandis*, when the bill begins in the House of Lords. And when both houses have done with the bill it is deposited in the House of Peers to wait the royal assent; except in the case of a bill of supply, which, after receiving the concurrence of the Lords, is sent back to the House of Commons, to be by them presented at the bar of the Lords to the Sovereign or the Royal Commissioners. Acts of amnesty are read only once in each house.

For the details of passing bills, consult *Lumley's* or *May's Parl. Prac.*

Bill of Adventure. See ADVENTURE, BILL OF.

Bill of Appeal, an abolished criminal prosecution.—59 *Geo. III.* c. 46.

Bill of Attainder, a bill declaring persons attainted and their property confiscated.

Bill-book, a book in which an account of promissory notes, bills of exchange, and other bills payable or receivable, is stated: it should show the date of the bill, the term it has to run before it becomes due, the names of all the parties to it, and the time of its becoming due, together with the account for which it was given.

Bill Chamber, a department of the Court of Session in Scotland.

Bill in Chancery, or Bill in Equity, a

printed or written statement of a plaintiff's case, which is in the nature of a petition to the Court, praying for some redress. It was probably borrowed from the civil law or from the canon law (which is a derivative from the civil law), or from both.

Bills are distributable into two classes, thus:—

I. ORIGINAL, initiating a suit relating to matters not before litigated: divided into—

(*a*) *Praying relief*, such are bills—

(1) Seeking a decree as to some right claimed, or wrong done or threatened.
(2) Of Interpleader.
(3) Of *Certiorari*.
(4) *Quia timet*.
(5) Of Peace.

(*b*) *Not Praying relief*, such are bills—

(1) To perpetuate testimony, or to examine witnesses *de bene esse*.
(2) Of Discovery (technically so called).

II. Not ORIGINAL or SECONDARY, otherwise called IN THE NATURE OF ORIGINAL BILLS, for controverting, suspending, or reversing a decree or order, or carrying it into execution, or for cross litigation: such are bills—

(1) Of Review.
(2) In the nature of a Bill of Review.
(3) Supplemental, in the nature of a Bill of Review.
(4) Impeaching a decree for fraud.
(5) To suspend a decree or to avoid it for subsequent matter.
(6) To execute a decree in a former suit.
(7) Combining two or more of the qualities of the six former species.
(8) And those called Cross-bills.

The bills not original or secondary, which were an addition to or in continuance of an original bill, such as supplemental bills and bills of revivor, are virtually abolished by 15 & 16 Vict. c. 86, ss. 52, 53. See *Consol. Ord.* 1860, xxxii. r. 2. See *Mitford*, *Story*, or *Welford on Equity Pleading*. For the descriptions of the several bills, see their distinctive names, as Bill of Peace. See PEACE, BILL OF.

The constituent parts of a bill which make up its form are these:—

(1) The title of the Court, the Judge, and the names of the plaintiffs and defendants.

(2) The address to the Lord Chancellor.

(3) The names, descriptions, and residences of the plaintiffs, in order to give notice to all parties of the place of access to them. An executor or administrator need not describe himself as such in this part of the bill, though the fact of his having proved the will or obtained administration from the proper court should appear in the stating part of the bill.

(4) The statement of the plaintiff's case. A bill must contain, as concisely as may be, a narrative of the material facts, matters, and circumstances on which the plaintiff relies; such narrative being divided into paragraphs, numbered consecutively, and each paragraph containing, as nearly as may be, a separate and distinct statement or allegation; it is not to contain interrogatories for the examination of any defendant (15 & 16 Vict. c. 86, s. 10). The charging part of a bill is not prohibited by the new law; and although it is not very often introduced, as it frequently tends to repetition, yet, when its aim is to give an answer by anticipation to a probable defence of the defendant, it may be material and should be inserted.

(5) A bill should pray specifically for the relief which the plaintiff conceives himself entitled to, and also for general relief. The advantage of the general prayer is, that if the plaintiff fail to obtain the relief as specially prayed, he may still get relieved under the general prayer, provided it be consistent with and not contradictory to his specific prayer. The Court will sometimes permit the case to stand over, with liberty to the plaintiff to amend his prayer, if imperfect, when it appears to the Court that he is clearly entitled to some relief.

(6) The names of the defendants.

(7) Counsel's signature, in order to guard against bills containing scandal, impertinence, or irrelevant matter of which the records of the Court might otherwise be made the vehicle.

(8) A note containing the name and address of the plaintiff's solicitor, and his town agent, if any.

The bill is drawn by counsel from instructions laid before him by the solicitor of the plaintiff or plaintiffs, if more than one, who must cooperate and act together in all proceedings taken in the suit, and cannot adopt inconsistent proceedings, their interests being joint; they must also retain one and the same solicitor. The draft of the bill must be signed by counsel, who is responsible for its contents. The bill, having been duly prepared and settled, must be printed on writing royal paper, quarto, in pica type leaded (trifling alterations in writing, such as the correction of names, &c., being permitted); and the copy to be filed must be interleaved with paper of the same description, and stamped with a chancery fee fund stamp of 1*l*. It is then delivered to the Clerk of Records and Writs, in whose division the cause is, for the purpose of having it filed, so as to become a record of the Court. The Clerk marks the number and the year upon the bill, and such number is retained on all pleadings in the same suit, thereby affording a facility of reference.

There are three exceptions to the rule of filing in the first instance a printed bill, for it is provided that the Clerks of Records and

Writs shall receive and file a written copy on paper (duly stamped) of a bill, praying either (1) a writ of injunction, or (2) a writ of *ne exeat regno*, or (3) filed for the purpose, either solely or among other things, of making an infant a ward of Court, upon the personal undertaking of the plaintiff or his solicitor, written at the foot of the bill, to file a printed copy of such bill, which needs not a further filing stamp, *within fourteen days*, which bill, so filed, is to be deemed and taken to have been filed at the time of filing the written copy of it. Should a printed copy not be filed, pursuant to this undertaking, the Clerk of Records and Writs will take the printed bill off the file; and the defendant can obtain his costs to be taxed by the Master, upon producing to him a certificate from the Clerk of Records and Writs that a printed bill has not been filed; and can recover them from the plaintiff in the ordinary manner, no order of the Court being necessary. A plaintiff will not, perhaps, adopt this practice, unless in a case of extreme urgency, since the costs of a written bill will not be allowed, unless the Court orders them, when disposing of the general costs of the cause (15 & 16 Vict. c. 86, s. 6; Consol. Ord. 1860, ix. r. 4). At the time of filing his bill the plaintiff must elect the Court before which he desires his cause to be heard; and this is signified by his writing at or near the top of the bill, 'Master of the Rolls,' 'Vice-Chancellor,' and naming one of the vice-chancellors, and writing 'Lord Chancellor' above the name. The Lord Chancellor may remove a cause from one court to another by special order. Consult *Smith*, *Daniell*, or *Ayckbourn's Chan. Prac.*

Bill of Conformity, a bill filed by an executor or administrator, when the affairs of the deceased are so much involved that he cannot safely administer the estate, except under the direction of a Court of Chancery.

Bill of Costs, an account of the charges and disbursements of an attorney or solicitor, incurred in the conduct of his client's business. It must be delivered, signed, to the client one *calendar* month before an action can be brought to recover the amount thereof, in order to give the client an opportunity of taxing it. Conveyancing costs are taxable. An executor or administrator of an attorney or solicitor must also deliver a bill of costs, signed, before he can sue upon it. See 6 & 7 *Vict.* c. 73.

Bill of Credit, a license or authority given in writing from one person to another, very common among merchants, bankers, and those who travel, empowering a person to receive or take up money of their correspondents abroad.

Bill in Criminal Cases, an indictment for a crime or misdemeanour preferred to a grand jury; evidence in support of it is adduced; if the grand jury think it a groundless accusation, they indorse 'not a true bill,' or 'not found,' and then the party is discharged without further answer, but a fresh bill may afterwards be preferred to a subsequent grand jury. If they are satisfied of the truth of the accusation, they then endorse upon it 'a true bill;' the indictment is then said to be found, and the party stands his trial.—4 *Steph. Com.* 445.

Bill of Debt, or **Bill Obligatory,** when a merchant by his writing acknowledges himself in debt to another, in a certain sum, to be paid on a certain day, and subscribes it at a day and place certain. It may be under seal or not.—*Com. Dig. Merchant, F.* 2.

Bill of Entry, an account of the goods entered at the Custom-house, both inwards and outwards. It must state the name of the merchant exporting or importing, the quantity and species of merchandise, and whither transported, and whence.

Bill of Exceptions, an appeal. If a judge, at the trial of a cause at *Nisi Prius*, mistake the law, either in directing a judgment of nonsuit, or in refusing demurrers to evidence, rejecting or admitting challenges to jurors, and other matters, the counsel for the party dissatisfied with the ruling of the judge, may tender a bill of exceptions at any time before verdict, and require the judge to seal it. The case always goes to the jury, and as soon as the bill of exceptions is completed, and judgment has been given upon the verdict, the mode of proceeding is by bringing error on the judgment, and having the matter determined in a Court of Error, and not in the Court out of which the record issued for the trial. The practice, however, of granting new trials has limited the number of cases in which counsel deem it expedient to tender a bill of exceptions.—1 *Chit. Arch. Prac. by Pren.* 420.

Bill of Exchange, a negotiable security in the form of an open letter of request, or an order from one person to another, desiring him to pay, on his account, a sum of money therein mentioned, to a third person. It is consequently an assignment to a third person of a debt due to the person drawing the bill, from the person upon whom it is drawn. It is a chose in action, but, for the encouragement of commerce, it is assignable, at common law, by mere endorsement, so that very many names are frequently attached to one bill, and each of them is liable to be sued upon the bill, if it be not paid in due time. The person who makes or draws the bill is called the *drawer*, he to whom it is addressed is before acceptance, the *drawee*, and after accepting it, the *acceptor*; the person in whose favour it is drawn is the *payee*, or *holder*; if he endorse the bill to another, he is called the *indorser*, and the person to whom it is thus assigned or

negotiated, is the *indorsee* or *holder*, and so on *ad infinitum*. The earliest recorded bills of exchange according to Beckmann (*Hist. Invent.* iii. 430) are mentioned by the jurist Baldus, and bear date A.D. 1328. But they were by no means in common use till the next century.—1 *Hall. Litt. Hist.* pt. 1, c. i., p. 53, n. (r). Consult *Chitty*, *Story*, or *Byles on Bills*.

Bill of Gross Adventure, an instrument in writing which contains a contract of bottomry, respondentia, and every species of maritime loan.—*Fr. Law.*

Bill of Health, a certificate or instrument, signed by consuls or other proper authorities, delivered to the masters of ships at the time of their clearing out from ports or places suspected of being particularly subject to infectious disorders, certifying the state of health at the time that such ship sailed. A *clean* bill imports that at the time the ship sailed no infectious disorder was known to exist. A *suspected* bill, commonly called a *touched* patent or bill, imports that there were rumours of an infectious disorder, but it had not actually appeared. A *foul* bill, or the absence of a clean bill, imports that the place was infected when the vessel sailed.—*McCull. Com. Dict.*

Bill of Indemnity, an Act of Parliament, passed every session, for the relief of those who have unwittingly or unavoidably neglected to take the necessary oaths, &c. required for the purpose of qualifying them to hold their respective offices.

Bill of Lading, a memorandum, signed by masters of ships, in their capacity of carriers, acknowledging the receipt of merchants' goods; of which there are usually three parts—one kept by the consignor, one sent to the consignee, and one preserved by the master. It is the evidence of the title to the goods shipped; and by its endorsement and delivery, the transfer of the property in the goods specified therein is generally effected. By 18 & 19 Vict. c. 111, the rights of suit under a bill of lading vest in the consignee or endorsee without prejudice to any right of stoppage *in transitu* or of freight.

Bill of Middlesex, a fictious mode of giving the Court of Queen's Bench jurisdiction in personal actions, by arresting a defendant for a supposed trespass when he was considered to be in the custody of the marshal, and then waiving the trespass, and proceeding against such defendant for any other cause of action, upon the ground that when a person was once brought into court, and either in the actual or supposed custody of the marshal, he could not be charged even for any civil matter elsewhere. The 2 Wm. IV. c. 39, abolished this fiction; and now, by 1 & 2 Vict. c. 110, all personal actions in the Superior Courts of Law at Westminster must be commenced by writ of summons.—*Bagley's Prac.* 71.

Bill of Pains and Penalties, a special Act of the Legislature which inflicts a punishment, less than death, upon persons supposed to be guilty of treason or felony, without any conviction in the ordinary course of judicial proceedings. It differs from a bill of attainder in this, that the punishment inflicted by the latter is death.—4 *Steph. Com.* 379.

Bill of Parcels, an account given by the seller to the buyer, containing particulars of the goods bought, and of their price.

Bill of Particulars, a statement of a plaintiff's cause of action, or of a defendant's set-off.

Bill of Rights, a declaration delivered by the Lords and Commons to the Prince and Princess of Orange, 13 February 1689, and afterwards enacted in Parliament, when they became King and Queen. It sets forth that King James did, by the assistance of divers evil counsellors, endeavour to subvert the laws and liberties of this kingdom, by exercising a power of dispensing with and suspending of laws; by levying money for the use of the Crown by pretence of prerogative, without consent of Parliament; by prosecuting those who petitioned the king and discouraging petitions; by raising and keeping a standing army in time of peace; by violating the freedom of election of members to serve in Parliament; by violent prosecutions in the Court of King's Bench, and causing partial and corrupt jurors to be returned on trials; excessive bail to be taken; excessive fines to be imposed, and cruel punishments to be inflicted; all which were declared to be illegal. The declaration concludes in these remarkable words, 'And they do claim, demand, and insist upon all and singular the premises, as their undoubted rights and liberties.' And the Act of Parliament itself (1 W. & M. st. 2, c. 2), recognises all and singular the rights and liberties asserted and claimed in the said declaration, to be the true, ancient, indubitable rights of the people of this kingdom.

Bill of Sale, an assignment by deed of chattels-personal. It is important that the purchaser should take possession of the chattels, since the continuance of their possession by the vendor is a badge or presumption of fraud. It being notorious that bills of sale are frequently resorted to for the purpose of defeating just claims, they are watched with considerable jealousy, and the question arises in every case, Is it an honest or a covenous transaction? It is, however, quite legal to protect property for the general body of creditors against the execution of a particular creditor.

If it be an *absolute* bill of sale, then, unless there have been a *bonâ fide* substantial change

of possession of the goods, an execution creditor cannot be defeated by it; and it must be an exclusive possession under the assignment, and not a concurrent possession with the assignor, otherwise it is fraudulent and void against creditors by 13 Eliz. c. 5, made perpetual by 29 Eliz. c. 5. Where, however, the bill of sale is *conditional* by way of mortgage, and possession is postponed until default, or it is in settlement, there the absence of transmutation seems to be no evidence of fraud, if in accordance with the terms of the assurance. It becomes a frequent enquiry, when the assignor is a trader, whether the bill of sale is fraudulent and an act of bankruptcy. It is so considered if it be void under the statute of Elizabeth; and also if it be of his whole property in consideration of a pre-existing debt; and so an assignment of a part of his property would be, if made voluntarily and in contemplation of bankruptcy. A debtor may, however, prefer one creditor to the rest, and assign property to him even after the others have begun actions against him, so that it be not in anticipation of bankruptcy (See Twyne's case, 3 *Co.* 80 [44 Eliz.], and 1 *Smi. L. C.* 1–24, where the principal cases are collected). By the reputed ownership clause in the Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, s. 125, the personalty, except ships, fixtures, and other immovable chattels, in the order, power, and disposition of a trader at the time of his bankruptcy, with consent of their true owner, vest in the assignees, under an order of the Court, which direct such goods to be sold (See 1 & 2 Vict. c. 110, s. 57, and 7 & 8 Vict. c. 96, ss. 17–21, as to insolvency). Let it be observed that the distinction between absolute and conditional bills of sale in reference to the Act of Elizabeth, has no application to Bankruptcy or Insolvency with regard to reputed ownership, unless perhaps the conditional nature of the possession is notorious, so as to repel the presumption of absolute ownership arising from possession of the chattels. The authorities establish the doctrine that where a trader is permitted by the actual owner to hold himself out to the world as the reputed owner of goods and chattels, such trader shall be deemed the real owner. The 17 & 18 Vict. c. 36, passed to prevent frauds upon creditors by secret bills of sale of personal chattels, provides that every bill of sale, or a copy thereof, must be filed in the Court of Queen's Bench within twenty-one days after its execution, together with an affidavit of the time of such bill of sale being given and a description of the residence and occupation of the deponent, and of every attesting witness of such bill of sale, otherwise it will be void as against assignees in bankruptcy or insolvency and creditors. The residence and occupation of the attesting witness should appear on the bill of sale and also in the affidavit. By 24 & 25 Vict. c. 91, s. 34, no copy of such bill of sale may be filed unless the original be produced, duly stamped. When, therefore, the only description of the attesting witness was in the affidavit to accompany registration, and therein he was described as 'of Liverpool, gentleman,' the fact being that he was an attorney's clerk, it was held insufficient, and the bill of sale invalid.—*Tuton* v. *Sanoner*, 3 H & N. 280. The law of reputed ownership is not affected by the Bills of Sale Act. Per Turner, L. J. in *Stansfield* v. *Cubitt*, 27 L. J. N. S., c. 266. The earliest bill of sale we read of in history was that given to Abraham by the sons of Heth, Gen. xxiii. 20.

Bill of Sight. When a merchant is ignorant of the real quantities or qualities of any goods assigned to him, so that he is unable to make a perfect entry of them, he must acquaint the collector or comptroller of the circumstance; and he is authorised, upon the importer or his agent making oath that he cannot, for want of full information, make a perfect entry, to receive an entry by *bill of sight* for the packages by the best description which can be given, and to grant warrant that the same may be landed and examined by the importer in presence of the officers; and within three days after any goods shall have been so landed, the importer shall make a perfect entry, and shall either pay the duties or shall duly warehouse the same.—3 & 4 *Wm. IV.* c. 52, s. 24.

In default of perfect entry within three days, such goods are to be taken to the Queen's warehouse; and if the importer shall not within one month make perfect entry and pay the duties thereon, or on such parts as can be entered for home use, together with charges of moving and warehouse rent, such goods shall be sold for payment of the duties.—*McCull. Com. Dict.*

Bill of Store, a license granted at the Custom-house to merchants, to carry such stores and provisions as are necessary for a voyage custom free.—3 & 4 *Wm. IV.* c. 52.

Bill of Sufferance, a license granted to a merchant, to suffer him to trade from one English port to another, without paying custom.

Bill in Trade (both wholesale and retail, and among workmen), an account of merchandize or goods delivered, or of work done and performed, &c.

Billa vera, a true bill.

Billeting [dim. of bill, a short note] **Soldiers,** finding quarters for them. This is regulated by the Annual Mutiny Acts.

Billets of Gold, wedges or ingots of gold.—27 *Edw. III.* c. 27.

Billiard Licenses, 8 & 9 Vict. c. 109.

Bills of Mortality, returns of the deaths which occur within a certain district.

It was with the view of communicating to the inhabitants of London, to the Court, and the constituted authorities of the city, accurate information respecting the increase or decrease in the number of deaths, and the casualties of mortality occurring amongst them, that the Bills of Mortality were commenced in London after a visitation of the plague. The object of their publication was to calm exaggerated rumours, and to warn those who could do so conveniently to leave London, whenever the pestilence became more fatal than usual. The bills were commenced in 1592, during a time when the plague was busy with its ravages; but they were not continued uninterruptedly until the occurrence of another plague in 1603, from which period, up to the present time, they have been continued from week to week; excepting during the Great Fire, when the deaths of two or three weeks were given in one bill.

In 1605, the parishes comprised within the Bills of Mortality included the ninety-seven parishes within the walls, sixteen parishes without the walls, and six contiguous out-parishes in Middlesex and Surrey.

In 1626, the city of Westminster was included in the bills; in 1636, the parishes of Islington, Lambeth, Stepney, Newington, Hackney, and Redriff. Other additions were made from time to time. At present the weekly Bills of Mortality include the ninety-seven parishes within the walls, seventeen parishes without the walls, twenty-four out-parishes in Middlesex and Surrey, including the district churches and ten parishes in the city and liberties of Westminster. The parishes of Marylebone and St. Pancras, with some others, which at the beginning of the last century had only a population of 9,150 persons, but now contain a rapidly increasing inhabitancy, were never included in the bills.

It is evident that the apprehension or existence of the plague conferred upon the Bills of Mortality their chief value and interest. The Lord Mayor every week transmitted a copy to the Court. The reports are still professed to be made weekly to the 'Queen's Most Excellent Majesty, and the Right Honourable the Lord Mayor.'

The Bills of Mortality are now utterly valueless. In 1832, they reported 28,606 deaths, and in 1842 only 13,142; while the population had been constantly increasing at a rapid rate. In 1833, out of 26,577 deaths, the causes of decease were returned as unknown in 887 cases, or 1 in 30; and in 1842, out of 13,142 deaths, 4,638 *are returned* in which the cause of decease was unknown, or less than 1 in 3. The Company of Parish Clerks might at least have expected to have been supplied with the returns of mortality from the clerks of the metropolitan churches, but this is not the case.

The parish of St. George's, Hanover Square, ceased to make returns in 1823; and in 1832 the parishes of All Saints, Poplar, and St. John's, Wapping, followed its example; and in 1834 the clerks of St. Bartholomew the Less, and St. George's, Queen's Square, became defaulters. The fact is, that instead of 13,142 deaths being reported annually, there should be a much greater number. Besides the contumacious parishes which refuse to contribute to the formation of correct Bills of Mortality for the metropolis, there are no means by which the Parish Clerks' Company can procure returns of the burials in cemeteries, and in the places of interment belonging to dissenters; and the defects from this cause, in Maitland's time, now above a century since, exceeded 3,000 a year.

At the foot of the Bill of Mortality of 1837, there was a notice to the following effect:—'By the operation of the New Registration Act, much difficulty has occurred in obtaining the reports of christenings and burials, in consequence of which, in some parishes, the reports have been wholly withheld; and in those of several other parishes, where the office of searcher has been discontinued, the disease of which deaths have taken place has been necessarily omitted.' They were added to the 'unknown causes.' In the bill for 1842, as already noticed, the difficulty here spoken of had increased. The only 'true bill,' therefore, is that prepared at the Registrar General's office. The first of these weekly bills was commenced Jan. 11, 1840, and the series has been continued from that time without interruption.—*Knight's London*, cxl.

Binomium, Vinocium, Brinomium, Vinovia, Binovia, ancient names of Binchester, in the bishoprick of Durham.

Bipartite, of two parts.

Birds [fr. *brida*, the young of birds], all creatures with wings and feathers, whether small or large, wild or tame. Stealing, or killing with intent to steal, birds ordinarily kept in a state of confinement, or for any domestic purpose, not being the subject of larceny at common law, or being in possession of any such bird, or the plumage thereof, knowing the same to have been stolen, or unlawfully and maliciously killing, maiming, or wounding any bird being the subject of larceny at common law, or being ordinarily kept in a state of confinement, or for any domestic purpose, are offences punishable on summary conviction by fine or imprisonment. See 24 & 25 *Vict.* c. 96, ss. 21 & 22, and 24 & 25 *Vict.* c. 97, s. 41. As to unlawfully and wilfully killing or wounding house doves or

pigeons under circumstances not amounting to larceny at common law, see 24 & 25 *Vict.* c. 96, s. 23.

Birretum, or **Birretus,** a thin cap fitted close to the shape of the head, the cap or coif of a judge or serjeant at law.

Birth [fr. *beorth*, A. S.; *bord*, Sw.; *geburt*, G.; fr. *beran*, A. S., to bring forth], the act of coming into life. The *Roman* law did not consider an infant legitimate which was born later than ten months after the death of the father, or the dissolution of the marriage. The *Prussian* code declares that an infant born 302 days after the husband's death shall be deemed legitimate. The *French* civil code declares that a child born in wedlock has the husband of its mother for its father. He may, however, disavow it, if he can prove that, from the 100th to the 180th day before its birth, he was prevented, either by absence or some physical impossibility, from cohabiting with his wife. An infant born 180 days after marriage cannot be disavowed by him in the following cases:—(1) When he had knowledge of his wife's pregnancy before marriage. (2) When he assisted at the act of birth, and signed a declaration of it. (3) When the infant is declared incapable of living. Lastly, the legitimacy of an infant born 300 days after the dissolution *may* be contested. The *Scotch* law is concise and decisive. 'To fix bastardy on a child, the husband's absence must continue till within six lunar months of the birth; and a child born after the tenth month is accounted a bastard.' The *English* law does not prescribe a precise time. Although it has been the practice in our courts to consider forty weeks as the more *usual* time, yet they exercise a discretion of allowing a longer time, when the opinions of the faculty, or the peculiar circumstances of the case, are in favour of a protracted gestation.—*Beck's Med. Juris.* 377.

Births, Burials, and **Marriages,** the three most important events that can happen to a person, as to which the only regular documentary proofs, in former times, were contained in the parish registers, which are in the nature of records; examined extracts from them are received in courts of justice, and certificates, under the hand of the minister of the parish, are resorted to for private purposes.

By 6 & 7 Wm. IV. c. 86, amended by 7 Wm. IV. and 1 Vict. c. 22, a General Register Office is provided for keeping a register of births, deaths, and marriages in England. The act repeals so much of the 52 Geo. III. c. 146, and 4 Geo. IV. c. 76, as relates to the registration of marriages (s. 1), but does not affect the registration of baptisms and burials as by law established (s. 49).

The form for general registration of births comprises the time of birth, name, and sex of the child; the name, surname, maiden surname, and profession of the parents; the signature, description, and residence of the informant (who must be the father or mother, or, in case of their inability, the occupier of the house, s. 20); the date of registration and signature of the registrar, and also the child's baptismal name (if any be given after registration, within six months).

That for deaths comprises the time of death, name, and surname, sex, age, profession, and cause of death of the deceased; the signature, description, and residence of the informant (who must be some person present at the death, or in attendance during the last illness, or else the occupier of the house, s. 25), with the date of registration and the signature of the registrar.

And the universal form for registration of marriages comprises the date of the marriage; the name and surname, age, condition, profession, residence, father's name and surname, and father's profession of each of the parties; together with the place and form of marriage; and the signatures of the person marrying the parties, and of two witnesses.

Searches may be made and certified copies obtained at the General Registrar Office, or at the Office of the Superintendent Registrar of the district, or from the clergyman, or registrar, or any other person who shall, for the time being, have the keeping of the register books.

By 3 & 4 Vict. c. 92, provision is made for depositing with the Registrar-General a number of non-parochial registers and records of births, baptisms, deaths, burials, and marriages, which had been collected by a commission appointed for that purpose, and for rendering such registers and records available as evidence. See 21 *Vict.* c. 25.

As to the registration of births, deaths, and marriages in Scotland, see 17 & 18 *Vict.* c. 80; 18 & 19 *Vict.* c. 29; and 23 & 24 *Vict.* c. 85.

Bisantium, Besantine, Bezant, an ancient coin, first issued at Constantinople; it was of two sorts—gold, equivalent to a ducat, valued at 9*s.* 6*d.*; and silver, computed at 2*s.* They were both current in England.

Bi-scot, a fine of 2*s.* for not repairing banks, ditches, and causeways.

Bishop [fr. ἐπίσκοπος, Gk.; *biscop*, Sax.], an overseer or superintendent. The chief of the clergy in his diocese or jurisdiction in England, Wales, or Ireland, and the archbishop's suffragan or assistant. A bishop is elected by the Queen's *congé d'élire*, or license to elect the person named by the Queen, in a letter missive, addressed to the dean and chapter; and if they fail to make election in twelve days, the Queen, by letters-patent, may nominate whom she

pleases. A bishop is said to be installed, and there are four things necessary to his complete title:—(1) election, which resembles the presentation of a clerk to an ecclesiastical benefice; (2) confirmation, resembling admission; (3) consecration, similar to institution; (4) installation, answering to induction. The bishops are the lords spiritual in parliament. There are twenty-five bishopricks in England, besides the bishoprick of Sodor and Man, the bishop of which is not a lord of parliament; and eighteen in Ireland (13 & 14 Vict. c. 94). A bishop has three powers:—(1) a power of ordination, gained on his consecration, by which he confers orders, &c. in any place throughout the world; (2) a power of jurisdiction throughout his see or his bishoprick; (3) a power of administration and government of the revenues thereof, gained on confirmation. He has, also, a Consistory Court, to hear ecclesiastical causes, and visits and superintends the clergy of his diocese. He consecrates churches and institutes priests, confirms, suspends, excommunicates, and grants licenses for marriages. He has his archdeacon, dean and chapter, chancellor, who holds his courts and assists him in matters of ecclesiastical law, and vicar-general. He grants leases for three lives, or twenty-one years, reserving the accustomed yearly rent; and he is addressed as 'My Lord,' being 'A Right Reverend Father in God by Divine permission Bishop of ——.'

Bishopfick, a diocese or see of a bishop.

Bis idem exigi bona fides non patitur; et in satisfactionibus, non permittitur ampliùs fieri quam semel factum est.—9 *Co.* 53.—(Good faith does not suffer the same thing to be exacted twice, and in giving damages, it is not allowed to give more than is given at once).

Bishop's Court, an ecclesiastical court, held in the cathedral of each diocese, the judge whereof is the bishop's chancellor, who judges by the civil canon law; and if the diocese be large, he has his commissaries in remote parts, who hold *consistory courts*, for matters limited to them by their commission.

Bissextile [fr. *bis*, Lat., twice, and *sextilis*, the sixth], leap year, consisting of 366 days, and happening every fourth year, by the addition of a day in the month of February, which, in that year, consists of twenty-nine days. Leap year is introduced in order to make up for the loss of the six hours by which the course of the sun annually exceeds the 365 days allowed for it in other years. The day thus added was by Julius Cæsar appointed to be the day before the 24th of February, which, among the Romans, was the sixth of the calends, and which, on this occasion, was reckoned twice; whence it was called the *bissextile*. By 21 Hen. III. to prevent misunderstanding the intercalary day and that next before it are to be accounted as one day. The supernumerary day, in leap years, is added to the end of February and called the 29th of that month.—*Encyc. Lond.*; 1 *Reeves*, c. v. p. 266. See CALENDAR, *post*.

Black [fr. *blakowaé*, to lose colour; *bleknut*, Russ., to wither; *bleich*, G., *bleek*, Du., pale, a total absence of all colour]. Black Act, 9 Geo. I. c. 22, so called because it was occasioned by the outrages committed by persons with their faces blacked or otherwise disguised, who appeared in Epping Forest, near Waltham, in Essex, and destroyed the deer there, and committed divers other enormities. Repealed by 7 & 8 Geo. IV. c. 27.

Black Acts, acts printed in the old black letter, during the dynasty of the Stewarts in Scotland.

Black book, a book kept in the Exchequer, and at the Admiralty.

Black game, heath fowl, in contradistinction to red game, as grouse.

Black mail [fr. *maile*, Fr., a small piece of money], a certain rent of money, coin, or other thing, anciently paid to persons upon or near the borders, who were men of influence, and allied with certain robbers and brigands for protection from the devastations of the latter; rendered illegal by 43 Eliz. c. 13. Also rent paid in cattle, otherwise called neat-gild; and all rents not paid in silver are called *reditus nigri* (black mail or rents), by way of distinction from the *reditus albi* (blanch-firmes, or white-rents).

Black Rod, Gentleman Usher of, a chief officer of the Queen, deriving his name from the *Black Rod* of office, on the top of which reposes a golden lion, which he carries. During the session of parliament he attends on the peers, and to his custody all peers impeached for any crime or contempt are first committed.—*Black Book*, 255.

Black ward, a subvassal, who held ward of the king's vassal.

Bladarius, a corn-monger, mealman, or corn-chandler.

Blade, fruit, corn, hemp, flax, herbs, &c.

Blanch firmes. In ancient times the crown rents were many times reserved *in libris albis* or blanch firmes, in which case the buyer was holden *dealbare firmam*, i. e. his base money or coin, below standard, was melted down in the Exchequer, and reduced to the fineness of standard silver, or, instead thereof, he paid twelve pence in the pound by way of addition.—*Lowndes on Coins*, 5.

Blanch holding, an ancient tenure of the law of Scotland, the duty payable being trifling, as a penny or a peppercorn, &c., if required.—20 *Geo. II.* c. 50; 25 *Geo. II.* c. 20.

Blancoforda, the ancient name of Blandford, in Dorsetshire.

Blancum Castrum, Blane Castle, in Monmouthshire.

Blank bar, common bar, the name of a plea in bar, which, in an action of trespass, is resorted to to compel the plaintiff to assign the place where a trespass was committed.

Blank bonds, Scotch securities, in which the creditor's name was left blank, and which passed by mere delivery, the bearer being at liberty to put in his name and sue for payment. Declared void by the Act 1696, c. 25.

Blank indorsement, when the name of the indorsee is not mentioned.

Blanks [fr. *blanc*, Fr., white; *blanchir*, to make white; fr. *blinken*, G., to glitter], a kind of white money (value 8*d.*), coined by Henry V. in those parts of France which were then subject to England; forbidden to be current in this realm by 2 Hen. VI. c. 9. Also, certain void spaces, sometimes left by mistake, in judicial proceedings, and which, if anything material be wanting, render the same void.

Blasphemy [fr. βλα΄πτω, Gk., to hurt, and φήμη, reputation; βλασφημέω, to speak impiously; *blasphemo*, Lat., to revile.—*Wedgw.*], an offence against God and religion, by denying to the Almighty his Being and Providence, or by contumelious reproaches of our Saviour Christ. Also, all profane scoffing at the Holy Scripture, and exposing it to contempt and ridicule. It is both a spiritual and temporal offence. It is an offence at Common Law, for the Scriptures are the common law, upon which all other laws are founded. It is not lawful to publish even a correct account of the proceedings in a court of justice, if such an account contain matter of a scandalous, blasphemous, and indecent nature. Punishable by fine and imprisonment, or corporal punishment.—1 *Geo. IV.* c. 8; 4 *Bl. Com.* 59; 2 *Sam.* xii. 14; *Tit.* ii. 5; *Rev.* xiii. 6.

Blatum bulgium, the ancient name of Bulness, in Cumberland.

Blaunpain, *alias* **Blanepain,** Whitbread.

Ble, sight, colour, &c.

Blench, Blench-holding. See ALBA FIRMA.

Blestium, the ancient name of Old Town, in Herefordshire.

Bleta [fr. *blêche*, Fr.], peat or combustible earth dug up and dried for burning.

Blinks, boughs broken down from trees and thrown in a way where deer are likely to pass.

Blockade [fr. *bloccato*, Ital., military term], the disposition of troops or armed vessels, so as to cut off all external communication with an enemy's port, fortress, city, &c. The term is now generally applied to the blockade of a port by armed vessels. The two essential circumstances necessary to make a good blockade, are—(1) that there be actually stationed at the place a sufficient force to prevent the entry or exit of vessels; and (2) that the party violating it shall be proved to have been aware of its existence. With regard to neutral vessels lying at the place where the blockade commences, the rule is, that they may retire freely after the notification of the blockade, taking with them the cargoes with which they may be already laden; but they must not take in any new cargo. The effect of a violation of blockade to the offending party, when captured, is the condemnation usually of both the ship and the cargo. If, however, it can be shown that the parties to whom the cargo belongs were not implicated in the offence committed by the master of the ship, the cargo will be restored. It has sometimes, on the contrary, happened that the owners of the cargo have been found to have been the only guilty parties, in which case the judgment has been for condemnation of the cargo and the restitution of the ship.

Blood [fr. *bloed*, Du.; *blut*, G.], kindred, lineage. It is a maxim that none shall claim as heir, who is not of the blood (i. e. kindred) of the purchaser.—*Co. Litt.* 12 *a.*

Bloodwit, or **Bloudveit** [fr. *blod*, Sax., blood, and *wyte*, Old Eng., pity], an amercement for bloodshed; a customary fine, paid as a composition and atonement for shedding or drawing of blood.—*Paroch. Antiq.* A riot wherein blood was spilled.—*Scotch Law.*

Bloody hand. See BACKBERIND.

Blossevilla, the ancient name of Bloville, Blofield.

Board [fr. *berd*, Du.; *brett*, G., a plank or table], an office under the control of the executive government, as the Board of Trade, the Board of Works, the Board of Admiralty, the Board of Ordnance, the Board of Health, the Board of Charities, the Poor Law Board, and the Board of Control, the business of which departments is conducted by officers specially appointed for that purpose; also an assembly of directors or officers for the despatch of business.

Boc, a charter.—*Ang. Sax.*

Bock-hord, or **Book-hoard,** a place where books, documentary evidence, or writings are kept.

Bock-land, Boc-land, or **Book-land,** one of the original modes of tenure of manor land, also called charter-land or deed-land, which was held by a short and simple deed under certain rents and free services, and in effect differed in no respect from the free-socage lands, whence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same.—2 *Bl. Com.* 90.

It was land that had been severed by an act of government from the folcland, and converted into an estate of perpetual inheritance. It might belong to the church, to the king, or to a subject. It might be alienable and devisable

at the will of the proprietor; it might be limited in its descent without any power of alienation in the possessor. It was often granted for a single life or for more lives than one, with remainder in perpetuity to the church. It was forfeited for various delinquencies to the state.

Estates in perpetuity were usually created by charter after the introduction of writing, and on that account bocland and land of inheritance are often used as synonymous expressions. But at an earlier period they were conferred by the delivery of a staff, a spear, an arrow, a drinking horn, the branch of a tree, or a piece of turf; and when the donation was in favour of the church, these symbolical representations of the grant were deposited with solemnity on the altar; nor was this practice entirely laid aside after the introduction of title-deeds. There are instances of it as late as the time of the Conqueror. It is not therefore quite correct to say that all the lands of the Anglo-Saxons were either folcland or bocland. When land was granted in perpetuity, it ceased to be folcland; but it could not with propriety be termed bocland, unless it was conveyed by a written instrument.

Bocland was released from all services to the public, with the exception of contributing to military expeditions, and to the reparation of castles and bridges. These duties or services were comprised in the phrase—*trinoda necessitas*, which was said to be incumbent on all persons, so that none could be excused from them. The church indeed contrived, in some cases, to obtain an exemption from them, but in general its lands, like those of others, were subject to them. Some of the charters granting to the possession of the church an exemption from all services whatever, are genuine; but the greater part of them are forgeries.

Bocland might, nevertheless, be subjected to the payment of an annual rent to the state by its original charter of creation. We have an instance of this among the deeds of Worcester Cathedral, collected by Heming. Æthelbald, King of the Mercians, had, it appears, granted to Eanulf, grandfather of Offa, an estate of inheritance, burthened with an annual payment of ale, corn, cattle, and other provisions to a royal vill; and this estate, with the rent-charge attached to it, Offa afterwards gave in remainder to the see of Worcester, after his own life and that of his sons. Bocland might be held by freemen of all ranks and degrees.

The estate of the higher nobility consisted chiefly of bocland. Bishops and abbots might have bocland of their own, in addition to what they held in right of the church.

The Anglo-Saxon kings had private estates of bocland, and these estates did not merge in the crown, but were devisable by will, gift, or sale, and transmissible by inheritance, in the same manner as bocland by a subject.

The above extracts are from '*An Inquiry into the Rise and Growth of the Royal Prerogative in England.*' By John Allen, 1830, 143–151. See also *Kemble's Cod. Diplom. Introd.* ciii.–cvi.

Bodotria, the ancient name of Edinburgh Firth.

Boduna, the people of Gloucestershire and Oxfordshire were formerly called so.

Body politic [fr. *bodig*, As.; *bodhag*, Gael.], the nation; also a corporation.

Boilary, water arising from a salt well belonging to a person who is not the owner of the soil.

Boiling to death, the punishment for poisoning inflicted by 22 Hen. III. c. 9, which was repealed by 1 Edw. VI. c. 12.

Bois, wood; *sub-bois*, underwood.

Bois saillis [Fr.], a coppice or copse. The latter words are derived from κόπαδες, Gk., fr. κόπτω, to cut; *arbores cædere*, Lat.

Bolerium prom. See ANTIVESTŒUM.

Bolhagium, or **Boldagium,** a little house or cottage.

Bolt, a long narrow piece of silk or stuff.

Bolting [fr. *bolt*, Sax., a house], a private arguing of cases in our inns of court.

Bombay, Bishopric of, founded by 3 & 4 Wm. IV. c. 85.

Bona, this term, according to the civil law, includes all sorts of property, movable and immovable.—*Story's Confl. Laws*, 375.

Bona confiscata, property forfeited for crime to the *fiscus* or public treasury.

Bona fassato de, Goodrick.

Bonâ fide, with good faith, implying the absence of all fraud or unfair dealing or acting, whether it consists in simulation or dissimulation. This term frequently occurs in the Roman jurists. It can only be defined with reference to things opposed to it, namely *mala fides* and *dolus malus*, both of which phrases, and especially the latter, are often used in a technical sense.—*Smith's Dict. of Antiq.*

Bonâ fide possessor facit fructus consumptos suos.—(A *bonâ fide* possessor makes the profits which have been consumed his own.)

Bona fides non patitur ut idem bis exigatur. (Good faith suffers not that the same thing should be twice exacted.)

Bonæ fidei possessor, in id tantum quod ad se pervenerit, tenetur.—2 *Inst.* 285.—(A tenant is bound to good faith in that only which may come to him.)

Bona forufacta, goods forfeited; called by the civilians *bona confiscata*, because they belonged to the *fiscus*, or imperial treasury.

Bona gestura, good behaviour.

Bona mobilia, movable effects and goods.

Bona notabilia, notable goods. They are

fixed by express canon (excepting in London, where the sum is 10*l.*), to be legal personal estate to the value of 5*l.* or upwards; though if several personal things, each under the value of 5*l.* but collectively worth more than that sum, be disposed in several dioceses, they constitute *bona notabilia*. A mere claim in the nature of a debt, however difficult to recover, if by possibility it may exceed 5*l.* is *bona notabilia*, but not a devise for the payment of debts, that being merely equitable assets.—1 *Chit. Gen. Prac.* 523; and 1 *Wms. Ex.* 265, *et seq.* See 20 & 21 *Vict.* c. 77, and 21 & 22 *Vict.* c. 95, which regulate the proceedings of the Probate Court, and abolished the jurisdiction of the Ecclesiastical Courts as to wills and administration.

Bona patria, an assize of countrymen or good neighbours; it is sometimes called *assiza bonæ patriæ*, when twelve or more men are chosen out of any part of the country to pass upon an assize. The persons composing it are called *juratores*, because they are to swear judicially in the presence of the party, &c., according to the practice of Scotland.—*Skene.*

Bona peritura, perishable goods.

Bona vacantia, stray goods. Those things in which nobody claims a property, and which belong to the crown, by virtue of its prerogative.—1 *Bl. Com.* 298.

Bonaught, or **Bonaughty,** an exaction imposed on the people of Ireland, at the will of the lord, for relief of the knights called *Bonaghti*, who served in the wars.—*Antiq. Hibern.* 60.

Bona Villa, de, Bonevil.

Bona waviata, goods waved or thrown away by a thief in his flight, for fear of being apprehended. They are given to the crown by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him.—1 *Bl. Com.* 296.

In the Roman law it was originally the property which a person left at his death, without having disposed of it by will, and without leaving any *heres*. Such property was open to occupancy; and so long as the strict laws of inheritance existed, such an event must not have been uncommon. A remedy was, however, found for this by the *bonorum possessio* of the *prætor.*—*Smith's Dict. of Antiq.*

Boncha [fr. *bonna* or *bunna*, Old Lat.], a rising bank, the bounds of fields.

Bond [fr. *bindan*, *band*, *bunden*, A.S., to bind], a written acknowledgment or binding of a debt under seal. When a bond is given by a simple contract debtor to his creditor, the debt is merged in the specialty. No technical form of words is necessary to constitute a bond. The person giving the bond is called the obligor, and he to whom it is given the obligee. A bond is called single when it is without a penalty, and an obligation when it contains a penalty, which is generally double the amount of the principal sum secured, although only the sum actually owing, with interest, can be recovered. See 4 & 5 *Anne*, c. 16, ss. 12 & 13; and 8 & 9 *Wm. III.* c. 11, s. 8. An infant may bind himself to pay for necessaries by a single bond, but not by an obligation with a penalty. The question as to what are necessaries depends upon the real circumstances of the infant, and not upon his ostensible situation.

If one of several obligees release the obligor, the rest are barred of their remedy. If a bond be given to three obligees jointly, two cannot sue thereon unless they shew that the third is dead; but where the obligation is several, each may maintain an action for his several debt.

If two or more bind themselves in a bond jointly and severally, the obligee may sue them all jointly, or he may sue any one of them, but if they are jointly and not severally bound the obligee must sue them jointly. For the purpose of enabling an obligee to sue two or more of the obligors alone without joining the others, there must be in the bond a severance of any four, three, or two of them, according to the number of the obligors.

The representatives of a deceased joint-obligor are discharged at law, but are liable in equity, where the bond, by mistake, was made joint only, or the joint-obligors were partners. Where, however, it appears on the face of the bond that the intention was to make it joint and several, it will be then so treated at law, though joint only in form. Where two or more persons are expressed to be jointly and severally bound, and one of them does not execute the bond, it is only the several bond of those executing it, unless there were a severance of the obligation, when it would be their joint and several bond.

A bond conditioned either to do something which is *malum in se* or *malum prohibitum*, or to omit the doing of something which is a duty, or to encourage such crimes and omissions, is void. A bond may be valid in part and void in part, if such parts are separable.

The 9 Geo. IV. c. 94, after reciting that it is expedient that certain bonds, covenants and other assurances, for resignation of ecclesiastical preferments should be valid, enacts, 'That every engagement by promise, grant, agreement, or covenant, which shall be really and *bonâ fide* made, given, or entered into, at any time after 28th July, 1828, for the resignation of any spiritual office, being a benefice with cure of souls, dignity, prebend, or living ecclesiastical, to the intent or purpose to be manifested by the terms of such engagement, that any *one person whosoever*, to be specially

named and described therein, or *one or* (*sic*) *two persons*, to be specially named and described therein, each of them being by blood or marriage an uncle, son, grandson, brother, nephew, or grandnephew of the patron, shall be presented, collated, nominated, or appointed to such spiritual office, or that the same shall be given or bestowed to or upon him, shall be good, valid, and effectual in the law, to all intents and purposes whatsoever, and the performance of the same may also be enforced in equity. Provided always that such engagement shall be so entered into before the presentation, nomination, collation, or appointment of the party so entering into the same as aforesaid (ss. 1 & 2). The bond must be deposited within two calendar months of its date with the registrar of the diocese, or peculiar jurisdiction wherein the benefice is situated, paying him 2*s*. It can be there inspected, and a certified copy, which is admissible as evidence, obtained (s. 4, and see ss. 3, 5, & 6).

There are two kinds of *post obit* bonds: (1) Where the sum secured is greater than the sum borrowed, but to be payable only upon a contingency such as the obligor-expectant surviving his ancestor. (2) Where the sum secured is greater than the sum borrowed, but it is to be paid on the death of a particular person, whether the obligor be then alive or not, the time of payment being contingent only. The usury laws were abolished by 17 & 18 Vict. c. 90. See *Chesterfield* v. *Janssen*, 2 *Ves.* 125 (1751), and 1 *Wh. & Tud. L. C.* 344-405, as to the interference of Equity in the case of frauds upon expectant heirs.

Bonds to procure marriage (or marriage brocage bonds), or to restrain marriage, or for immoral considerations, such as *future*, but not *past*, cohabitation, and also in *total*, but not *partial*, restraint of trade are void.

Bondage, slavery; also a kind of tenure or occupation.

Bond-creditor, a creditor whose debt is secured by a bond.

Bondsman, a surety.

Bond-tenants, copyholders and customary tenants are sometimes so called.—*Calthorp on Customs of London.*

Boni judicis est ampliare jurisdictionem.—*Chan. Prac.* 329.—(It is the part of a good judge to enlarge jurisdiction.)

The late Lord Abinger, in *Russell* v. *Smyth*, 9 *M. & Wels.* 818, observed that 'the maxim of the English law is, to amplify its remedies, and without usurping jurisdiction, to apply its rules to the advancement of substantial justice.' When rules of law have been found to work injustice, they have been *evaded* instead of being repealed. Obsolete or unsuitable laws, instead of being removed from the statute-book, have been made to bend to modern usages and feelings. Instead of the legislature framing new provisions, as occasion has required, it has been left to able judges to invade its province, and arrogate to themselves the lofty privilege of correcting abuses and introducing improvements. The rules are thus left in the breasts of the judges, instead of being put upon a right footing by legislative enactment. Much of the evil is, no doubt, attributable to the supineness of the legislature, something to the narrowness of the rules of the Common Law; but the principal share, to the want of a proper understanding at what point *interpretation* ought to end, and *legislation* begin.—*Dwarris on the Statutes*, 792. Lord Wensleydale, then Mr. Baron Parke, in *Mirehouse* v. *Renwell*, 8 Bing. 515, on error in the House of Lords, thus expounds the true judicial feeling and determination in Westminster Hall:—'The precise facts stated by your Lordships have never, as far as we can learn, been adjudicated upon in any court, nor is there to be found any opinion of them of any of our judges, or of those ancient text-writers to whom we look up as authorities. The case, therefore, is in some sense, new, as are many others which continually occur; but we have no right to consider it because it is new, as one for which the law has not provided at all, and because it has not been decided, to decide it for ourselves, according to our own judgment of what is just and expedient. Our Common Law system consists in applying to new combinations of circumstances, those rules of law which we derive from legal principles and judicial precedents; and for the sake of attaining uniformity, consistency, and certainty, we must apply these rules when they are not plainly unreasonable or inconvenient, to all cases which arise; and we are not at liberty to reject them, and abandon all analogy to them, in those to which they have not hitherto been judicially applied, because we think that the rules are not as convenient or reasonable as we ourselves could have devised. It appears to me to be of great importance to keep this principle of decision steadily in view, not merely for the determination of the particular case, but for the interests of law as a science.'

Boni judicis est causas litium dirimere.—2 *Inst.* 306.—(It is the duty of a good judge to take away the occasions of litigation.)

Boni judicis est judicium sine dilatione mandare executioni.—*Co. Litt.* 289.—(It is the duty of a good judge to commit judgment to execution without delay.)

Boni judicis est lites dirimere; et interest reipublicæ ut sint fines litium.—4 *Co.* 15.—(It is the duty of a good judge to prevent

litigations; and it concerns the public good that there be periods to legal strifes.)

These four maxims relate to the administration of justice and the prevention of strife. The principle of English law is to amplify its remedies, and, without usurping jurisdiction, to apply its rules to the advancement of substantial justice, while that system of law is best which confides as little as possible to the discretion of the judge; that judge the best, who relies as little as possible on his own opinion.—*Russell* v. *Smyth*, 9 *M. & W.* 818; 6 *Scott, N. R.* 180. 'And although the law should be vindicated by speedy execution, yet it is not to be applied to further litigation; for, '*componere lites*'—the prevention of iniquitous litigation, is more the aim of an enlightened jurisprudence than '*discordias alere*' —the stirring up of unjust strife.

Bonis non amovendis (that the goods be not removed), a writ addressed to the sheriff, where error is brought, commanding that the person against whom judgment is obtained be not suffered to remove his goods, till the error be tried and determined.—*Reg. Orig.* 131.

Bonitarian, the right of possession.—*Civil Law.*

Bonium, seu **Bovium,** Boverton, or Cowbridge, in Glamorganshire; also Bangor, in Flintshire.

Bono et malo (*Writ de*), an abolished writ of gaol delivery, which issued for every prisoner.

Bonum defendentis ex integrâ causâ, malum ex quolibet defectu.—11 *Co.* 68.—(The good of a defendant arises from a perfect case, his harm from some defect.)

Bonum necessarium extra terminos necessitatis non est bonum.—*Hob.* 144.—(Necessary good is not good beyond the bounds of necessity.)

Bonus, a premium, or advantage.

Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert.—*Co. Litt.* 24.—(A good judge decides according to justice and right, and prefers equity to strict law.)

'I commend the judge,' said Lord Hobart (*Hob.* 125), 'who seems fine and ingenious, so it tend to right and equity; and I condemn them who, either out of pleasure to shew a subtle wit, will destroy, or out of incuriousness or negligence will not labour to support, the act of the party, by the art or act of the law.'

Book of Rates [fr. *boc*, As.], an account declaring the duties of customs.—*Jacob.*

Book of Responses, an account which the director of the Chancery keeps, particularly to note a seizure, when he gives an order to the sheriff to give it to an heir whose service has been returned to him. The form is *respondeat vicecomes, &c.*—*Scotch Law.*

Booting or **Boting Corn** [fr. *bote* or *boot*, Sax., compensation], rent-corn, anciently so called.

Borcovicus, and **Borovicum,** Berwick-upon-Tweed.

Bordagium. See BORDLODE.

Bordaria [fr. *bord*, Sax.; *domus*, Lat.], a cottage.

Bordarii, or **Bordimanni** [fr. *bords*, Old Gall., limits, borders], boors, husbandmen, cottagers.—*Domesday.*

Bord-brigch [fr. *borg-bryce*, or *burg-brych*, Sax.], a breach or violation of suretyship, pledge-breach, or breach of mutual fidelity.

Border Warrant [fr. *bord*, Fr., edge, *margin*], a process granted by a judge ordinary, on either side of the border between England and Scotland, for arresting the person or effects of an inhabitant of the opposite side, until he find security, *judicio sisti.*

Bord-halfpeny [fr. *bord*, Sax., a table, and *halpeny*, or half-penny], a customary small toll paid to the lord of a town for setting up boards, tables, booths, &c., in fairs or markets.

Bordlands, the domesnes which a lord keeps in his own hands for the maintenance of his board or table.—*Bract.* l. 4, t. 3, c. ix.

Bordlode, or **Bordage,** a service required of tenants to carry timber out of the lord's woods to his house, or it is said to be the quantity of food or provision which the *bordarii* or *bordmen* paid for their *bord-lands.* The old Scots had the term of *burd* and *meet-burd* for victuals and provisions, and *burden-sack* for a sack full of provender; whence probably came our word burden.—*Spelm.*

Bord-service, a tenure of bord-lands.

Borel-folk, country people, from the Fr. *boure*, *floccus*, a lock of wool, because they covered their heads with such stuff.—*Blount.*

Borgh-upon weir of law, a finding of caution to answer the requisitions of the law.—*Scotch Dict.*

Borlasius, Borlace.

Borough [fr. *burg*, Fr.; *burgus*, Lat.; *borhoe*, or *burg*, As.], originally a walled town or other fortified place, perhaps from πύργος, a castle, but now a town either corporate or not, that sends burgesses to Parliament. By the Reform Act, 2 Wm. IV. c. 45, s. 79, wherever the words 'city or borough,' or 'cities or boroughs' may occur throughout the act, those words shall be construed to include, except there be something in the subject or context manifestly repugnant to such construction, all towns corporate, cinque ports, districts or places within England and Wales, which shall be entitled, after this Act shall have passed, to return a member or members to serve in Parliament, other than counties at large, and ridings, parts and divisions of counties at large, and shall also include the town of Berwick-upon-Tweed.

As to the right of voting in *boroughs*, it may be here stated generally, that, independently of the old rights of voting in scot and lot boroughs, and corporation towns, the Reform Act confers a right of voting upon all occupiers, either as owner or tenant of any house or building of the clear annual value, either alone or with land, of 10*l.*, provided the party has been in occupation for twelve months before the 31st day of July preceding the registration, has resided for six months previously within the burgh, or seven miles from the same, has been rated to the poor during all the time of occupation, and has paid, before the 20th day of July, preceding, all rates and assessed taxes up to the 5th day of January preceding. The receipt of parochial relief forms a disqualification, but that provision does not extend to a county voter. See 2 *Wm. IV.* c. 45; 6 & 7 *Vict.* c. 18; 11 & 12 *Vict.* c. 90; and 14 & 15 *Vict.* cc. 14 and 39.

Borough-courts, private and limited species of tribunals, held by prescription, charter or Act of Parliament. They are erected in particular districts for the convenience of the inhabitants, that they may prosecute small suits, and receive justice at home.—19 *Geo. III.* c. 70; 2 & 3 *Wm. IV.* c. 74; 1 *Bl. Com.* 80.

Borough-heads, borough-holders, bors-holders, or burs-holders.

Borough-English, or **Postremo-geniture,** a custom evidently of Saxon origin, and so named to distinguish it from the Norman customs. It is supposed to be derived from the Tartars, and may be a remnant of the pastoral state of the Germanic barbarians, described by Cæsar and Tacitus. By this custom, then, which is occasionally met with in burgage tenemental lands, if a person have many sons, and then die intestate, the youngest son shall inherit all the realty which belonged to his father situated within such borough. It is based on the assumption that the youngest son, on account of his tender age, is not so capable as the rest of his brethren to keep himself. Among the pastoral tribes, the sons, as soon as they attained the proper age, migrated from the paternal habitation, with an allotment of cattle, to seek a residence elsewhere; the youngest son usually continued with his father, and thus became the heir to his house. The vulgar notion that this custom arose out of the right of concubinage which the lord had with his tenants' wives on their wedding night, and that therefore the land descended not to the eldest son, but to the youngest, who was with greater probability the true child of the tenant, is altogether exploded, for there is no evidence of such a right having ever existed in England, although it certainly seems to have prevailed in Scotland, until it was abolished by Malcolm III. (*Reg. Mag.* l. 4, c. xxxi.), who commuted it for a fine, payable on the tenant's marriage, which payment is now known as *Marcheta.*

A posthumous son dispossesses his elder brother. The custom is found in freeholds and copyholds, but without any legal differences. The right of representation exists with this custom, for, should the younger son die in his father's lifetime, leaving a daughter, she will inherit the property. This custom extends to estates-tail, but not generally (as gavelkind does) to the collateral descent, so that where land held in Borough-English descended to the youngest son, and he died without issue, it was resolved that they did not go to the younger brother, for the custom did not take place in the descent between brothers, but the eldest brother inherited, unless as special custom expressly extended it to the collaterals. A custom is often annexed to lands in Borough-English, that the widow shall have all her husband's lands in dower, and the power of devising, in order that she may the better provide for the younger children, with the care of whom she is intrusted. These customs are special, and not properties of the general custom, which should be borne in mind, as many authors have treated them as integral parts of Borough-English. Borough-English, like gavelkind, the law takes particular notice of; there is no occasion, therefore, to prove that such custom actually exists, but simply that the lands in question are subject thereto. The extension, however, of the custom to the collateral line must be specially pleaded. This custom, like gavelkind, cannot be altered by any limitation of the parties; therefore where A. seised in fee of lands held in Borough-English, made a feoffment to the use of himself and his heirs male of his body, according to the course of the common law, the words 'according to the course of the common law' were held void; for customs, which go with the land, and fix and order the descent of inheritances, can only be altered by Act of Parliament. This custom obtains in the manor of Lambeth, Surrey, in the manors of Hackney, St. John of Jerusalem in Islington, Heston, and Edmonton in Middlesex, and in other counties.

Borough-sessions, courts established in boroughs under the Municipal Corporations Act (5 & 6 Wm. IV. c. 76, amended by 6 & 7 Wm. IV. c. 105, and 6 & 7 Vict. c. 89). They are held by the recorders of the respective boroughs once a quarter, or oftener if they think fit, and at times to be fixed by them. The jurisdiction is over such offences as are cognizable by the County Sessions, whose powers extend to all boroughs which may not have petitioned for a separate court by virtue of s. 103 of the Municipal Corporations Act.

Borrowing [*v. borg, boch,* A.S., a surety,

pledge, loan], contracting a loan on security; taking money on credit. For the rights and duties of borrowers, consult *Story on Bailments*, 231, 234, 280.

Borsholder, borough's ealder, or headborough, supposed to be the discreetest man in the borough, town, or tithing. By the Saxon laws there was a general custom of bail throughout the country, by which each man was answerable for his neighbour.

Bortmagad [fr. *bord*, Sax.; *domus*, Lat., and *magad*, *ancilla*], a housemaid.

Boscage [fr. *bosco*, Ital.; *silva*, Lat.], food which wood and trees yield to cattle, as mast, &c.

Boscaria, woodhouses or oxhouses, from *bos*, Lat.

Bosco, de, bois, boys.

Bosco arso, de, brentwood, or burntwood.

Bosco Boardi, de, Borhard.

Boscus [fr. *bosco*, Ital.; *bois*, Fr.], all manner of wood; boscus is divided into high wood or timber; *hautboys*, and coppice, or underwoods, *sub-boscus*, *sub-bois*: but the high wood is properly called *saltus*, and in Fleta we read it *maeremium*.

Bossinnus, a rustic pipe.

Bostar, an ox-stall.

Bote [fr. *bot*, A.S.; *betan*, to repair, synonymous with *estovers*, Fr.; *estoffer*, to furnish], necessaries for the maintenance and carrying on of husbandry. The owner of an estate for life or for years is entitled, unless expressly restrained by the terms of the conveyance or devise, to reasonable estovers or botes, i. e. necessary wood, such as house-bote, plough-bote, cart-bote, and hay-bote, or hedge-bote. *House-bote* is a sufficient allowance of wood from off the estate to repair or burn in the house, and sometimes termed fire-bote; *plough-bote and cart-bote* are wood to be employed in making and repairing all instruments of husbandry; and *hay-bote* or *hedge-bote* is wood for repairing of hays, hedges or fences.

There was also *man-bote*, which was a compensation or amends for a man slain, &c.—*Lamb.* c. xcix.

Boteless, or **Bootless**, a vain attempt, without emendation.

Botellaria, a buttery or cellar, in which the *butts* and *bottles* of wine and other liquors are deposited.

Botha, a booth, stall, or standing in a fair or market.—*Mon. Angl.* 2 par. fo. 132.

Bothagium, or **Boothage**, customary dues paid to the lord of a manor or soil, for the pitching or standing of booths in fairs or markets.—*Paroch. Antiq.* 680.

Bothna, or **Buthna**, a park where cattle are enclosed and fed; a barony, lordship, &c.—*Skene.*

Botiler of the King [*pincerna regis*, Lat.], an officer that provides the king's wines, who (according to *Fleta*, l. 2, c. xxi.) may, by virtue of his office, choose out of every ship laden with sale wines, one cask before the mast, and one behind.—25 *Edw. III.* st. 5, c. 21.

Bottomry Bond, or **Contract**, also **Bottomree**, or **Bummaree**, a species of mortgage or hypothecation of a ship, by which her keel or bottom is pledged (*partem pro toto*) as a security for the repayment of a sum of money. If the ship be totally lost, the lender loses his money, but if she return safely, he recovers his principal, together with the interest agreed upon. Such bonds are allowed as valid in all trading nations, for the benefit of commerce, and as a *pretium periculi* for the extraordinary hazard run.—*Abbott on Shipping*, p. 2, c. iii.; 2 *Bl. Com.* 457; and 1 *C. L. R.* 616.

Bovata Terræ, as much land as an ox can plough.—See OXGANG. 8 bovatæ make 1 carucate.

Bouche of Court, or **Budge of Court**, a certain allowance of provision from the king to his knights and servants, who attended him on any military expedition.

Boverium, or **Boveria**, an ox-house.

Bovettus, a young steer, or castrated bullock.

Bought and Sold Notes. The practice of licensed brokers is to keep books wherein they enter the terms of any contract they effect, and the names of the parties. Such entry, when signed by the broker, is a contract legally binding, as when the broker for a seller treats with a buyer, he is deemed the agent of both. It is the custom for the broker to deliver a transcript or memorandum of the entry in his book to each party, which is called a *bought or sold note*, the bought note being given to the seller, and the sold note to the buyer. But this is stated conversely in some of the books. As these notes contain the essential parts of the bargain, they will suffice in the absence of a corresponding entry in the broker's book; but if these notes describe the particulars differently or incorrectly, as one species of goods for another, or erroneously state the terms, no contract arises, and a variation of this nature cannot be corrected by a reference to the broker's book.—2 *Selw. N. P.* 873.

Bough of a Tree, a symbol which gave seisin of land, to hold of the donor *in capite*.

Bovicula, a heifer, or young cow.

Bound, or **Boundary** [fr. *borne*, *bone*, Fr., a limit], the utmost limits of land, whereby the same is known and ascertained. See ABUTTALS.

Boundaries of Counties, &c. See the Boundary Act, 2 & 3 Wm. IV. c. 64, as to the divisions of counties, and the limits of cities and boroughs in England and Wales, in so far as respects the election of members to serve in Parliament.

Bound-Bailiffs, officers who arrest debtors, &c., and who enter into bonds for their good behaviour. The vulgar phrase 'bum-bailiff' is, perhaps, a corruption of this word, which *see*.

Bounty, a premium paid by Government to the producers, exporters, or importers of certain articles, or to those who employ ships in certain trades, with a view of encouraging the establishment of some new branch of industry, or of fostering and extending a trade that is believed to be of paramount importance. Bounties have been generally abolished. The system of bounties has been shown to be erroneous by the best political economists.

Bounty of Queen Anne, a royal charter, which was confirmed by 2 Anne, c. 11, whereby all the revenue of first-fruits and tenths is vested in trustees for ever, to form a perpetual fund for the augmentation of poor livings. After the appropriation of the revenue arising from the payment of first-fruits and tenths to the augmentation of small livings, it was considered a proper extension of this principle to exempt the smaller livings from the incumbrance of those demands; and for that end, the bishops of each diocese were directed to enquire and certify into the Exchequer, what livings did not exceed 50*l.* a year, according to the improved value at that time; and it was further provided that such livings should be discharged from those dues in future. It has been still further regulated by subsequent statutes; viz. 5 Anne, c. 24; 6 Anne, c. 27; 1 Geo. I. st. 2, c. 10; 3 Geo. I. c. 10; 43 Geo. III. c. 107; 45 Geo. III. c. 84, s. 4; 1 & 2 Wm. IV. c. 45; 1 & 2 Vict. cc. 20, 23, ss. 3, 4; c. 106, ss. 72 & 119; c. 107, s. 10; 2 & 3 Vict. c. 49; 3 & 4 Vict. cc. 20 & 113, s. 76; 4 & 5 Vict. c. 39, s. 4; and 6 & 7 Vict. c. 37.

These trustees were erected into a corporation, and have authority to make rules and orders for the distribution of this fund. The principal rules established by them are, that the sum to be allowed for each augmentation shall be 200*l.* to be laid out in land, which shall be annexed for ever to the living; and that this donation shall be made, first, to all livings not exceeding 10*l.* a year, then to all livings not above 20*l.*, and so in order, whilst any remain under 50*l.* a year. But when any private benefactor advances 200*l.* the trustees give another 200*l.* for the advancement of any living not above 45*l.* a year, though it may not belong to that class of livings which they are then augmenting.

By the 46 Geo. III. c. 133, a very noble donation of 6,000*l.* a year was granted for the augmentation of small livings not exceeding 150*l.* a year. The statute enacts that all such livings may be discharged from the payment of the land-tax, without any consideration for it, provided the whole annual account shall not exceed 6,000*l.*—1 *Bl. Com.* 285; 2 *Burn's Ec. L.* 260.

Bow-bearer, an under officer of the forest, whose duty it is to oversee and true inquisition make, as well of sworn men as unsworn, in every bailiwick of the forest; and of all manner of trespasses done, either to vert or venison, and cause them to be presented without any concealment, in the next court of attachment, &c.—*Crompt. Juris.* 201.

Bowling, game of, legalised by 8 & 9 Vict. c. 109.

Bowyers, manufacturers of bows and shafts. An ancient company of the city of London.—12 *Edw. IV.* c. 2; 33 *Hen. VIII.* c. 6; 8 *Eliz.* c. 10.

Bracelets, hounds or beagles of the smaller or slower kinds.

Bracenarius, a huntsman or master of the hounds.

Bracetus, a hound.—*Mon. Ang.* t. 2, p. 283.

Brachylogy [fr. βραχύς and λόγος, Gk.], the method of expressing a sentence or argument concisely.

Bracinum, a brewing; the whole quantity of ale brewed at one time, for which *tolsestor* was paid in some manors. *Brecina*, a brewhouse.

Bracton, the author of the treatise entitled *De Legibus et Consuetudinibus Angliæ*. Bracton's book, compared with that of Glanville, is a voluminous work. It is divided into five books, and these into tracts and chapters. See 2 *Reeves' Hist.* c. viii. p. 86, note (*a*), for an analysis of the several divisions of the chapters, and a complete digest of the contents of this venerable code. If this law-treatise had been printed with such divisions and notification of its contents as are given in the note referred to, the arrangement of the whole would have struck the eye as distinctly as it does the understanding upon perusal; it being, in truth, a comprehensive and particular account of the law, digested with a strict adherence to method and system. Consistently with the extensiveness and regularity of the plan, the several parts of it are filled with a copious and accurate detail of legal learning. The rules of property are explained; the proceedings in actions, through the minutest steps, are investigated and developed; while every proposition is supported by fair deduction, or corroborated by the authority of some adjudged case, so that the reader never fails of deriving instruction or amusement from the study of this scientific treatise on our ancient laws and customs. Bracton was deservedly looked up to as the first source of legal knowledge, even down to the time of Lord Coke,

who seems to have made this author his guide in all enquiries into the foundation of our law.

The author of this work is usually styled Henry de Bracton; though he passed, as fancy or mistake may have dictated, by the names of Brycton, Britton, Briton, Breton. He is said to have lived at the latter part of the reign of Henry III. There is internal evidence that the book was written before the fifty-second year of this king; for it takes no notice of the writ of entry in the *post*, nor of the regulations about distresses, attachments, guardians in socage, and other points, made by the statute of Marlbridge; and as he quotes a case in the forty-sixth year of this king, it must follow that the book was written, or, at least, received the author's last hand, some time between that and the fifty-second year. It is said that Bracton was a judge, and, speaking of some judges of his time, he calls them *insipientes, et minus doctos, qui cathedram judicandi ascendunt antequam leges didicerint.* (*Brac.* I.)—*Hales' Hist.* p. 189. In Lincoln's Inn Library is an ancient MS. copy of Bracton, which is said to be more correct than the printed copies.

Brahmen, Brahmin, Brahman, or **Bramin,** a divine, a priest, the first Hindu caste.

Branding in the *hand* or *face* with a hot iron. A punishment inflicted by law for various offences, after the offender had been allowed benefit of clergy. Abolished by 3 Geo. IV. c. 38.

Brasiator [fr. *brasium*, Lat., malt], a maltster, a brewer.—*Old Records.*

Brasium, malt.

Brawling [fr. *brailler*, Fr., freq. of *braire*, to cry], the offence of quarrelling, or creating a disturbance in the church or churchyard. Therefore mere quarrelsome words, which are neither an affray nor an offence in any other place, are penal here. It was enacted by 5 & 6 Edw. VI. c. 4, that if any person shall, by words only, quarrel, chide, or brawl in a church or churchyard, the ordinary shall suspend him, if a layman, *ab ingressu ecclesiæ* (from the entrance of the church); and if a clerk in orders, from the ministration of his office during pleasure. And if any person in such church or churchyard proceed to smite or lay violent hands upon another, he shall be excommunicated *ipso facto*, or if he strike him with a weapon, or draw any weapon with intent to strike, he shall, besides excommunication, upon conviction by a jury, have one of his ears cut off, or, if he have no ears, be branded with the letter 'F' in his cheek. But this punishment was repealed by 9 Geo. IV. c. 31, s. 1. With respect to the malicious or contemptuous disturbance of a congregation, or molestation of a minister during the celebration of divine service, see 1 *M.* c. 3; and 1 *W. & M.* c. 18; also 52 *Geo. III.* c. 155, s. 12; 4 *Bl. Com.* 145. By 23 & 24 Vict. c. 32, the jurisdiction of Ecclesiastical Courts in England and Ireland, in suits for brawling, is abolished as against persons not in holy orders, and persons guilty of riotous, violent, or indecent behaviour in churches and chapels of the Church of England or Ireland, or in any chapel of any religious denomination, or in England in any place of religious worship duly certified under the provisions of 18 & 19 Vict. c. 81, or in churchyards or burial grounds, on conviction before two justices are liable to a penalty of not more than 5*l.*, or imprisonment for any term not exceeding two months.

Breach of close, an unwarrantable entry on another's land; for every man's land is in the eye of the law inclosed and set apart from his neighbour's, and that either by a visible and material fence, as one field is divided from another by a hedge, or by an invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. Every such entry or breach of a man's close carries necessarily along with it some damage or other; for, if no other special loss can be assigned, yet still the words of the writ itself specify one general damage, viz. the treading down and bruising his herbage.—*Cro. Eliz.* 420.

Breach of covenant, a violation of an agreement contained in a deed either to do or not to do some act: it is a civil injury.—3 *Bl. Com.* 155.

Breach of duty, the not executing any office, employment, trust, &c., in a proper manner; for every person who undertakes the duties of any office, &c., contracts with those who employ and trust him to perform it with integrity, diligence, and skill; and if by his want of either of those qualities any injury accrues to individuals, they have therefore their remedy in damages by an action.—3 *Bl. Com.* 163.

Breach of peace, offences against the public, which are either actual violations of the peace, or constructive violations, by tending to make others break it. Both of these species are either felonious or not felonious. The *felonious* breaches are: (1) The riotous assembling of twelve persons or more, and not dispersing upon proclamation. (2) The riotous demolishing of churches, houses, buildings, or machinery (24 & 25 Vict. c. 97, ss. 11 and 12). (3) Maliciously sending, delivering or uttering, or directly or indirectly causing to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person (24 & 25 Vict. c. 100, s. 16). The remaining offences are not felonious. (4) Affrays. (5) Riots, routs, and unlawful assemblies, which must have three persons at

least to constitute them. (6) Tumultuously petitioning, which was carried to an enormous height in the times preceding the great rebellion, wherefore by 13 Car. II. st. 1, c. 5, it is enacted that not more than twenty names shall be signed to any petition to the King or either House of Parliament for any alteration of matters established by law in church or state, unless the contents thereof be previously approved, in the country by three justices, or the majority of the grand jury at the assizes or quarter sessions, and, in London, by the Lord Mayor, aldermen, and common council; and that no petition shall be delivered by a company of more than ten persons, on pain in either case of incurring a penalty not exceeding 100*l.* and three months' imprisonment. (7) Forcible entry or detainer, which is committed by violently taking or keeping possession of lands or tenements with menaces, force, and arms, and without the authority of the law. (8) Riding, or going armed, with dangerous or unusual weapons, terrifying the good people of the land. (9) Spreading false news (12 Ric. II. c. 11). (10) False and pretended prophecies, with intent to disturb the peace, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. These are the actual breaches of the peace; the remaining are constructive. (11) Challenges to fight, either by word or letter, or being the bearer of such challenges. (12) Libels, which, taken in their largest and most extensive sense, signify any writings, pictures, or the like, of an immoral or illegal tendency; but in the sense of a constructive breach of the peace, they are malicious defamations of any person, and especially a magistrate, made public by either printing, writing, signs, or pictures, in order to provoke him to wrath, or expose him to public hatred, contempt, and ridicule. Consult 6 & 7 *Vict.* c. 96, amending the law respecting defamatory words and libels; 4 *Bl. Com.* c. 11; and 4 *Steph. Com.* cap. x.

Breach of pound, the breaking any pound or place where cattle or goods distrained are deposited, to rescue such distress; it is an indictable offence. See POUND BREACH.

Breach of prison, an escape by a prisoner lawfully in prison.

Breach of promise, a violation of one's word or undertaking, such as the breach of the condition of a bond, &c.

Breach of trust, a violation of duty by a trustee, executor, or other person in a fiduciary position. The Court of Chancery has adopted two principles in regard to the liability consequent upon a breach of trust: 1st. That with a view not to deter persons from undertaking a trust, the Court is extremely liberal, and will so determine as not to strike terror into persons acting for the benefit of others, and not for their own; and will endeavour to protect a trustee from any mischief that may happen from a misapplication of trust-money, and where executors intend fairly to discharge their duty, the Court will not hold them liable upon slight grounds. 2ndly. That care must be had to guard against an abuse of their trust.—13 *Ves.* 410. See 20 & 21 *Vict.* c. 54.

Breaking of arrestment, an action wherein it is narrated, that though arrestment was laid out, payment nevertheless was made; the pursuer, therefore, concludes that the breaker should refound him, and besides should be punished according to law.—*Scotch Dict.*

Brecca [fr. *brèche*, Fr.], a breach or decay.

Brecina. See BRACINUM.

Brede, broad, also deceit.—*Bract.*

Bredwite [fr. *bread* and *wite*, Sax.], a fine or penalty imposed for defaults in the assize of bread.—*Paroch. Antiq.* 114.

Brehon, the Irish name for a Judge.

Brehon law, a rule of right, unwritten, but delivered by tradition from one to another, in which oftentimes there appeared great show of equity in determining the right between party and party, but in many things repugnant quite, both to God's laws and man's. This law was formally abolished, 40 Edw. III., it being unanimously declared to be indeed no law, but a lewd custom crept in of later times.—*Spenser's State of Ireland*, p. 1513; *Hale's Hist.* p. 217; 1 *S. S.* 82.

Brenagium, a payment in bran, which tenants anciently made to feed their lords' hounds.

Brephotrophi, curators of places for receiving foundlings.

Bresina, wether-sheep.—*Mon. Ang.* t. 1, c. 406.

Bretoyse, or **Bretoise,** the law of the Welsh marches, observed by the Ancient Britons.

Bretwalda (*wielder*), ruler of the Britons.

Breve, a writ, by which a person is summoned or attached to answer an action, complaint, &c., or whereby anything is commanded to be done in the courts, in order to justice, &c. It is called *breve*, from the brevity of it, and is addressed either to the defendant himself, or to the Chancellors, Judges, Sheriffs, or other officers.—*Skene, de verb 'Breve.'*

Breve judiciale debet sequi suum originale, et accessorium suum principale.—Jenk. Cent. 292.—(A judicial writ ought to follow its original, and an accessory its principal.)

Breve ita dicitur, quia rem de quâ agitur, et intentionem petentis, paucis verbis breviter enarrat.—2 Inst. 39.—(A writ is so called because it briefly states, in few words, the matter in dispute, and the object of the party seeking relief.)

Breve judiciale non cadit pro defectu formæ.—

Jenk. Cent. 43.—(A judicial writ fails not through defect of form.)

An *original* writ (*breve originale*) is a mandatory letter issuing out of the common law jurisdiction of the Court of Chancery under the Great Seal, and in the Queen's name, addressed to the sheriff of the county where the injury is alleged to have been committed, containing a summary statement of the cause of complaint, and requiring him to command the defendant to satisfy the claim; and on his failure to comply, then to summon him to appear in one of the Superior Courts of Common Law, there to account for his non-compliance. In some cases, however, it omits the former alternative, and requires the sheriff simply to enforce the appearance. It was formerly essential to the due institution of all actions in the Superior Courts, that they should commence by original writ; in the case of *real* actions this is still necessary, but not so in *personal* actions (2 Wm. IV. c. 39), which commence by writ of summons as enacted by the second sec. of 1 & 2 Vict. c. 110; neither is an original writ issued in the *mixed* action of ejectment, which is commenced by a writ pursuant to the C. L. P. Act, 1852. *Judicial* writs are those issued subsequently to the original writ out of a Court of Common Law, during the progress of an action. They issue under the seal of the Court, and not under the Great Seal of England, and are tested not in the Queen's name, but in that of the chief, or, if there be no chief, of the senior puisne judge.—3 *Bl. Com.* c. xix.

Breve perquirere, to purchase a writ or license of trial, in the King's courts, by the plaintiff, *qui* breve *perquisivit*; whence the usage of paying 6*s.* 8*d.* fine to the Crown where the debt is 40*l.*, and of 10*s.* where the debt is 100*l.*, &c., in suits and trials for money due upon bond, &c.

Breve de recto, a writ of right or license for a person ejected out of an estate, to sue for the possession of it when detained from him.

Brevet, a commission conferring on an officer a degree of rank immediately above that which he holds in his particular regiment; without, however, conveying a power to receive the corresponding pay. Brevet rank does not exist in the royal navy, and in the army it neither descends lower than that of captain, nor ascends above that of lieutenant-colonel.

Brevia Magistralia, official writs framed by the Clerks in Chancery to meet new injuries, to which the old forms of action were inapplicable.—4 *Reeves*, 426.

Brevia, tam originalia quam judicialia, patiuntur Anglica nomina.—10 *Co.* 132.—(Writs, as well original as judicial, bear English names.)

Brevia selecta, abbrev., *Brev. Sel.* [Lat.], *choice writs* or *processes.*

Brevia testata, written memoranda, introduced to perpetuate the tenor of a conveyance and investiture, when grants by parol became productive of dispute and uncertainty. To this end the persons who attended as witnesses were registered in the deed, and this was anciently done without their own signatures (writing not then being a general accomplishment), for they merely heard the deed read, and then the clerk added their names in a sort of memorandum, thus, '*hijs testibus, Johanne Moore, Jacobo Smith, et aliis ad hanc rem convocatis.*'—The modern system of conveyancing is an elaborate extension of these *brevia testata.*—2 *Bl. Com.* 307.

Brevibus et rotulis liberandis, a writ or mandate to a sheriff to deliver to his successor the county, and the appointments, with the rolls, briefs, remembrance, and all other things belonging to his office.—*Reg. Orig.* 295.

Bribery [fr. *briber*, Fr., to devour or eat greedily], the taking by, or giving to, a person in a judicial or public office, of any fee, gift, reward, or brocage, to influence his behaviour in his office, or the taking or giving a reward for appointing another to a public position. As to bribery at elections for members of Parliament, see 17 & 18 *Vict.* c. 102, continued and amended by 19 & 20 *Vict.* c. 84; 21 & 22 *Vict.* c. 87; and 22 & 23 *Vict.* c. 48.

Bribour [fr. *bribeur*, Fr.], a pilferer of other men's goods.—28 *Edw. II.* c. 1.

Bricks, the duties of excise on, were repealed by 13 & 14 Vict. c. 9.

Bricolis, an engine by which walls were beaten down.—*Blount.*

Bridewell, a house of correction, not under the sheriff's charge.

Bridge [*γέφυρα*, Gk.; *pons*, Lat.; *bric*, Sax.], a building of brick, stone, wood, or iron, erected across a river, ditch, valley, or other place, for the common ease and benefit of travellers. Public bridges, which are of general convenience, are of common right to be repaired by the whole inhabitants of that county in which they lie. If the bridge be within a city or town corporate, the inhabitants of such city and town corporate shall repair it; if within a riding, the inhabitants of the riding shall repair it. The inhabitants of a county, &c., are, therefore, bound to repair every public bridge within it; unless, when indicted for the non-repair of it, they can shew by their plea that some other person is liable, *ratione tenuræ*; and every bridge *in a highway* is, by 22 Hen. VIII. c. 5, deemed a public bridge for this purpose. If part of a bridge be within one county, &c., and the other part within another county, &c., each party shall repair that part of the bridge which is within it. Besides the bridge, the county is bound to repair 300 yards of the road adjoin-

ing either end of it. As to the offence of pulling down, throwing down, or destroying a bridge, see 24 & 25 *Vict.* c. 97, ss. 29 and 33.

Bridge-masters, persons chosen by the citizens, who have certain fees and profits belonging to their office, as in the case of London Bridge.—*Lex. Lond.* 283.

Brief [fr. *brevis*, Lat.; *brief*, Dutch; a letter], an abbreviated statement of the pleadings, proofs, and affidavits at law, or of the bill, answer, and other proceedings in equity, with a concise narrative of the facts and merits of the plaintiff's case, or the defendant's defence, for the instruction of counsel at the trial or hearing. Arrangement and compression without any material omission should be carefully attended to in the preparation of briefs.

Brief al'evesque, a writ to the bishop which, in *quare impedit*, shall go to remove an incumbent, unless he recover or be presented *pendente lite*.—1 *Keb.* 386.

Brief out of the Chancery, a writ or command to a judge that he examine by an inquest, whether a man be nearest heir.—*Scotch Law.*

Brief of distress, an obsolete writ, which issued out of Chancery after decree obtained against any landlord to distress his readiest goods, according to the old custom.—*Ibid.*

Brief of mortancestry, that which is used for entering of all heirs of defuncts.—*Ibid.*

Brief, papal, the Pope's letter upon matters of discipline.

Briefs for collecting charities, licenses to make collection for repairing churches, restoring loss by fire, &c.—4 *Anne*, c. 14.

Briga [fr. *brigue*, Fr.], debate, contention.

Brigandine [*lorica*, Lat.], a coat of mail or ancient armour, consisting of numerous jointed scale-like plates, very pliant and easy for the body, mentioned in 4 & 5 P. & M. c. 2; Jer. xlvi. 4, and li. 3.

Brigantes, the ancient name for the inhabitants of Yorkshire, Lancashire, Durham, Westmoreland, and Cumberland.

Brigbote, or **Brug-bote** [fr. *brig*, Sax.; *pontus*, Lat.; and *bote*, *compensatio*], the contribution to the repair of bridges, walls, and castles, which by the old laws of the Anglo-Saxons might not be remitted.—*Fleta*, l. 1, c. xlvii.

Broad-arrow, used as a Government mark, is thought to have had a Celtic origin; and the so-called arrow may be the → or *á*, the broad *a* of the Druids. This letter was typical of superiority either in rank and authority, intellect or holiness; and is believed to have stood also for king or prince. See 39 & 40 *Geo. III.* c. 89; 55 *Geo. III.* c. 127.

Brinjarrie, Binjary, Benjary, or **Banjary,** a grain merchant in India.

Bristol bargain, where A lends B 1,000*l.* on good security, and it is agreed that 500*l.*, together with interest, shall be paid at a time stated; and as to the other 500*l.*, that B in consideration thereof, should pay unto A 100*l. per annum* for seven years.

British Columbia, the territory on the North-west coast of North America, commonly known by the designation of New Caledonia. Its government is provided for by 21 & 22 Vict. c. 99.

Britton. The small French tract under the name of Britton is thought to have been composed under the direction of Edward I. The singular form of it seems to countenance such a supposition; for the contents of the whole book are put into the king's mouth, and the law so delivered has the appearance of being promulgated by the immediate voice of the sovereign. This work is shorter than Fleta, and is little more than a compendium. It is attributed by some to John Breton, who was Bishop of Hereford and a judge; but as he died in the third year of this king's reign, and this treatise takes notice of statutes made in the 13th, the truth of this account is justly doubted. By others it is considered as nothing more than an abridgment of Bracton, with the subsequent alterations that had been made in the law; and that it is called Britton, as one of the names of Bracton himself.

This French tract, as it is written in the language which the law spoke for many years after, engages the curiosity of a modern reader in a particular manner. In the writings of Bracton and Fleta everything is seen as it were through a cloud, disguised in the terms and phraseology of the Latin tongue; whereas Britton addresses you in the technical, proper style of the law: you here perceive a determinate meaning, conveyed in precise terms, and are enabled to form an opinion from it with more confidence and certainty.—2 *Reeves*, c. xi. p. 280.

Brocage, the wages or hire of a broker; also termed *Brokerage*, 12 R. II. c. 2.

Brocella [fr. *brusca*, obs. Lat.; *broce*, Fr.], a wood, a thicket or covert of brushes and brushwood, hence *brouce* of wood, and *brousing* of cattle.

Brocha [fr. *broche*, Fr.], an awl or large packing needle; also a spit, hence to *broach*, or pierce a barrel.

Brochia, a great can or pitcher.—*Bract.* 1. 2, t. 1, c. vi.

Brode-halfpenny, or **broad-halfpenny.** See BORD-HALFPENNY.

Broken stowage, that space in a ship which is not filled by her cargo.

Broker [fr. *broceur*, Fr.; *tritor*, Lat.; a person who breaks into small pieces], an agent employed to make bargains and contracts

between other persons in matters of trade, commerce, and navigation, for a compensation commonly called a brokerage. Domat has given (B. 1, tit. 17, s. 1, art. 1) a very full and exact description, according to the sense of our law: 'The engagement (says he) of a broker is like to that of a proxy, a factor, and other agent; but with this difference, that the broker being employed by persons who have opposite interests to manage, he is, as it were, agent both for the one and the other, to negotiate the commerce, or affair in which he concerns himself. Thus his engagement is twofold, and consists in being faithful to all the parties, in the execution of what each one of them entrusts him with. And his power is not a trust, but to explain the intentions of both parties, and to negotiate in such a manner as to put those who employ him in a condition to treat together personally.'

Where he is employed to buy or sell goods, he is not entrusted with the custody or possession of them, and is not authorised to buy or sell them in his own name. He is strictly, therefore, a middle-man, or intermediate negotiator between the parties, and for some purposes (as that of signing a contract within the Statute of Frauds) he is treated as the agent of both parties, but primarily he is deemed merely the agent of the party by whom he is originally employed. A broker being personally confided in, cannot ordinarily delegate his authority to a sub-agent or clerk under him, or to any other person, unless the principal give an assent, either expressed or implied, thereto. A broker differs from an auctioneer in two respects; a broker may buy as well as sell, but an auctioneer can only sell; a broker cannot sell personally at public auction, for that is the appropriate function of an auctioneer, but he may sell at private sales, which an auctioneer (as such) does not.

There are various sorts of brokers now employed in commercial affairs, whose transactions form, or may form, a distinct and independent business. Thus, for example, there are exchange and money-brokers, stock-brokers, ship-brokers, and insurance-brokers, who are respectively employed in buying and selling bills of exchange, or promissory notes, railway-scrip, goods, stocks, ships, or cargoes; or in procuring freights or charter parties. The character of a broker is also sometimes combined in the same person with that of a factor. In such cases, we should carefully distinguish between his acts in the one character and in the other, as the same rules do not always apply to each. See FACTOR. The Romans called brokers *Proxenetæ*.—*Dig. Lib.* 50, tit. 14, l. 2; *Story's Comm. on Agency*, p. 24.

Brokers in London must be admitted by the Lord Mayor and aldermen, paying 5*l.* on admission, and a like sum annually under a penalty of 100*l.* They are also required to take an oath, and enter into a bond for the observance of certain regulations. A broker, who is not duly qualified, cannot recover any compensation.— 6 *Anne*, c. 16; 57 *Geo. III.* c. 60.

Brokerage, the commission or per centage paid to brokers on the sale or purchase of bills, funds, goods, &c.

Brok, an old sword or dagger.

Brooke's (Sir Robert) Abridgment, a work printed in 1568, and an improvement on the plan of Statham and Fitzherbert. The cases are here arranged with more strict regard to the title; but the order in which they are strung together is very little better, being generally guided only by the chronology. He observes one method which contributes in some degree to draw the cases to a point; he generally begins a title with some modern determination in the reign of Henry VIII., as a kind of rule to guide the reader in his progress through the heap of ancient cases which follow. He abridges, with great care, in the language of his own time, sometimes adding a short observation, or *quære*, furnished by the experience of later times. So that, upon the whole, the substance of the year-books, to which it is an excellent repertory, is conveyed in this one volume, in a style and manner more generally acceptable than the original. This has the praise of being the most correct of these works.— *Foster*. However, such works, with all their use, can rarely be ultimately relied on; the opinion of a court can hardly be so abridged as to convey all the circumstances which had their weight in a determination; something will escape in the transfusion. As far as the nature of their design can go, they are of excellent use; and the full extent of their design was not tried till the very methodical work of Mr. Justice Rolle appeared, and the modern ones of Bacon and Comyns. An application to such a work as this to comprehend the great outline and extent of any branch, and a patient reading of the particular cases reported at length, more minutely to discern the grounds and principles upon which they were adjudged, is an union of labours which is necessary to form clear conceptions of the law.— 5 *Reeves*, c. xxxv. p. 244.

Brossus, bruised or injured with blows, wounds, or other casualty.—*Cowel.*

Brothel houses [fr. *bordel*, Fr.], lewd places, the habitation of prostitutes. They were formerly allowed in certain places, and especially on the Bank Side, in *Southwark*, where they had signs before their doors in like manner as inns and ale houses. By 14 Ric. II. it was enacted that no stews or brothel houses should be kept in *Southwark*, but in the common

places appointed therefor. Of these, before the reign of Hen. VII., there were eighteen allowed; but the king for a long time forbad them. Afterwards, twelve, and no more, were permitted. But finally, Hen. VIII. by proclamation, in the 37th year of his reign, suppressed them all. And so odious were they become, that in leases of houses an express condition was inserted, that the lessees should not suffer, harbour, or keep any lewd woman within the said house, &c. Any person going to these places is subject to be imprisoned till he give security for good behaviour.—4 *Inst.* 205. See BAWDY HOUSE. A *brothelman*, or *borelman*, was a loose, idle fellow; a *femme bordelier*, or *brothelier*, a common woman.

Brother-in-law, a wife's brother or a sister's husband. There is not any relationship, but only affinity, between brothers-in-law.

Brudhote. See BRIGBOTE.

Brudkop [fr. *brautkauf*, Low Sax., purchase], betrothment.

Bruere [*erica*, Lat., heath], heath-ground.

Brueria [fr. *brær*, Sax., briar], thorns, briars, heath.—*Par. Ant.* 620.

Bruilletus, a small coppice or wood.

Bruillus [fr. *breil*, *breuil*, Fr., a thicket], a clump of trees in a park or forest.

Bruneta. See BURNETA.

Bruscia, a wood.—*Mon. Ang.* t. 1, fol. 773.

Bubbles [fr. *bobbel*, Dutch], projects started by dishonest individuals to cheat and rob the public. The South-Sea project, and the Railway mania, for examples. The 6 Geo. I. c. 18, punished such fraudulent undertakings; but the act was partly repealed by 6 Geo. IV. c. 91; and the 6 Geo. IV. c. 91 and 4 & 5 Wm. IV. c. 94 are repealed by 1 Vict. c. 73.

Bucinus, a military weapon for a footman.

Bucklarium, a buckler.—26 *Edw. I.* m. 8.

Buckstall, a toil to take deer.—4 *Inst.* 306.

Buckwheat, a French wheat, called in Essex *brank*, and in Worcestershire, *crap*.—15 *Car.* II. c. 5.

Budget (*The*). The Chancellor of the Exchequer makes one general statement every year to the House of Commons, which is intended to present a comprehensive view of the financial condition of the country. Sometimes there are preliminary, or supplemental, or occasional speeches; but the great general statement of the year has, for a long time past, been quaintly called 'the Budget,' from the French *bougette*, by a common figure of speech, putting the name of that which contains, to signify the thing contained. The annual speech known by that appellation embraces a review of the income and expenditure of the last, as compared with those of preceding years; remarks upon the financial prospects of the country; an exposition of the intended repeal, modifications, or imposition of taxes during the season, and a detail of the public expenditure during the current period, with its grounds of justification. *Dod's Parl. Comp.*

Buggery [fr. *bugarone*, or *buggerare*, Ital.], a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature, by mankind with mankind, or with brute beast, or by womankind with brute beasts.—3 *Inst.* 58; 24 & 25 *Vict.* c. 100, s. 61.

Building, a house or other erection. In order as much as possible to prevent the damage consequent upon fires happening in crowded streets, the 7 & 8 Vict. c. 84, and 9 & 10 Vict. c. 5, usually called the Building Acts, were passed. They are confined in their operation to the metropolis and its neighbourhood. See also 18 & 19 *Vict.* c. 122.

As to setting fire to, and other injuries to buildings, see 24 & 25 *Vict.* c. 97, ss. 1–11.

Building lease, a demise of land for a long term of years, the lessee covenanting to erect certain edifices thereon according to specification. As to such leases of settled estates, see 19 & 20 *Vict.* c. 120, and 21 & 22 *Vict.* c. 77.

Bul, in the ancient Hebrew chronology, the eighth month of the ecclesiastical, and the second of the civil year. It has since been called *Marshevan*, and answers to our October.

Bull [fr. *bulla*, Lat., a stud or boss], a brief or mandate of the Pope or Bishop of Rome, so called from the seal of lead or gold affixed to it, upon which was engraved on one side an image of St. Paul on the right of a cross, and that of St. Peter on the left, and on the other the Pope's name, and the year of his pontificate. To procure, publish, or put in use any of these is made treason by 13 Eliz. c. 2, and 7 Anne, c. 21.

Bull and **Boar.** By the custom of some places the parson is obliged to keep these animals for the use of the parishioners, in consideration of his having tithes of calves and pigs, &c.—1 *Roll. Abr.* 559.

Bullary, a bucket of brine.

Bulletin [fr. *bulla*, Lat., a sealed dispatch], an official notice of a public transaction or matter of importance.

Bullio salis, as much salt as is made at one *wealing*, or boiling; a twelve gallon measure of salt.—*Mon. Ang.* t. 2.

Bullion [some derive it from *βόλος*, Gk., a lump of earth, q. d. money having no stamp upon it; others from *βούλα*, a signature, because it is to receive the prince's effigies; and Minsevus of *billon*, Fr. or Span., copper to make money of], uncoined gold and silver in the mass. Those metals are called so, either when smelted from the native ore, and not perfectly refined; or when they are perfectly

refined, but melted down into bars or ingots, or into any unwrought body, of any degree of fineness.

Bulter, or **Boulter,** the bran or refuse of meal after it is dressed; also the bag in which it is dressed, 51 Hen. III. Hence, *bulted*, or *boulted* bread, being the coarsest bread.

Bum-bailiff [fr. the notion of a humming, droning, or dunning noise; the term *bum* is applied to dunning a person for a debt.—*Hall*], a person employed to dun one for a debt; the bailiff employed to arrest for debt.—*Wedgw.*

Bungalow, a country-house in the East Indies.

Burden of proof [*onus probandi*, Lat.]. The most prominent canon of evidence is, that the point in issue is to be proved by the party who asserts the affirmative, according to the civil law maxims, *Ei incumbit probatio qui dicit, non qui negat*, and *Affirmanti non neganti incumbit probatio.* The burden of proof lies on the person who has to support his case by proof of a fact which is peculiarly within his own knowledge, or of which he is supposed to be cognisant. 'It is a well known principle of the law,' remarks Archbishop Whately (*Rhetoric*, pt. 1, chap. iii. s. 2), 'that every man (including a prisoner brought up for trial) is to be *presumed* innocent, till his guilt is established. This does not, of course, mean that we are to *take for granted* he is innocent; for if that were the case, he would be entitled to immediate liberation; nor does it mean that it is antecedently *more likely than not* that he is innocent; or that the majority of those brought to trial are so. According to the most correct use of the term, a "presumption" in favour of any supposition, means, not (as has been sometimes erroneously imagined) a preponderance of probability in its favour, but such a *pre-occupation* of the ground as implies that it must stand good, till some sufficient reason is adduced against it. It evidently means only that the "burden of proof" lies with the accusers;—that he is not to be called on to prove his innocence, or to be dealt with as a criminal till they have done so; but that they are to bring their charges against him, which if he can repel, he stands acquitted.'

'Thus again, there is a "presumption" in favour of the right of any individuals or bodies corporate to the property of which they are in *actual possession*: this does not mean that they are, or are not, *likely* to be the rightful owners, but merely that no man is to be disturbed in his possessions till some claim against him shall be established. He is not to be called on to prove his right; but the claimant to disprove it; on whom, consequently, the "burden of proof" *lies.*'

Bureau [fr. *bujo*, It., dark], a large writing-table; also a place where public business is transacted.

Bureaucracy, government by departments, each under a chief; also official abuse.

Burgage-holding, a tenure by which royal boroughs are held of the Sovereign. The service is watching and warding, and is done by the burgesses within the territory of the borough, whether expressed in the charter or not.—*Scotch Dict.*

Burgage-tenure, one of the three species of free socage holdings, is a tenure whereby houses, and lands which were formerly the site of houses, in an ancient borough, are held of some lord by a certain rent. There are a great many customs affecting these tenures, the most remarkable of which is the custom of Borough English (*which see*).—*Litt.* s. 162. This tenure is obviously a fragment of Saxon freedom. As to the right of voting for members of Parliament in respect of these interests, see 2 *Wm. IV.* c. 45.

Burg, or **Burgh,** a small walled town or place of privilege.

Burgbote, a contribution towards the building or repairing of castles or walls of a borough or city.—*Cowel.*

Burgesses [fr. *burgeise*, O. E.; *burgeois*, O. Fr.; *burgensis*, Lat.], generally the inhabitants of a borough or walled town; men of trade; sometimes restricted to the magistrates, &c., of corporate towns, and sometimes to the representatives of such borough in the Commons' House of Parliament.

Burgessour, a burglar.—*Brit.*

Burgh-breche [*fidejussionis violatio*, Lat., a breach of pledge], a fine imposed on the community of a town, for a breach of the peace, &c.—*Leg. Canuti*, c. lv.

Burgh English. See BOROUGH-ENGLISH.

Burgheristhe, or **Burgheriche,** a breach of the peace in a city, &c.—*Domesday.*

Burgh-mails, yearly payments to the Crown of Scotland, introduced by Malcolm III. and resembling the English fee-farm rents.—*Encyc. Lond.*

Burghware, a citizen or burgess.

Burglary [fr. *burg*, Sax., a house, and *larron*, a thief, fr. *latro*, Lat.], called by our ancient law *hamesecken.* A breaking and entering by night into a dwelling-house, with intent to commit a felony. There are four things to be considered in this definition. (1) The *time*; it must be by night, and not by day; and night in the perpetration of this offence, is to be considered as commencing at nine in the evening, and concluding at six in the morning (24 & 25 Vict. c. 96. s. 1). (2) the *place*; it must be a mansion-house, or dwelling-house, or some building connected therewith. The 53rd s. of 24 & 25 Vict. c. 96, enacts 'that no building, although within the same curtil-

age with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house, for the purposes of this Act (which include burglary), unless there shall be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage leading from one to the other.' A house that has not been slept in by the owner, or any part of his family, is not his dwelling-house, so as to make the breaking into it burglary, although it has been used for meals and for business in general. (3) The *manner*; there must be both a breaking and an entry to complete it. But they need not be both done at once; for if a hole be broken one night, and the same breakers enter the next night through the same, they are burglars. Breaking or taking out the glass of, or otherwise opening a window, picking a lock, opening it with a key, lifting the latch of a door, or unloosing any fastening, coming down a chimney, are breakings within the authorities; as for the entry, any the least degree of it, with any part of the body, or with an instrument held in the hand, is sufficient; as to step over the threshold; to put a hand or a hook in at a window to draw out goods, or a pistol to demand one's money; introducing the hand between the glass of an outer window and an inner shutter, are all of them burglarious entries. (4) The *intent* must be felonious, either at Common Law or by Statute, as robbery, murder, rape, or any other felony, whether actually perpetrated or not. By 24 & 25 Vict. c. 96. s. 52, burglary is punishable with penal servitude for life or for any term not less than three years, or by imprisonment.—4 *Bl. Com.* 222; *Russell on Crimes; Arch. Crim. Plead.* 235, *et seq.*

Burgmote, a court of a borough.—*Leg. Canuti*, c. xliv.

Burgomaster, a German mayor or Burgomeister.

Buri, husbandmen.—*Mon. Ang.* t. 3, p. 183.

Burial, the act of interring the dead. The 4 Geo. IV. c. 52, abolished the barbarous mode of burying persons found *felo de se*, and directs that their burial shall take place, without any marks of ignominy, privately in the parish church-yard, between the hours of nine and twelve at night, under the direction of the coroner. The burial of dead bodies cast on shore is enforced by 48 Geo. III. c. 75. The recent Burial Acts are 20 & 21 Vict. cc. 35, 81; 22 Vict. c. 1; 23 & 24 Vict. c. 64; and 25 & 26 Vict. c. 100.

Burial in some part of the parish church-yard without payment for breaking the soil, is a common law right, and that right will be enforced by *mandamus*, but not burial in an iron coffin or vault, or even in any particular part of a church-yard, as the family vault for example, that being within the discretion of the incumbent. In order to acquire a perfect right to be buried in a particular vault or place, a faculty must be obtained from the ordinary, as in the case of a pew; or a man may prescribe that he is occupier of an ancient messuage in a parish, and ought to have separate burial in such a vault within the church, and such prescription implies that a faculty was originally obtained (8 B & C. 293). The faculty, however, fails when the family cease to be parishioners.

A clergyman may be prosecuted in the Ecclesiastical Court for improperly refusing to bury a dissenter or other person, for by the 60th Canon 'no minister shall refuse or delay to bury any corpse that is brought to the church or church-yard (convenient warning being given him before), in such manner and form as is prescribed in the Book of Common Prayer' (3 Phil. Ec. Cas. 264–306). A conspiracy to prevent a burial is indictable at common law, and so is the wilfully obstructing a clergyman in reading the burial service over the dead in the parish church, and by threats and menaces hindering the burial (7 Dowl. & Ryl. 461). A clergyman has, neither by the ecclesiastical law, nor by the common law, any right to black cloth or other ornaments placed round a pulpit upon the occasion of a burial, but the same belong to the executors, or persons at whose expense they were placed there, and who may recover the value in an action of *trover*, if taken by the parson, or other person.

It is a popular error that a creditor can arrest or detain the body of a deceased debtor, and the doing such an act is indictable as a misdemeanour. See Lord Ellenborough's remarks in *Jones* v. *Ashburnham*, 4 East, 445. It is also an error that permitting a funeral procession to pass over private land creates a public right of way.

Funerals are exempt from tolls by 3 Geo. IV. c. 126, s. 32. The 2 & 3 Wm. IV. c. 74, regulating schools of anatomy, was intended to prevent the stealing of dead bodies, which is contrary to common decency, and abhorrent to the general sentiments and feelings of society. The 6 & 7 Wm. IV. c. 86, regulates the registry of deaths.

Burkism (from the name of its first perpetrator), the practice of killing persons for the purpose of selling their bodies for dissection.

Burneta, or **Bruneta,** cloth made of dyed wool.—*Lyndewood.*

Burning in the hand. See BRANDING.

Burning of houses, outhouses, &c. See ARSON. As to setting fire to churches, mills, ships, &c., see 1 *Vict.* c. 89.

Burrochium, a burroch, dam, or small wear

over a river, where traps are laid for the taking of fish.—*Cowel.*

Bursa, a purse.

Bursar [fr. *bursarius*, Lat.; whence *purse*, and *purser*, a ship's officer], a treasurer of a college.

Bursaria, the exchequer of collegiate or conventual bodies; or the place of receiving, paying, and accounting by the bursars. Also stipendiary scholars, who live upon the burse, fund, or joint stock of the college.

Burse [*cambium*, *bąsilica*], an exchange, or place of meeting of merchants.

Burseholders. See HEADBOROUGH.

Bushel [fr. *busse*, Du., a box; *busken*, a little box], a dry measure containing eight gallons or four pecks.

Busones comitatus, the barons of a county. *Blount;* 2 *Reeves*, c. viii. p. 2.

Bussa, a ship.—*Blount.*

Bussellus [fr. *bouts*, old Fr., leathern vessels for holding wine], a bushel.

Busta, Bustus, Busca, and **Buscus,** &c. See BRUCIA and BRUSULA.

Bustard [fr. *outarde*, Fr.], a large bird of game, usually found on downs and plains.—25 *Hen. VIII.* c. 11.

Buthscarle, mariners or seamen.—*Seld. Mare Claus.* 184.

Butler [fr. *bouteiller*, Fr., as if fr. *bouteille*, a bottle; or fr. *buttery*, *butt*, a barrel]. See BOTILER.

Butlerage, an ancient hereditary duty belonging to the Crown, much older than the customs. It was a right of taking two tons of wine from every ship importing into England twenty tons or more, and by King Edward I. was exchanged into a duty of 2*s.* for every ton imported by merchant-strangers. It was called *butlerage*, because paid to the king's butler; and also *prisage*, because it was a *taking* or purveyance for wine to the king's use.—4 *Inst.* 30; 1 *Bl. Com.* 314.

Butler's ordinance. A law for the heir to punish waste in the life of the ancestor; though it be of record in the parliament book of Edward I., yet it never was a statute, nor ever so received; but only some constitution of the king's counsel, or lords in parliament, which never obtained the strength or force of an act of parliament.—*Hale's Hist.* p. 18.

Butticella, or **Butticellin,** a less measure.

Butt, 108 gallons.

Butts, the ends of short pieces of land in arable ridges or furrows. Also the place where archers meet with their bows and arrows to shoot at a mark.

Buyer [fr. *bycgan*, *bohte*, A. S.; *bygge*, O. E.; to purchase for money], a purchaser; 'the buyer wants a hundred eyes, the seller but one.' *Chi compra ha bisogno di cent' occhii, chi vende n' ha assai di uno*, It. Or according to the Latins, *Caveat emptor.* Let the buyer look to himself. The seller knows the good or bad qualities of his commodities, and has more need of his tongue than his eyes; whereas the buyer cannot be too watchful in this deceiving age, in which tricking in trade is but too much looked upon as warrantable cunning, over-reaching passing for wit.—*Encyc. Lond.*

Buying of Pleas. See MAINTENANCE.

Buza, Butta, or **Buttis,** a standing measure.

Buzonis, the shaft of an arrow before it is fledged and feathered.

Bye, and **Bee** [fr. *by*, Sax.], habitation, as *bying*, i. e. a dwelling-house.

Bye-bil-wuffa, a deed of mortgage or conditional sale. See KUL-KUBALA.—*Ind.*

By-laws [fr. *bilagines*, from *by*, Sax., *pagus*, *civitas*, and *lagen*, *lex*, Spelm.; or *bylag*, Sw., fr. *by*, a borough-town; *byar-iög*, Icel.; *bylove*, Dan.; *leges urbanæ*, Lat.; *byarrette*, Icel.; *jus municipii*; or perhaps laws made *obiter* by the *by*], the laws, regulations, and constitutions of corporations, for the government of their members, being private laws made *by the by*, in particular cases, to which the public laws do not extend. They may be made at courts-leet or courts-baron, by commoners or inhabitants, in vills, &c., guilds or fraternities of trade duly incorporated. They are binding, unless contrary to law, or unreasonable, and against the common benefit, and then they are void. There are nice distinctions drawn between by-laws made in *restraint* of a trade, and those to *regulate* it. If a by-law do not mention how the penalty for disobedience of it is to be recovered, debt or *assumpsit* will lie, but if warranted by special custom, distress and sale of the party's goods may be made.

No trading company is allowed to make by-laws which may affect the Crown, or the common profit of the people, under penalty of 40*l.*, unless they be approved by the Chancellor, Treasurer, and Chief Justices, or the Judges of assize in their circuits.—19 *Hen. VII.* c. 7.

By the Municipal Corporation Act (5 & 6 Wm. IV. c. 76), the council have express power to make such by-laws as to them shall seem meet, for prevention and suppression of any nuisances not already made punishable in a summary manner, and to inflict a fine not exceeding 5*l.* These by-laws cannot be made unless two-thirds of the whole council are present, and cannot come into operation till twenty-eight days after the same have been sent to the Secretary of State for approval of her Majesty in council, who may disapprove of the same, and till after public notification thereof has been made in the borough, by affixing the same in some public place.

In Scotland those laws are called laws of *bir-*

law, or *burlaw*, which are made by neighbours elected by common consent in the birlaw courts, wherein cognizance is taken of complaints between neighbour and neighbour. The men so chosen are judges and arbitrators, and are styled *birlaw-men*. And *birlaws*, according to Skene (p. 33), are *leges rusticorum*, laws made by husbandmen, &c., concerning neighbourhood.

Bysax, the first month of the Bengal year, beginning on the 11th of April, and ending on the 11th of May.

C.

C, inscribed upon a ballot in the Roman Courts of Judicature, stood for *condemno*.—*Tay. C. L.* 192.

Cabal [fr. *cabala*, Heb., tradition; or *cabale*, Fr., intrigue], a hidden or imaginary art practised by the Jews (1 *Hall. Litt. Hist.* p. 205). (The Jews believed that Moses received in Sinai not only the law, but also certain unwritten principles of interpretation, called Cabala or Tradition, which were handed down from father to son, and in which mysterious and magical powers were supposed to reside.) Also a junto or private meeting of small parties. This name was given to that iniquitous ministry in the reign of Charles II. formed by Clifford, Ashley, Buckingham, Arlington, and Lauderdale, who concerted a scheme for the restoration of popery. The initials of these five names form the word 'cabal;' hence the appellation.—*Hume* ix. 66. For a succinct account of the Cabal Ministry, see 2 *Hall. Cons. Hist.* p. 374. A cabal differs from a party, as few to many.

Cabalist, a factor or broker in French commerce.

Caballaria [fr. *caballus*, Lat., a mill horse], pertaining to a horse. It was a feudal tenure of lands, the tenant furnishing a horseman suitably equipped in time of war, or when the lord had occasion for his service.

Cabinet Council, a private and confidential assembly of the most considerable ministers of state, to concert measures for the administration of public affairs; first established by Charles I.

Cable [fr. *cabl*, Welsh; *cabel*, Dut.], the great rope of a ship, to which the anchor is fastened. See 25 *Geo. III.* c. 56.

Cablish [fr. *cado*, Lat., to fall; *cablis*, O. Fr.], brushwood, or more properly windfall-wood, according to *Spelman*.

Cachepolus, or **Cacherellus**, an inferior bailiff, or catchpole.—*Jacob*.

Cachet, Lettres de, letters issued and signed by the kings of France, and countersigned by a Secretary of State, authorising the imprisonment of a person. It is said that they were devised by Père Joseph, under the administration of Richelieu. They were at first made use of occasionally as a means of delaying the course of justice; but during the reign of Louis XIV. they were obtained by any person of sufficient influence with the king or his ministers. Under them persons were imprisoned for life, or for a long period, on the most frivolous pretexts, for the gratification of private pique or revenge, and without any reason being assigned for such punishment. They were also granted by the king for the purpose of shielding his favourites or their friends from the consequences of their crimes; and thus were as pernicious in their operation as the protection afforded by the church to criminals in a former age. Abolished during the revolution of 1789.

Cadastre, an official statement of the quantity and value of realty made for purposes of taxation.—*Fr. Law*.

Cade, a cask containing, of herrings 500, but of sprats 1,000.—*Book of Rates*, fol. 45.

Cadet [fr. *cadet*, Fr.; *capdel*, Gascon.; the younger son of a family; said to be fr. *capitetum*, little chief.—*Wedgw.*], one who is trained for the army by a course of military discipline, at Woolwich, Addiscombe, &c., previously to obtaining a commission in the East India service. Also a younger brother.—*Encyc. Lond.*

Cadi, a Turkish magistrate.

Caduca, the lapse of a testamentary disposition.—*Sand. Just.* 324.

Caep-Gildum, restoring cattle or goods.

Caerleon, in Wales, an archbishopric which became subject to the Archbishop of Canterbury in the reign of Henry I.

Cæsarian operation [fr. *Cæsar*, or rather *Cæso*, the first of that name, who was cut out of his mother's womb], a surgical operation whereby the *fœtus*, which can neither make its way into the world by the ordinary and natural passage, nor be extracted by the attempts of art, whether the mother and *fœtus* be yet alive, or whether either of them be dead, is, by a cautious and well timed-section, taken from the mother, with a view to save the lives of both, or either of them. 'By most men,' observes Burn (*Principles of Midwifery*, p. 473, 1824), 'the life of the mother has been considered of the greatest importance, and therefore, as the Cæsarian operation is full of danger to her, no British practitioner will perform it, when delivery can, by the destruction of the child, be procured *per vias naturales*. There are, I think, histories of twenty-three cases, where this operation has

been performed in Britain; out of these only one woman has been saved, but eleven children have been preserved. On the continent, however, where the operation is performed more frequently, and often in more favourable circumstances, the number of fatal cases is much less. If we confine our view to the success of the operation in this island, we must consider it as universally fatal to the mother. The operation itself, though dangerous in its consequences and formidable in its appearance, is by no means difficult to perform. Some advise the incision to be made perpendicularly in the linea alba, others transversely, in the direction of the fibres of the transversalis muscle. Perhaps the precise situation and direction of the wound must be regulated by the circumstances of the case, and the shape of the abdomen; but in general, I apprehend that the transverse wound will be most eligible.'

If this operation be performed after the mother's death, the husband cannot be tenant by the courtesy; since his right begins from the birth of the issue, and is consummated by the death of the wife; but if mother and child are saved, then the husband would be entitled after her death.

Cæterorum, a kind of administration granted after a limited administration for the rest of the estate.

Cagia, a cage or coop for birds.—*Rot. Claus.*; 38 *Hen. III.*

Calangium, and **Calangia,** a challenge, claim, or dispute.—*Mon. Angl.* tom. 2, fol. 252.

Calcetum, and **Calcea** [fr. *calx*, Lat.; *chaux*, Fr., chalk], a causey, or common hard-way, maintained and repaired with stones and rubbish.—*Kennet's Gloss.*

Calcutta, Bishop of, the metropolitan bishop in India.—3 & 4 *Wm. IV.* c. 85, s. 94.

Caledonia, that part of Scotland north of the Firths of Dunbritton and Edinburgh.

Calefagium, a right to take fuel yearly.—*Blount.*

Calendar [fr. *calendarium*, Lat.; fr. *calendæ*, the first day in the month in Roman reckoning], the order and series of months, together with the festivals and fasts, which make up the year. There are two modes of computing time, by the annual course of the sun, and by the periodical revolutions of the moon. The solar year consists of 365 days, five hours, 48′, 45″, 30‴; the lunar year of 354 days, three hours, 48′, 38″, 12‴. The Mahometans adopt the lunar year. The solar year, calculated by the ancient Egyptians, has undergone various corrections and denominations. The chief of these now in use are the three following: (1) The Julian year, so called because Julius Cæsar introduced into the Roman empire the solar or Egyptian year, instead of the lunar year. The Russians and Greeks are the only nations that now use the Julian year. The common Julian year consists of 365 days, and the bissextile, which returns every four years, of 366 days. This computation is faulty, inasmuch as it allows 365 days, and six entire hours, for the annual revolution of the sun, being an excess every year of 11′, 14″, 30‴, beyond the true time. This, in a course of ages, had amounted to several days, and began at length to derange the order of the seasons. Leo X. paid some attention to this, but Gregory XIII. caused a new calendar to be drawn up, which is called the (2) Gregorian year; and because the civil year had gained ten days, he ordered, by a bull published in 1581, that these days should be expunged, so that instead of the 5th of October, 1582, it should be reckoned the 15th. The Catholic states adopted this new calendar, but the Protestants and the rest of Europe adhered to the Julian, and hence the distinction between the old and new style, to which it is necessary to attend in all public acts and writings since 1582. The difference until 1699 was ten days, and eleven from 1700, twelve days must be reckoned during 1800, so that the 1st January of the old style answers to the 13th of the new. (3) The Reformed Calendar differs from the Gregorian, as to the method of calculating the time of Easter, and the other moveable feasts. The Protestants of Germany, Holland, Denmark, and Switzerland, adopted this in 1700, Great Britain in 1752, Sweden in 1753, but since 1776, the Protestants of Germany, Switzerland, and Holland, have adopted the Gregorian. In England the year used to commence on the 25th of March until 1753, when by the 24 Geo. II. c. 23, the beginning of the year was transferred to the 1st of January, and the 3rd of September, 1752, was reckoned the 14th of the same month, in order to accommodate the English chronology to the new style.—25 *Geo. II.* c. 30; 6 *Rymer's Fœdera*, 119; *Koch's Europe, Introd.*; 2 *Hall. Lit. Hist.*, 56, 329.

Calendar Month, a period of time consisting of thirty days in April, June, September, and November; of thirty-one days in the remainder of the months, except February, which consists of twenty-eight days, unless in leap year, when the intercalary day is added, making twenty-nine days.

Calendar of Prisoners, a list of all the prisoners' names in the custody of the sheriff of each county, prepared before the arrival of the judges on their respective circuits. At the end of the assize, the clerk of assize makes out four written lists of all the prisoners, with separate columns, containing their crimes,

verdicts, and sentences, leaving a blank column, which the judge fills up opposite to the names of the prisoners, by writing to be reprieved, or respited, or imprisoned, &c. These four calendars are signed by the judge and clerk of assize; then one is given to the sheriff, another to the gaoler, and the judge and the clerk of assize each keep another. If the sheriff afterwards receive no special order from the judge, he executes the judgment of the law in the usual manner, agreeably to the directions in his calendar.—*Christian's note to* 4 *Bl. Com.* c. xxxii. p. 104.

Calends [fr. καλέω, Gk., to call], the first days of each month among the Romans. Romulus begun his months always upon the first day of the moon, to avoid the altering of the immovable feasts. Therefore every new moon, one of the inferior priests used to assemble the people in the Capitol, and *call* over as many days as there are between that and the nones. But we must remember that this custom of calling the days continued no longer than the year of the city 450, when C. Flavius, the *curule ædile* ordered the *fasti*, or calendar, to be set up in public places, that everybody might know the difference of times and the return of festivals.—*Liv.* l. 5, c. xlvi. &c. In the dates of deeds, the day of the month, by *nones*, *ides*, or *calends*, is sufficient.—2 *Inst.* 675.

Calkers, magistrates who repair the breaches of order and safety in the State.—*Ezek.* xxvii. 9,.27.

Call [fr. καλέω, Gk.] **of the House,** an imperative summons sent to every member of the House of Commons, on some particular occasion, when the sense of the whole house is deemed necessary. Members not attending when their names are called, are reported as defaulters, and ordered to attend on another day, when, if they still be absent, and no excuse offered, they may be committed to the custody of the Serjeant-at-arms.—*Lex. Parl.*

Calling the jury, successively drawing out of a box into which they have been previously put, the names of the jurors on the panels annexed to the *nisi prius* record, and calling them over in the order in which they are so drawn. The twelve persons whose names are first called, and who appear, are sworn as the jury, unless some just cause of challenge or excuse, with respect to any of them, shall be brought forward.

Calling the plaintiff, when a plaintiff or his counsel, seeing that sufficient evidence has not been given to maintain the issue, withdraws, the crier is ordered to call or demand the plaintiff, and if neither he nor any person for him, appear, he is nonsuited, the jurors are discharged without giving a verdict, the action is at an end, and the defendant recovers his costs. Such judgment does not prevent a plaintiff from bringing another action for the same cause, but a verdict would have barred him for ever.—3 *Bl. Com.* 376; *Step. Pl.* 120, 330.

Callis, the king's highway, according to old writers.—*Hunt*, l. 1.

Calpes, a gift to the head of a clan, as an acknowledgment for protection and maintenance.—*Scotch Law.*

Calumnia, the offence committed by a man, who, in the language of Gaius, *intelligit non recte se agere sed vexandi adversarii gratia actionem instituit.*—*Sand. Just.* 597.

Calumniators, accusers of innocent persons.

Camalodunum, Maldon, in Essex.

Cambist [fr. *cambium*, Lat.], a person skilled in cambistry or exchanges; a trader or dealer in promissory notes and bills of exchange. Technical among merchants and bankers.

Cambridge. See UNIVERSITY.

Camera [fr. καμάρα, Gk.], the judge's chamber in Serjeant's Inn.—*Ken. Glos.*

Cameralistics, the science of finance or public revenue, comprehending the means of raising and disposing of it.

Camera-stellata, the Star Chamber. Its authority was enlarged and confirmed by *Rot. Parl.* 3 Hen. VII. n. 17, and abolished in the reign of Charles I. a little before the commencement of the civil wars.—*Hume*, iv. 96.

Camisia, a garment belonging to priests, called the *Alb.*—*Pet. Blesensis.*

Camoca, a garment made of silk.—*Mon. Angl.* tom. 3, p. 81.

Campana Bajula, a small hand-bell, used in the ceremonies of the Roman church, and retained among the Protestants by sexton, parish clerks, and criers.—*Camb. ap. Wharton Angl. Sacr.* par 2, p. 637.

Campartum, a part or portion of a larger field or ground, which would otherwise be in gross or common.—*Prinne, His. Col.* vol. iii. p. 89.

Campertum, a corn field.—*Pet. in Parl.* 30 *Ed. I.*

Campfight [fr. *duellum*, Lat.; *combat*, Fr.], the trial of a cause by duel or combat of two champions in the field, for decision of some controversy. If it were a crime deserving death, the campfight was for life or death; if the offence deserved only imprisonment, the campfight was accomplished when one combatant had subdued the other, so as either to make him yield, or take him prisoner. The accused might choose another to fight in his stead, but the accuser was obliged to fight in his own person. The combatants were armed with similar weapons.—3 *Inst.* 221; *Verstegan's Rest. of decayed Intell.* 64.

Campus Maii, an anniversary assembly of our ancestors, held on May-day, when they confederated for the defence of the kingdom against all its enemies.—*Leges Edw. Conf.* c. 35.

Can, clearance, averment.—*Anc. Inst. Eng.*

Cana, a rod or distance in the measure of ground.

Canada. See 3 & 4 Vict. c. 35; 5 & 6 Vict. c. 118; 10 & 11 Vict. c. 71; 11 & 12 Vict. c. 56; 14 & 15 Vict. c. 63; 16 & 17 Vict. c. 21; 17 & 18 Vict. c. 118; 18 & 19 Vict. c. 56; 19 & 20 Vict. c. 23; 20 & 21 Vict. c. 34; and 22 & 23 Vict. cc. 10, 26.

Canal Traffic Acts. 8 & 9 Vict. c. 42; and 17 & 18 Vict. c. 31.

Cancellaria Curia, the ancient denomination of the Court of Chancery.

Cancellarii Angliæ dignitas est, ut secundus à rege in regno habetur.—4 *Inst.* 78.—(The dignity of the Chancellor of England is, that he is deemed the second from the sovereign in the kingdom.)

Cancellation, according to Bartolus, an expunging or wiping out of the contents of an instrument by two lines drawn in the manner of a cross.

Cancelli (*lattice work*), the rails or balusters inclosing the bar of a court of justice or the communion-table.

Candidate [fr. *candidatus*, Lat., clothed in white], a competitor, one who solicits or proposes himself for a place or office. The name is borrowed from the *Toga Candida*, in which competitors at Rome were habited.—*Vide Plutarch in Coriolan.*

Candlemas-day, a festival appointed by the church to be observed on the second day of February in every year, in honor of the purification of the Virgin Mary, being forty days after her miraculous delivery. At this festival, formerly, the Protestants went, and the Papists now go in procession, with lighted candles; they also consecrate candles on this day for the service of the ensuing year. It is the fourth of the four cross quarter-days of the year.

Canes opertiæ, dogs with whole feet not lamed.

Canestellus [dim. of *canistrum*, Lat.], a basket.

Canfara, a trial by hot iron.

Canipulus, a short sword.—*Blount.*

Canon [fr. κανών, Gk., a rule], a law or ordinance of the church; also a residentiary member of a cathedral chapter.—3 & 4 *Vict.* c. 113.

Canon law. The origin of this law dates from a period much earlier than the papal supremacy, if indeed it be denied that St. Peter was the proto-bishop of Rome, or indeed pope, as he is termed by his pseudo-apostolic successors. When Christian communities formed themselves into congregations (ἐκκλησίαι), certain resolutions were agreed upon for their government; these, with characteristic simplicity, were termed rules (κάνωνες, forma, disciplina); the phrases *canonica sanctio*, *lex canonica*, and *canonum jura*, were not introduced until the ninth century, nor the phrase *jus canonicum* until the canon law began in the twelfth century to be treated as a science. The canon law, properly so called, denotes the ecclesiastical law, sanctioned by the church of Rome. It borrows from the Roman law many of its principles and rules of proceeding, though not servilely, nor without such variations as the independence of its tribunals and the different nature of its authorities might be expected to produce (2 *Hall. Lit. Hist.* pt. 2, c. iv. s. 3, p. 173). A comprehensive history of the canon law is yet to be given to the world (*Droit Ecclésiastique*). The component parts of the canon law are: (1) The Decree, containing three parts:—(*a*) distinctions; (*b*) causes; (*c*) a treatise concerning consecration. (2) The decretals, also in three parts:—(*a*) Gregory's decretals, in five books; (*b*) the sixth decretal; (*c*) the Clementine constitutions. (3) The extravagants of John XXII. and other later popes were subsequently added as novel constitutions. The term 'extravagant' is used in the canon law to denote documents which transcend the limits of a particular collection. From the careful revisions and scientific treatment of the canon law, it was received very generally in the Christian states. The rules for its application were as follows:—1st. In cases not contained in the civil law, or the rule for which was obscure, open to doubtful interpretation, or not expressly determined, if precisely and clearly resolved by the canon law, this latter formed the basis of decision; and on the contrary, if the case were not provided for, or ambiguously resolved by the canon law, when it was directly met, or its solution more clearly inferable from the civil law, this latter was to be preferred. 2nd. In cases of conflict, the civil law formed the rule in courts of civil, and the canon in those of ecclesiastical jurisdiction. Thus, when a matter of canon law cognizance arose in civil law courts, the decision was given according to the rules of the canon law; and *vice versâ* when a question of civil law cognizance occurred before an ecclesiastical tribunal. 3rd. Within the imperial states, the civil law formed the basis, and the canon law in the papal states. 4th. In matters of a feodal nature the civil was preferred to the canon law. 5th. In forensic causes, the canon is not presumed to differ from the civil law. The canon law of England comprehends, besides the collections of the Roman pontiffs, legatine and provincial constitutions. Also, the canon law, so far as it was received here before the 25 Henry VIII.

c. 19, and is not repugnant to the common law, the statute law, and the law concerning the royal prerogative, is acknowledged to be in force by the authority of Parliament. The canons made in England in 1603, and never confirmed in Parliament, so far as they are agreeable to the ancient canon law, bind the laity; so far as they contain new regulations, are binding on the clergy only. The canon law is founded principally upon the civil law, and so interwoven with it in its many branches, that there is no understanding the canon law rightly, without being very well versed in the civil law; wherefore its knowledge is absolutely necessary for the despatch of all causes of ecclesiastical cognizance. And the civil law not only serves to explain the canon law, but by the practice of ecclesiastical courts it is allowed to come in aid of and to support the canon law in cases which are there omitted.

'The canon law prevails in this country' (observed Lord Thurlow, in *Scott* v. *Tyler*, 2 *Dick.* 716), 'only so far as it hath been actually received, with such amplifications and limitations as time and occasion have introduced; and subject at all times to the municipal law. It is founded on the civil law; consequently the tenets of that law also may serve to illustrate the received rules of the canon law.'

Canon Religiosorum, a book wherein the religious of convents had a fair transcript of the rules of their order, which were frequently held among them as their local statutes; and this book was therefore called *Regula* and *Canon*. These public books were the four following: (1) *Missale*, containing all the offices of devotion. (2) *Martyrologium*, a register of their saints and martyrs, with the place and time of passion. (3) *Canon*, or *Regula*, the institution and rules of their order. (4) *Necrologium*, or *Obituarium*, in which they entered the deaths of their founders and benefactors, to observe the days of commemoration of them.—*Ken. Glos.*

Canonical, agreeable to the canons of the church.

Canonical obedience, that duty which a clergyman owes to the bishop who ordained him, to the bishop in whose diocese he is beneficed, and also to the metropolitan of such bishop.

Canonist, a professor of ecclesiastical law.

Canons *of the Protestant Church*, ordinances enacted by the clergy under James I. in 1603, but never confirmed in Parliament. It has been solemnly adjudged upon the principles of law and the constitution, that, where they are not merely declaratory of the ancient canon law, but are introductory of new regulations, they do not bind the laity, whatever regard the clergy may think proper to pay them.—1 *Bl. Com.* 83.

Canons of inheritance, the rules directing the descent of real property throughout the lineal and collateral consanguinity of the owner, dying intestate, who is technically called the purchaser. The 3 & 4 Wm. IV. c. 106, materially altered the old canons of real property descent, but because the act does not extend to any descent which took place on the death of any persons who died before the 1st January, 1834, it is deemed expedient to give both the old and the new canons:—

The old canons, which obtain in cases of ancestors dying *before* 1st January, 1834, are the following:—

(1) That inheritances shall lineally descend to the issue of the person who last died actually seised, *in infinitum*, but shall never lineally ascend.

(2) That the male issue shall be admitted before the female.

(3) That where there are two or more males in equal degree, the eldest only shall inherit; but the females all together.

(4) That the lineal descendants, *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done had he been living.

(5) That on failure of lineal descendants, or issue of the person last seised, the inheritance shall descend to his collateral relations, being of the blood of the first purchaser, subject to the three preceding rules.

(6) That the collateral heir of the person last seised must be his next collateral kinsman of the whole blood.

(7) That in collateral inheritances the male stocks shall be preferred to the female (that is, kindred derived from the blood of the male ancestors, however remote, shall be admitted before those from the blood of the females, however near, unless where the lands have in fact descended from a female.

The canons according to the new law grafted upon the old, are the following:—

(1) That inheritances shall lineally descend to the issue of the person who last died entitled, *in infinitum*.

(2) That the male issue shall be admitted before the female.

(3) That where there are two or more males in equal degree, the eldest only shall inherit, but the females all together.

(4) That the lineal descendants, *in infinitum*, of any person deceased, shall represent their ancestor; that is, shall stand in the same place as the person himself would have done had he been living.

(5) That on failure of lineal descendants, or issue of the person last entitled, the inheritance

shall ascend and descend to the lineal ancestors, and to the collateral relations of the purchaser.

(6) That the nearest lineal ancestor shall be the heir of the purchaser, in preference to any of the descendants of such lineal ancestor, and to more remote lineal ancestors and their descendants (other than himself); and the descendants of every such lineal ancestor shall succeed next after or in default of him, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue; and subject to this rule and to the next, the descent to collaterals shall be subject to the second, third, and fourth canons.

(7) That as between collaterals of a purchaser, a relation of the half blood shall succeed next after any relation in the same degree of the whole blood and his issue, where the common ancestor shall be a male, and next after the common ancestor, where such common ancestor shall be a female. So that the brother of the half-blood, on the part of the father, shall inherit next after the sisters of the whole blood on the part of the father and their issue; and the brother of the half-blood on the part of the mother, shall inherit next after the mother. The collaterals of the half-blood of a person last entitled, who was not a purchaser, will take in a course of descent from the purchaser of whose whole blood they are, by force of the direction, that in every case the descent shall be traced from the purchaser.

(8) That in lineal ascending, and in collateral inheritances, the male stock shall be preferred to the female (that is, the male ancestors and kindred derived from their blood, however remote, shall be admitted before female ancestors and kindred derived from their blood, however near), unless where the lands have in fact descended from a female. Therefore, under the new law, none of the maternal ancestors of the person from whom the descent is to be traced (viz. the purchaser), nor any of their descendants, are capable of inheriting until all his paternal ancestors and their descendants shall have failed; and also no female paternal ancestor of such person, nor any of her descendants, is, or are capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and no female maternal ancestor of such person, nor any of her descendants, is or are capable of inheriting until all his male maternal ancestors and their descendants have failed.—2 *Sug. V. & P.* 238, 10th ed.

(9) Where there shall be a total failure of heirs of the purchaser, or where any lands shall be descendible, as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then, and in every such case, the land shall descend, and the descent shall thenceforth be traced from the person last entitled to the land as if he had been the purchaser thereof.—22 & 23 *Vict.* c. 35, s. 19. This enactment is to be read as part of the 3 & 4 Wm. IV. c. 106, s. 20.

Cantel, or **Cantle** [fr. *chantel*, Fr.], a lump, or that which is added above measure; also a piece of anything, as a '*cantel of bread*,' or the like.—*Blount.*

Canterbury, *Archbishop of*, his customary privilege is to crown the Kings and Queens of England, while the Archbishop of York has the privilege to crown the Queen-Consort, and be her perpetual chaplain. The Archbishop of Canterbury has also, by 25 Hen. VIII. c. 21, the power of granting dispensations in any case not contrary to the Holy Scriptures and the law of God, where the Pope used formerly to grant them, which is the foundation of his granting special licenses to marry at any place or time; to hold two livings (which must be confirmed under the Great Seal), and the like; and on this also is founded the right he exercises of conferring degrees in prejudice of the two universities; but although he can confer all the degrees which are taken in the universities, yet the graduates of the two universities, by various acts of parliament, and other regulations, are entitled to many privileges, which are not extended to what is called a *Lambeth* degree.—1 *Bl. Com.* 381; 1 *Burn's Ec. L.* 178. The power of conferring medical degrees appears to be superseded by 21 & 22 Vict. c. 90, sch. A 10, called 'The Medical Act.' See ARCHBISHOP.

Cantred, or **Kantress** [fr. *cant*, or *cantre*, Brit., a hundred, and *tre*, a town or village], a hundred Welsh villages.—*Mon. Ang.* p. 1, f. 319.

Cap of Maintenance, one of the regalia or ornaments of State, belonging to the sovereigns of England, before whom it is carried at the coronation and other great solemnities. Caps of maintenance are also carried before the mayors of several cities in England.—*Encyc. Lond.*

Capacity, an ability or fitness to do or to receive, to sue or to be sued. All persons are capable of purchasing; and all that are in possession, or potential possession of any estates, are capable of conveying them, unless under peculiar legal disabilities, as being attainted, *non compotes*, infants (except by custom), under duress, feme coverts (except *sub modo*), and aliens. All persons are capable of committing crimes, unless there be in them a defect of will: for, to constitute a legal crime,

there must be both a vicious will and a vicious act. The will does not concur with the act: (1) Where there is a defect of understanding. (2) Where no will is exerted. (3) Where the act is constrained by force and violence. A vicious will may, therefore, be wanting in the cases of—(α) infancy; (β) idiotcy, or lunacy; (γ) drunkenness, which does not, however, excuse; (δ) misfortune; (ε) ignorance, or mistake of fact; (ζ) compulsion, or necessity—which is 1st, that of civil subjection; 2ndly, that of duress *per minas*; 3rdly, that of choosing the less pernicious of two evils, where one is unavoidable; 4thly, that of want or hunger, which is no legitimate excuse, although this is a vexed point amongst jurists. The Queen, from her excellence and dignity, is also incapable of doing wrong.—*Bl. Anal.*

All laws which have for their principal object the regulation of the capacity, state, and condition of persons, have been treated by foreign jurists generally as personal laws. They are by them divided into two sorts: those which are universal, and those which are special. The former (universal laws) regulate universally the capacity, state, and condition of persons, such as their minority, majority, emancipation, and power of administration of their own affairs. The latter (special laws) create an ability or disability to do certain acts, leaving the party in all other respects with his general capacity or incapacity. Consult *Story's Conflict of Laws*, c. iv. tit. '*Capacity of Persons.*'

Capax doli, capable of committing crime.

Cape, a judicial writ touching a plea of lands or tenements, divided into *cape magnum*, or the *grand cape*, which lay before appearance to summon the tenant to answer the default, and also over to the demandant; the *cape ad valentiam* was a species of grand cape; and *cape parvum*, or petit cape, after appearance or view granted, summoning the tenant to answer the default only.—*Termes de la Ley*; 3 *Step. Com.* 672.

Capella, an oratory, or depending place of divine worship; also a chest, cabinet, or other depository of precious things, especially of religious relics.—*Ken. Paroch. Antiq.* 580.

Capellus, a cap, bonnet, helmet, or other covering for the head.

Capias (*that you take*). The writ of *capias*, as a means of commencing an action at Common Law, is altogether abolished, and a new writ, called a 'capias on mesne process,' or 'bailable process,' was introduced by 1 & 2 Vict. c. 110, s. 3. It is addressed to the sheriff, and is in force one calendar month; an order for issuing it, and arresting and holding the defendant to bail under it, may be obtained at any time after the commencement of the action and before final judgment, in all cases in which the defendant was previously liable to arrest (whether with or without a Judge's order), on satisfying a judge at chambers, by affidavit, that the cause of action amounts to 20*l.* or upwards, and that the debtor is about to quit England, unless forthwith apprehended.—1 *Chit. Arch. Prac. by Pren.* 720. This writ is sometimes called *capias ad respondendum.*

A capias is the process on an indictment when the person charged is not in custody, and in cases not otherwise provided for by statute. 4 *Step. Com.* 447.

Capias ad audiendum judicium (*that you take to hear judgment*). This writ is awarded and issued, in case the defendant be found guilty of a misdemeanor (the trial of which may, and does usually, happen in his absence, after he has once appeared), to bring him up to the Court to receive sentence, and, if he abscond, he may be prosecuted even to outlawry.—4 *Bl. Com.* 375.

Capias ad respondendum (*that you take to answer*). A process issued in cases of injury accompanied with force, or otherwise, against the defendant's person, when he neglected to appear upon the former process of attachment, or had no substance whereby to be attached, subjecting his person to imprisonment.—3 *Bl. Com.* 281. See 48 *Geo. III.* c. 58.

Capias ad satisfaciendum (*that you take to satisfy*); called in practice a *ca. sa.* A writ of execution of the highest nature, inasmuch as it deprives a person of liberty, till the satisfaction awarded be made; and therefore, when a man is once taken in execution upon this writ, no other process can be sued out against his lands and goods, unless he escape or is rescued; and by 21 Jac. I. c. 24, if the defendant die while charged in execution upon this writ, the plaintiff may after his death sue out a new execution against his lands, goods, or chattels. This writ is addressed to the sheriff, commanding him to take the body of the defendant, and have him at Westminster on a day therein named, or immediately after the execution of the writ, to make the plaintiff satisfaction for his demand, or remain in custody till he does. The general rule is that any person may be arrested under this writ who is not privileged from being held to bail under a *capias ad respondendum.* By 7 & 8 Vict. c. 96, s. 57, no person shall be taken or charged in execution upon any judgment obtained in any of her Majesty's superior courts or in any County Court, Court of Requests, or other inferior courts, in any action for the recovery of any debt wherein the sum recovered shall not exceed 20*l.*, exclusive of the costs recovered by such judgment. The exception is in a case of fraud, when the Judge may order an arrest under s. 59.

Bail may be taken in execution upon a *ca. sa.*, although they could not be holden to bail. So an infant and a *feme covert* may be taken on this writ, and if it be sued out against husband and wife, the wife may be taken on it, and she will not be discharged, unless she have no separate property, the general rule being that the wife shall be discharged, if in custody *before* execution, but not after it.—2 *Bl. Com.* 315; 1 *Chit. Arch. Prac. by Pren.* 651.

Capias in withernam (*that you take by way of reprisals*). If the goods before an action of replevin have been eloigned, so that the sheriff cannot replevy them, then, upon plaint being levied in the County Court by the plaintiff, the sheriff may issue this writ, *in vetito* (or, more properly, *repetito*), *namio*, signifying a second or reciprocal distress in lieu of the first which was eloigned; in other words, the officer is commanded to take goods or cattle of the defendant, to the value of those taken by him, and deliver them to the plaintiff, who gives a bond with sureties, conditioned to prosecute his suit and to return the goods, &c., so to be delivered to him, if a return of them should be afterwards adjudged. Goods taken *in withernam* cannot be replevied till the original distress is forthcoming.

Also, after verdict and judgment for defendant in replevin, and the usual writ of execution *de retorno habendo* has been sued out, to which the sheriff has returned that the goods, &c., are eloigned, i. e., conveyed to places unknown to him, so that he cannot execute the writ, the defendant may then sue out a *capias in withernam*, requiring the sheriff to take other goods, &c., of the plaintiff to the value of the goods, &c., eloigned, and deliver them to the defendant, to be kept by him until the plaintiff deliver to him the goods, &c., originally replevied.—3 *Bl. Com.* 148.

Capias pro fine, or **Misericordia** (*that you take for the fine or in mercy*). Formerly if the verdict was for the defendant, the plaintiff was adjudged to be amerced for his false claim; but if the verdict was for the plaintiff, then in all actions *vi et armis*, or where the defendant in his pleading had falsely denied his own deed, the judgment contained an award of a *capiatur pro fine*; in all other cases, the defendant was adjudged to be amerced. In actions of trespass and ejectment a *capias pro fine* used to issue in pursuance of the *capiatur*, and the defendant was obliged to compound the fine, by paying some small sum to the master, until by 5 W. & M. c. 12, it was enacted that no *capias pro fine* should thereafter issue in actions of 'trespass, ejectment, assault, or false imprisonment' brought in any of the Courts of Westminster; but that the plaintiff should pay 6*s.* 8*d.* to the master in satisfaction of the said fine, at the time of signing the judgment, and should be allowed the same in his costs; and it is now unnecessary in any case.—1 *Chit. Arch. Prac. by Pren.* 500.

Capias utlagatum (*that you take the outlaw*). This writ is either general, against the person only; or special, against the person, lands, and goods. If a defendant be outlawed, and appear publicly afterwards, he may be arrested by virtue of this writ, and committed till the outlawry be reversed; and any person may arrest an outlaw on a criminal prosecution, either of his own head, or by this writ, or a warrant, in order to bring him to execution.—2 *Chit. Arch. Prac. by Pren.* 1251.

Capiatur, *judgment quod.* See CAPIAS PRO FINE, or MISERICORDIÂ.

Capita [M. Lat.], abuttals or boundaries.

Capita (*rights*). Distribution of personalty *per capita* (professedly borrowed from the civilians, and enacted in the Statutes of Distributions) happens when all the claimants claim in their own right, in equal degree of kindred, and not *jure representationis*, in the right of another person, as if the next of kin be the intestate's three children, A. B. and C.; and here the intestate's personalty is divided into three equal portions, and distributed *per capita*, one to each. So succession *per capita* is where the claimants are next in degree to the ancestor, in their own right, and not by right of representation.—2 *Steph. Com.* 225, 226.

Capital [fr. *capitalis; caput*, Lat.], in political economy, that portion of the produce of industry existing in a country, which may be made directly available, either for the support of human existence, or the facilitating of production; but, in commerce, and as applied to individuals, it is understood to mean the sum of money which a merchant, banker, or trader adventures in any undertaking, or which he contributes to the common stock of a partnership. Also the fund of a trading company or corporation, in which sense the word *stock* is generally added to it.—*McCull. Com. Dict.* As to circulating and fixed capital see 1 *Mill's Pol. Econ.* b. 1. c. vi.

Capital felonies, those crimes upon conviction of which the offender is condemned to be hanged. The crimes now punishable with death are high treason and murder. Since 24 & 25 Vict. cc. 96, 97, 98, and 100, numerous offences, formerly capital, have ceased to be so.

Capitale, a thing which is stolen, or the value of it.—*Blount.*

Capitale vivens, live cattle.—*Ibid.*

Capitation, a tax or imposition raised on each person in consideration of his labour, industry, office, rank, &c. It is a very ancient kind of tribute, and answers to what the Latins called *tributum*, by which taxes on persons are

distinguished from taxes on merchandise, called *vectigalia*.

Capite, tenure in, lands held by tenants immediately from the king. It was the most honourable tenure, and was of two kinds, either *ut de honore*, where the land was held of the king, as proprietor of some honor, castle, or manor, or *ut de coronâ*, where it was held in right of the Crown itself. When these tenants *in capite* granted portions of their lands to inferior persons, they were called *mesne* (middle) lords or barons, with regard to such inferior tenants, who were styled tenants *paravail*, the lowest tenants, because they were supposed to make avail or profit of the lands. This tenure is abolished, so that tenures now created by the Crown are in common socage.—12 *Car. II.* c. 24.

Capitilitium, poll-money.

Capititium, a covering for the head.—1 *Hen. IV.*

Capitula itineris, articles of enquiry.—2 *Reeves*, c. viii. p. 4.

Capitulary, a code of laws.

Capitulation [fr. *capitulo*, Lat., to treat upon terms; fr. *capitulum*, a little head or division], the treaty which determines the conditions under which a place besieged is abandoned to the commanding officer of the besieging army; also an agreement by which the prince and the people, or those who have the right of the people, regulate the manner in which the government is to be administered.

Capitula ruralia, assemblies or chapters, held by rural deans and parochial clergy, within the precinct of every deanery; which at first were every three weeks, afterwards once a month, and subsequently once a quarter.—*Cowel.*

Capitulum est clericorum congregatio sub uno decano in ecclesiâ cathedrali.—Co. Litt. 98.—(A chapter is a congregation of clergy under one dean in a cathedral church.)

Capituli agri, head-lands; lands lying at the head or upper end of furrows, &c.—*Ken. Par. Ant.* 137.

Captain [fr. *capitano*, It., a head-man; fr. *caput*, Lat.], a leader or commander of a company of soldiers; who is either a general, governing a whole army, or special, as leader of a band or regiment. Also the commander of a ship or vessel.

Captator, a person who obtains a gift or legacy through artifice.

Caption, that part of a legal instrument, as a commission, indictment, &c., which shows where, when, and by what authority it is taken, found, or executed. Thus, where a commission is executed, the commissioners subscribe their names to a certificate, declaring when and where the commission was executed. The caption is no part of an indictment, it is merely the style of the Court where the indictment was preferred, which is prefixed as a kind of preamble to it on the record, when made up, or when it is returned to a *certiorari*.—*Arch. Crim. Plead.* tit. '*Caption.*' This word is improperly used for an arrest.

Captives, prisoners. As in the goods of an enemy, so also in his person, a sort of qualified property may be acquired, by taking him a prisoner of war, at least till his ransom be paid.—2 *Bl. Com.* 402.

Capture, the arrest or seizure of a person or thing, particularly applied to the seizure of ships by an enemy in time of war.

Caputagium, head or poll-money.

Caput anni, the first day of the year.

Caput baroniæ, the castle or chief seat of a baron.

Caput jejunii, the beginning of the Lent Fast, i. e. Ash Wednesday.

Caput loci, the head or upper part of a place.

Caput lupinum, a wolf's head. An outlawed felon was said to have *caput lupinum*, and might be knocked on the head, like a wolf, by any one that should meet him, because, having renounced all law, he was to be dealt with as in a state of nature, when everyone that should find him might slay him; yet now, to avoid such inhumanity, it is holden that no man is entitled to kill another wantonly or wilfully, but in doing so is guilty of murder, unless it happen in the endeavour to apprehend him.—4 *Steph. Com.* 468.

Car, and **Char** [fr. *caer*, Brit., city], names of places beginning with these words signify a city, as Carlisle, Cardiff, &c.

Carat, a weight equal to three and one-sixth grains.

Carcan, a pillory.

Carcannum, a prison.—*Leg. Canut. Reg.*

Carcatus, loaded, a ship freighted.

Carcel-age, prison-fees.

Carcer ad homines custodiendos, non ad puniendos, dari debet.—Co. Litt. 260.—(A prison ought to be given for the custody, not the punishment, of persons.)

Cards. To keep a common house for card-playing is unlawful.—4 *Steph. Com.* 352.

Carecta, and **Carectata,** a cart and cart-load.

Caretarius, or **Carectarius,** a carter.—*Blount.*

Cargo [fr. *cargo*, Sp., the load of a ship; *charge*, Fr.], the lading of a ship, the merchandise or wares contained and conveyed in a ship.

Caristia, dearth, scarcity, dearness.—*Cowel.*

Caritas, or **Karite,** a grace-cup, an extraordinary allowance of wine or liquor.

Cark, a quantity of wool, whereof thirty make a sarplar.—27 *Hen. VI.* c. 2.

Carle See KARLE.

Carno, an immunity or privilege.—*Cowel.*

Caroome, a license by the Lord Mayor of London to keep a cart.—1 *Wm. Ex.* 730.

Carpemeals, a coarse cloth.—*7 Jac. I.* c. 16.

Carrels, closets, or apartments for privacy or retirement.

Carreta, a carriage, cart, or wain-load.

Carricle, or **Carracle,** a ship of great burden.

Carrier, in its general sense a person who undertakes to transport the goods of other persons from one place to another for hire. It is not, however, every person who undertakes to carry goods for hire that is deemed a common carrier.

A private person may contract with another for the carriage of his goods, and incur no responsibility beyond that of any ordinary bailee for hire, that is to say, the responsibility of ordinary diligence. To bring a person within the description of a common carrier, he must exercise it as a public employment; he must undertake to carry goods for persons generally; and he must hold himself out as ready to transport goods for hire, as a business, not as a casual occupation, *pro hâc vice.* A common carrier has, therefore, been defined to be one who undertakes for hire or reward to transport the goods of such as choose to employ him, from place to place. Although the expression used is a common carrier of goods, yet this language is not to be understood in a strict sense; for a common carrier may be of money as well as of goods, if such is his own practice, or the common usage of the business in which he is engaged.

Common carriers are generally of two descriptions: (1) carriers by land; (2) carriers by water. Of the former description are the proprietors of stage-wagons and stage-coaches, and railroads, which ply and run between different places, and carry goods for hire. So are truckmen, wagoners, teamsters, cartmen, and porters, who undertake to carry goods for hire, as a common employment, from one town to another, or from one part of a town or city to another. Of the latter description are the owners and masters of ships, whether they are regular packet ships or carrying smacks, or coasting ships, or other ships carrying on general freight. So are the owners and masters of steam-boats engaged in the transportation of goods for persons generally for hire. So are the lightermen, hoymen, barge-owners, ferrymen, and boatmen, and others employed in the same manner. The owners of a steam-boat, who undertake to tow freight boats for hire, or undertake to tow vessels in or out of port for hire, are not ordinary carriers, but are responsible only for common skill, care, and diligence in their undertaking.—*Story on the Law of Bailments,* 500.

The law regulating and limiting the common law liability of carriers, is fixed by the 11 Geo. IV. and 1 Wm. IV. c. 68, which protects carriers from liability in case of the loss of certain specified articles, exceeding the value of *ten* pounds (excepting loss by the felony of the carrier's servants or his own personal default), unless the party delivering the goods declare the value, and offer to pay, if required, an extra charge for carriage, but requires that the notice of the increased charges that may be required shall be affixed in the office, and of which, when so affixed, every person is bound to take notice; but it provides that the act shall not affect special contracts. It then declares that all other notices, then already or thereafter to be given, shall not protect a carrier from liability, excepting when so given under terms of the act, viz. when certain specified articles exceed the value of 10*l.* and when such notice has been duly affixed; but as to any other goods, or even the specified articles, when under the value of 10*l.* carriers cannot by any notice protect themselves from the ancient common law liability. The act, however, allows effect to any express special contract made with a carrier, and according to the terms of that contract. The statute then authorizes an action for loss against any one proprietor, and excludes a plea in abatement of non-joinder, and provides that if loss ensue, then not only the declared value, but also the money paid for extra insurance, shall be recoverable; but entitles the carrier to require proof of the value of the package lost, and authorizes him to pay money into court.

The articles specified in the act are the following, viz.:—bills of exchange, china, clocks, coin (gold or silver) of this or any other state, engravings, fur, glass, gold coin or gold manufactured or otherwise, jewellery, lace, maps, notes of any bank, or for payment of money, orders for payment of money, paintings, pictures, plate (gold or silver), plated articles, precious stones, promissory notes, securities for payment of money, silks manufactured or unmanufactured or wrought up or not with other articles, silver, stamps, English or foreign, timepieces of every description, title-deeds, trinkets, watches, writings.

Since this act, carriers requiring an increased charge, usually affix in their offices and circulate, placards giving notice. It is settled by prior decisions that no action can be supported against the postmaster-general for the loss of bills or bank-notes, stolen out of letters put into the post-office, and, therefore, it is a proper precaution to remit such documents in registered letters, or in halves by different conveyances.—*Jeremy on the Law of Carriers*; 3 *Chitty's Commercial Law,*

369–386; *Burn's Justice*, tit. '*Carriers*;' *Chitty's Law of Contracts*; and 1 *Smi. L. C.* 173.

Carrying away infant-females under sixteen. Statute 24 & 25 Vict. c. 100, s. 55, enacts that 'Whosoever shall unlawfully take, or cause to be taken, any unmarried girl, being under the age of sixteen years, out of the possession, and against the will of her father or mother, or of any other person having the lawful care or charge of her, shall be guilty of a misdemeanor, and, being convicted thereof, shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, with or without hard labour.' The abduction of a natural-daughter from her putative father is within this law. In order to constitute this offence it is not necessary that any corrupt motive should be the inducement to commit the offence, and the consent of the child herself would be no excuse, the gist of the offence being the taking away of infant-daughters from the possession of their parents or guardians. If the parents or guardians once consent, it seems doubtful whether they can afterwards revoke it. The offender's ignorance of the tender age of the female is no extenuation of his crime.

Cart-Bote. See BOTE.

Carte blanche, a white card, or free permission, signed at the bottom with a person's name, and sometimes sealed, giving another person power to superscribe what conditions he pleases. Applied generally in the sense of unlimited terms being granted.

Cartel [fr. *cartella*, It., pasteboard], a piece of pasteboard with some inscription on it, hung up in some place, and to be removed.—*Flor.* Hence a written challenge openly hung up, afterwards any written challenge. See CHARTEL.

Cartel-ship, a vessel commissioned in time of war to exchange the prisoners of any two hostile powers; also to carry any particular proposal from one to another; for this reason, the officer who commands her is particularly ordered to carry no cargo, ammunition, or implements of war, except a single gun for the purpose of signals.—*Encyc. Lond.*

Cartulary [fr. *carta*, Lat., paper], a place where papers or records are kept.

Caruca [fr. *carr*, old Gallic], a plough.

Carucage, a tax imposed on every plough for the public service.

Carucatarius, he that held lands in *carvage*, or plough-tenure.—*Paroch. Antiq.* 354.

Carucate [fr. *carucata terræ*], **Carvage**, or **Carve of land**, a plough-land of 100 acres, or, according to Skene, as much land as may be tilled in a year and a day by one plough.—*Ken. Glos.* This quantity varies in different counties from 60 to 120 acres.

Case, action on, resorted to where a party sues for *damages*, for any wrong or cause of complaint to which *covenant* or *trespass* will not apply. This action originated in the power given by the Statute of Westminster 2, to the clerks of the Chancery, to frame new writs *in consimili casu*, upon the analogy of writs already known. Under this power they constructed many writs for different injuries, which were considered as *in consimili casu* with, that is, to bear a certain analogy to a *trespass*. The new writs invented for the cases supposed to bear such analogy, received, accordingly, the appellation of writs of *trespass on the case* (*brevia* '*de transgressione super casum*'), as being founded on the particular circumstances of the case, thus requiring a remedy; and to distinguish them from the old writ of *trespass*, and the injuries themselves, which are the subjects of such writs, were not called *trespasses*, but had the general name of *torts*, *wrongs*, or *grievances*. The writs of trespass on the case, though invented thus, *pro re natâ*, in various forms, according to the nature of the different wrongs which respectively called them forth, began, nevertheless, to be deemed as constituting, collectively, a new individual *form of action*; this new genus took its place by the name of *trespass on the case*, among the more ancient actions of debt, covenant, trespass, &c. Such being the nature of this action, it comprises, of course, many different species. There are two, however, of more frequent use than any other species of trespass on the case, viz. *assumpsit* and *trover*. The difference between an action of *trespass* and an action on the case is, that in the former the plaintiff complains of an immediate wrong, and in the latter, of a wrong that is the consequence of another act. The action on the case is equally applicable to consequential injuries to the real and personal property, as to the personal character of the party by whom it is brought.—*Step. Plead.* 17.

Case for the opinion of Courts of Law. It is no longer lawful for the Court of Chancery to direct cases for a Court of Common Law; but the Court of Chancery itself may decide legal questions arising incidentally.—15 & 16 *Vict.* c. 86, s. 61.

Case stated, an agreement between litigants, setting forth the facts and points in dispute, with a view to a prompt decision. As to cases by Justices of the Peace, see 20 & 21 *Vict.* c. 43.

Cash [fr. *caisse*, Fr., a chest], money, properly ready money, bills, drafts, bonds, and all immediately negotiable paper in a person's possession.

Cashier, a person entrusted with the monetary interests of a public company, usually under the order of directors; also a deprivation of office.

Cashlite, a mulct.

Cassation [fr. *casso*, Lat., to quash], a making null or void of any unjust or illegal act or decision; also a decision in the last resort.—*Fr. Law.*

Cassatum and **Cassata,** a house, with land sufficient to maintain one family.

Cassetur breve (*that the writ be quashed*). When the defendant pleads sufficient matter in abatement and the plaintiff cannot deny it, he may either obtain leave to amend his declaration, if that will answer his purpose and which will be granted upon payment of costs, or he may at once enter on the roll a *cassetur breve*, or judgment upon his prayer that his writ may be quashed, to the intent that he may sue out a better. In practice, judgment is not often signed, nor any entry made on record, but the prayer and award are copied on paper, and delivered, in the same manner as a pleading, to the opposite party. Neither party is entitled to costs.—2 *Chit. Arch. Prac. by Pren.* 1417.

Cassidile, a little sack, purse, or pocket.

Cassock, or **Cassula** [fr. *casag*, Gael., a long coat], a garment belonging to a priest

Castel, or **Castle** [fr. *castellum* dim. of *castrum*, Lat.], a fortress in a town; a principal mansion of a nobleman.—2 *Inst.* 31.

Castellain, the lord, owner, or captain of a castle; the constable of a fortified house; a person having the custody of one of the Crown mansions; an officer of the forest.—*Bract. Manw.*

Castellarium, the precinct or jurisdiction of a castle.

Castellarum operatio, castle-work or service and labor done by inferior tenants for the building and upholding of castles of defence; towards which some gave their personal assistance, and others paid their contributions. See TRINODA NECESSITAS. *Castleward* was the service of guarding or watching at such castle.

Caster and **Chester** [fr. *castrum*, Lat.], the places ending with either of these words were the sites of the castles built by the Romans.

Castigatory, a certain engine of correction, otherwise called the tre-bucket, *tumbrel tymborella*, cucking-stool, scolding-stool, ducking-stool, *goginstole*, and *cokestole*, corrupted from choaking-stool. It was a punishment provided for scolding women, wherein they were plunged or soused over head in the water.

It was also called *Cathedra Stercoralis*, and by the Saxons *scealfing stole*, and anciently inflicted on brewers and bakers transgressing the laws, who were ducked *in stercore* (in stinking water).—*Domesday Book.*

Casting vote, the vote given by the chairman or president of a deliberative assembly, when the suffrages of the meeting are equal. Thus, in the House of Commons the Speaker declares the numbers after a division, but is not required to record his own vote unless the numbers are even, and then he must vote one way or the other, in order that the House may come to some decision upon the question which has been put from the chair. It is a difficult and delicate office to give an opinion under such circumstances, especially when it is the duty of the Speaker to withdraw himself as much as possible from the contentions of parties, and, therefore, when the question relates to the stage of a bill – as for the second reading, for instance— it is usual for him to vote for the 'ayes' in order to give the house an opportunity of re-considering the bill in a future stage. In committees, some misconception appears to have existed as to the precise nature of the chairman's right of voting. In 1836 the House of Commons was informed that the chairman of a select committee had first claimed the privilege to vote as a member of the committee, and afterwards when the voices were equal, of giving a casting vote as chairman, and that such practice had of late years prevailed in some select committees; when it was declared by the House that, according to the established rules of Parliament, the chairman of a select committee can only vote when there is an equality of voices (91 *Commons' Jour.* 214). This error was very probably occasioned by the practice of election committees, which was, however, confined to them, and only existed under the provisions of Acts of Parliament.

Casts. See SCULPTURES.

Casual ejector, the fictitious *Richard Roe*, in the mixed action of ejectment before the fiction was abolished by the C. L. P. A., 1852. The declaration stated that a lease of the premises in question, for a term of years, had been made by the party claiming the title (who was the real plaintiff) to a fictitious *John Doe* (who was the lessee of the plaintiff), who entered upon the land by virtue of such demise, and that afterwards Richard Roe (the casual ejector) entered and ousted John Doe, during the continuance of his term. Appended to this declaration was a notice supposed to be signed by Richard Roe addressed to the tenant in possession (who was the actual defendant). The notice informed the tenant of the action having been brought by the lessee, and of Richard Roe having no title to the premises, and advised him to appear at a certain time and defend his title, otherwise he, Richard Roe, would suffer judgment by default, and then the actual defendant would be turned out of possession by the sheriff, under a writ of *habere facias possessionem.*

Casual poor, those who are not settled in a parish. See 33 *Geo. III.* c. 35, s. 3, and 7 & 8 *Vict.* c. 101, s. 26.

Casualty of wards, the mails and duties due to the superior in ward-holdings.—*Scotch Dict.*

Casu consimili, a writ of entry, granted where tenant by the courtesy, or tenant for life, alienated in fee, or in tail, or for another's life, and was brought by him in reversion against the party to whom such tenant so alienated to his prejudice, and in the tenant's lifetime.—*Termes de la Ley.* Abolished.

Casu proviso, a writ of entry, given by the Stat. of Gloucester, c. 7, where a tenant in dower alienated in fee, or for life, &c., and it lay for him in reversion against the alienee.—*F. N. B.* 207. Abolished.

Casus fœderis, a case stipulated by treaty, or which comes within the terms of a compact.

Casus omissus, a point unprovided for by statute.

Casus fortuitus non est sperandus; et nemo tenetur divinare.—4 *Co.* 66.—(A fortuitous event is not to be foreseen; and no person is bound to divine.

Casus omissus et oblivioni datus dispositioni communis juris relinquitur.—5 *Co.* 37.—(A case omitted and given to oblivion is left to the disposal of the common law).

Casus omissus habetur pro amisso.—(An omitted case is deemed as lost.)

Cat. Amongst the ancient Britons cats were looked upon as creatures of intrinsic value; and the killing or stealing one was a grievous crime, and subjected the offender to a fine, especially if it belonged to the king's household, and was the *custos horrei regii*, for which there was a very peculiar forfeiture.—2 *Steph. Com.* 7 n.

Catalla justè possessa amitti non possunt.—*Jenk. Cent.* 28.—(Chattels justly possessed cannot be lost.)

Catalla reputantur inter minima in lege.—*Ibid.* 52.—(Chattels are considered in law among the least things.)

Catallactics, the science of political economy.—*Whately's Lect. on Pol. Econ.*

Catallis captis nomine districtionis, an obsolete writ that lay where a house was within a borough, for rent issuing out of the same, and which warranted the taking of doors, windows, &c. by way of distress.—*Old Nat. Bre.* 66.

Catallis reddendis, an obsolete writ that lay where goods delivered to a man to keep till a certain day were not upon demand re-delivered at the day.—*Reg. Orig.* 39.

Catals, goods and chattels.

Catapulta, a warlike engine to shoot darts; a crossbow.

Catascopus, an archdeacon.—*Du Cange.*

Catching bargain, a purchase from an expectant heir, for an inadequate consideration.

Catchland. Land in Norfolk, so called because it is not known to what parish it belongs, and the minister who first seizes the tithes of it, by right of pre-occupation, enjoys them for that year.—*Cowel.*

Catchpole, a sheriff's officer or bailiff, so called probably because he catches by the poll or head the party arrested.

Category [fr. *κατηγορία*, Gk.], a series or order of all the predicates or attributes contained under a genus.

Cathedral [fr. *καθέδρα*, Gk., a seat], the church of the bishop and head of the diocese, in which is his seat of dignity. The Cathedral Acts are 3 & 4 Vict. c. 113, 4 & 5 Vict. c. 39, and 6 & 7 Vict. c. 77.

Our cathedrals and collegiate churches have been divided into four classes:—1st, consisting of thirteen, being the cathedrals of the old foundation, or *Ecclesiæ Cathedrales Canonicorum Secularium*; 2nd, consisting of eight conventual cathedrals, constituted with deans and chapters by Hen. VIII.; 3rd, containing the five cathedrals founded, together with new bishoprics, by Hen. VIII.; 4th, the new cathedrals of Ripon and Manchester.—*Cath. Com. Rep.*

Cathedral preferments, all deaneries, archdeaconries, and canonries, and generally all dignities and offices in any cathedral or collegiate church, below the rank of a bishop.

Cathedratic, a sum of 2*s.* paid to the bishop by the inferior clergy; but from its being usually paid at the bishop's *synod*, or visitation, it is commonly named *synodals*.—*Burn's Dict.*

Catholic [fr. *καθολικὸς*, Gk.], universal, general. The rise of heretics induced the primitive Italian church to assume to itself the appellation of Catholic, being a characteristic to distinguish itself from all private or particular sects. The Romish church, assuming this claim, distinguishes itself by the name of Catholic, in opposition to all those who have separated from her communion in the eucharist, and whom she considers as heretics and schismatics, and herself only as the true and Christian church. In the strict sense of the word, there is no Catholic church in being, that is, no universal Christian community; to the want of which, some philosophers have attributed the wide and boundless stride of Mahometanism.—*Encyc. Lond.*

Catholic Emancipation Act, 10 Geo. IV. c. 7.

Cattle [derived by Skinner, Menage, and Spelman fr. *capitalia, quæ ad caput pertinent*, personal goods; in which sense *chattels* is yet used. Mandeville uses *catele* for price], beasts of pasture, neither wild nor domestic.

Cattle-gate, common for one beast.

Catzurus, a hunting-horse.

Caucus, a public meeting of a political character.—*North American.*

Cauda terræ, a land's end, or the bottom of a ridge in arable land.

Caulceis, ways pitched with flint or other stones. See CALCETUM.

Causa matrimonii prælocuti, a writ which lay where a woman gave lands to a man in fee simple, &c., to the intent he should marry her, and he refused to do so in any reasonable time, being thereunto required. — *Reg. Orig.* 66. Abolished by 3 & 4 Wm. IV. c. 27.

Causæ dotis, vitæ, libertatis, fisci, sunt inter favorabilia in lege.—Jenk. Cent. 284.—(Causes of dower, life, liberty, revenue, are among the things favoured in law.)

Causa ecclesiæ publicis causis æquiparatur; et summa est ratio quæ pro religione facit.—Co. Litt. 341.—(The cause of the church is equal to public causes; and paramount is the reason which makes for religion.)

Causa et origo est materia negotii.—1 *Co.* 99.—(Cause and origin is the material business.)

Causa proxima, non remota spectatur.—Bac. Max. R. 1.—(The immediate, not the remote cause, is to be regarded.)

Causa spiritualis committi potest principio laico.—Da. 4.—(A spiritual cause may be committed to a lay prince.)

Causa vaga et incerta non est causa rationabilis.—5 *Co.* 57.—(A vague and uncertain cause is not a reasonable cause.)

Causa mortis (*in prospect of death*). See DONATIO MORTIS CAUSÂ.

Causam nobis significes quare, a writ addressed to a mayor of a town, &c., who was by the king's writ commanded to give seisin of lands to the king's grantee; on his delaying to do it, requiring him to show cause why he so delayed the performance of his duty.

Cause, a suit or action; motive or reason; that which produces an effect.

Cause of action, a right to sue; as to joining causes of action, see *C. L. P. A.* 1852, ss. 40 & 41, and 18 & 19 *Vict.* c. 67. s. 6.

Cause-list, a printed roll of actions to be tried in the order of their entry, with the names of the attorneys for each litigant.

Causea [fr. *chaussée,* Fr., a paved road], a causeway.

Cautio pro expensis, security for costs.

Caution, a species of bail; security.

Caution juratory, the best security that a suspender can offer in order to obtain a suspension.—*Scotch Law.*

Cautione admittenda, a writ that lies against a bishop who holds an excommunicated person in prison for contempt, notwithstanding he offers sufficient caution or security to obey the orders and commandment of the Church for the future.—*Reg. Orig.* 66.

Cautioner, a surety.

Cauzi, Cazi, Kazy, a Mahometan judge or justice, who also officiates as a public notary in attesting deeds by affixing his seal. The same as the officer we call *Cadi* in Turkey.

Cauzi-ul-Cazant, judge of judges; the chief judge or justice.—*Indian.*

Cavendum est à fragmentis.—Bac. Aph. 26. (Beware of small pieces.)

Caveat (*that he take heed*), a warning or caution. If a person desire to stop the enrolment of a decree in Chancery, in order to present a petition of appeal to the Lord Chancellor, he enters a *caveat* with his lordship's secretary, which prevents the enrolment for twenty-eight days; it is sometimes entered to prevent the issuing of a lunacy commission. It is also entered to stay the probate of a will, letters of administration, a license of marriage, or an institution of a clerk to a benefice.

Caveat actor, caveat emptor (*let the doer—let the purchaser beware*).

Caveat emptor, qui ignorare non debuit quod jus alienum emit.—Hob. 99.—(Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another.)

Lord Thurlow, in *Lowndes* v. *Lane,* 2 *Cox,* 363, said that, as to the extent of this maxim, he was willing to carry it to a great extent, but not to the extent of saying it should apply where there was a positive representation essentially material to the subject sold, and which at the same time is false in fact. He said he must consider any fundamental mistake in the particulars of an estate as furnishing a case in which the purchaser would be entitled to have the mistake set right, if recently applied for. 'If a man,' said Tindal, C. J. (*Brown* v. *Edgington,* 2 *Scott, N. R.* 504), 'purchase goods of a tradesman, without, in any way, relying upon the skill and judgment of the vendor, the latter is not responsible for their turning out contrary to his expectation; but, if the tradesman be informed at the time the order is given of the purpose for which the article is wanted, the buyer relying upon the seller's judgment, the latter impliedly warrants that the thing furnished shall be reasonably fit and proper for the purpose for which it is required.'

Cavers, persons stealing ore from mines in Derbyshire, punishable in the berghmote or miner's court; also officers belonging to the same mines.

Cavil, a captious argument.

Ceap, a bargain; anything for sale; chattel; also cattle, as being the usual medium of barter. Sometimes used instead of—

Ceapgilde [fr. *ceap,* Sax., cattle, and *gild,* payment], payment in cattle, market price.

Ceapian, to make a bargain.

Cede, to assign or transfer.

Cedent, an assignor.

Celation [fr. *celo*, Lat.], concealment of pregnancy or delivery.—*Dung.*

Celer lecti, the top, head, or tester of a bed.

Celibacy [fr. *cælibatus*, Lat.], an unmarried or single state of life.

Cellerarius, a butler in a monastery; sometimes called manciple or caterer.

Cemetery [fr. κοιμητήριον, Gk. fr. κοιμάω, to set to sleep], a place of burial, differing from a churchyard by its locality and incidents; by its locality, as it is separate and apart from any sacred building used for the performance of divine service; by its incidents, that inasmuch as no vault or burying-place in an ordinary churchyard can be purchased for a perpetuity, in a cemetery a permanent burial place can be obtained. See *The Cemeteries Clauses Act*, 1847, 10 & 11 Vict. c. 65.

Cendulæ, small pieces of wood laid in the form of tiles, to cover the roof of a house.

Cenegild [fr. *cinne*, Sax., relation, and *gild*, payment], an expiatory mulct paid by one who killed another, to the kindred of the deceased.

Cenellæ, acorns from the oak.

Cenninga, notice given by a buyer to a seller that the thing sold was claimed by another, in order to appear and justify the sale.—*Athel. ap. Brompt.* c. iv.

Censaria [fr. *cense*, Fr.], a farm or house and land let at standing rent.

Censarii, farmers.—*Blount.*

Censuales, a species or class of the *oblati* or voluntary slaves of churches or monasteries, i. e. those who, to procure the protection of the church, bound themselves to pay an annual tax or quit-rent only of their estates to a church or monastery. Besides this, they sometimes engaged to perform certain services.—*Potg. de Stat. Serv.* l. 1. c. i. ss. 6, 7.

Censumethidus, a dead rent, like that which is called *mortmain.*—*Blount.*

Censure [fr. *census*, Lat.], a custom observed in certain manors in Devon and Cornwall, where all persons above the age of sixteen years are cited to swear fealty to the lord, and to pay 11*d.* per poll, and 1*d.* per annum ever after; these thus sworn are called censers. Also a judgment which condems some book, person, or action, or more particularly a reprimand from a superior.—*Surv. Dict. Corn.*

Census, a numbering of the people. It takes place once in every ten years. By the last census, taken on the 8th of April, 1861, under the Acts 23 & 24 Vict. c. 61 for England, c. 62 for Ireland, c. 98 for Scotland, the number of persons then within Great Britain (including the islands in the British Seas), was 29,058,888, exclusive of the army, navy, and merchant-seamen then abroad, estimated at 275,900.

Census regalis, the annual revenue (or income) of the Crown.

Cent [fr. *centum*, a hundred], a hundred pounds. A profit of 10*l.* per cent. is the gain of 10*l.* by the use of 100*l.*

Centenarii, petty judges, under-sheriffs of counties, that had rule of a hundred, and judged smaller matters among them.—1 *Vent.* 211.

Centeni, the principal inhabitants of a district composed of different villages, originally in number a hundred, but afterwards only called by that name.

Central Criminal Court, the most important criminal tribunal in this country, as well from the authority of the judges who preside there as from the number and magnitude of the crimes which are tried before it. This court was erected in 1834, by 4 & 5 Wm. IV. c. 36, which, reciting that it was expedient, for the more effective and uniform administration of justice in criminal cases, that offences committed in the metropolis, and certain parts adjoining thereto, should be tried by justices and judges of oyer and terminer, and gaol delivery in the city of London, proceeded to constitute a new tribunal, which it entitled 'The Central Criminal Court,' to consist of the lord mayor, the lord chancellor, the judges of the three superior courts at Westminster, the judges in bankruptcy, the judges of the admiralty, the dean of the arches, the aldermen, recorder, and common serjeant of London, the judges of the sheriffs' court, and any person who had, or shall have been lord chancellor, a judge of any of the superior courts at Westminster, or who might be thereafter appointed by general commission of the queen. To this court her majesty may issue commissions of oyer and terminer, and gaol delivery, for the trial of all cases of treasons, murders, felonies, and misdemeanors committed within the city of London and county of Middlesex, and in certain specified parts of the counties of Essex, Kent, and Surrey, all of which constitute a district which is to be, for the purposes of that act, deemed and taken to be *one county.* The court sits at the sessions house, in the Old Bailey; and there are at least twelve sessions held in every year, at times fixed by any eight of the judges at Westminster. Two provisions in this statute, and also several subsequent statutes, greatly augmented the jurisdiction of this tribunal, by first curtailing that of the courts of quarter sessions within the district assigned to the Central Criminal Court, and restraining them from trying nearly all the serious kinds of felony (4 & 5 Wm. IV. c. 36, s. 17); and by transferring to it the entire criminal jurisdiction of the Court of Admiralty (s. 22), followed up, in 1837, by 7 Wm. IV. and 1 Vict. cc. 84–89, by the operation of which all the serious offences punishable under them, if

committed within the jurisdiction of the Admiralty, may be, and have ever since been, tried at the Central Criminal Court. During every session two of the judges of the superior courts at Westminster preside in this court for the purpose of trying the more important offences. The remainder are tried by either the recorder or common serjeant, or a judge from the sheriffs' court, commissioned for that purpose; on every occasion the lord mayor or some of the aldermen being also present on the bench. There are two courts adjoining each other, which sit simultaneously. See 9 & 10 *Vict.* c. 24; 14 & 15 *Vict.* c. 55; and 19 & 20 *Vict.* c. 16.

Ceola, a large ship.—*Blount.*

Cepi corpus et paratum habeo (*I have taken the body and have it ready*), a return made by the sheriff upon an attachment, *capias*, &c., when he has the person against whom the process was issued in custody.—*F. N. B.* 26.

Cepit in alio loco, a plea in replevin when the defendant took the goods in another place than that mentioned in the declaration.—*Woodf. L. & T.* 680.

Ceppagium, the stumps or roots of trees which remain in the ground after the trees are felled.—*Fleta*, l. 2. c. xli.

Ceragium, a payment to find candles in the church.—*Blount.*

Certa debet esse intentio, et narratio, et certum fundamentum, et certa res quæ deducitur in judicium.—*Co. Litt.* 303.—(The intention ought to be certain, and the count, and foundation, and the thing which is brought to judgment.)

Certainty, truth, fact. There are three kinds of certainties:—(1) to a certain intent in general, which is required in a charge or declaration; (2) to a common intent, which is sufficient for a defence; and (3) to a certain intent in every particular, which is rejected in almost all cases, as partaking of too much subtlety.—*Rex* v. *Horne, Cowp.* 682.

Certificando de recognitione stapulæ, a writ commanding the mayor of a staple to certify to the Lord Chancellor a statute-staple taken before him where the party himself detains it, and refuses to bring in the same. There is the like writ to certify a statute-merchant, and in divers other cases.—*Reg. Orig.* 152.

Certificate, a testimony given in writing to declare or verify the truth of anything. There are several sorts, the principal of which are the following:—

(1.) Certificates of acknowledgment of married women. Every deed executed by a married woman for any of the purposes of the Act of 3 & 4 Wm. IV. c. 74 (not executed by her as protector) shall, upon her executing the same, or afterwards, be produced and acknowledged as her act and deed before a judge of one of the superior courts at Westminster, or before two of the perpetual commissioners, or two special commissioners, appointed as presently noticed (s. 79). And such judge, or commissioners, before receiving the acknowledgment, shall examine her, apart from her husband, touching the knowledge of such deed, and shall ascertain whether she freely and voluntarily consents to such deed, otherwise the deed cannot be acknowledged, and, so far as relates to her, is void (s. 80). The Lord Chief Justice of the Common Pleas shall appoint proper persons for every county, riding, division, soke, or place for which there may be a clerk of the peace, to be perpetual commissioners for taking such acknowledgments, who are removable at his pleasure; and lists of their names, with their residences and the places to which they are appointed, shall be kept by the officer of the Common Pleas, with whom the certificates of the acknowledgments are lodged; and such officer transmits to the clerks of the peace the lists relating to their locality, a copy of which may be obtained by any person (s. 81). These perpetual commissioners are competent to take the acknowledgment of any married woman wheresoever she may reside, and wheresoever the lands, &c., may be (s. 82).

If from being beyond seas, or from ill health, or any other sufficient cause, a married woman be prevented from making the acknowledgment before a judge, or special commissioners, the Court of Common Pleas, or any judge thereof, may issue a commission appointing special commissioners to take such acknowledgment (s. 83).

When a married woman acknowledges a deed, the person taking the acknowledgment signs a memorandum, endorsed on or written at the foot or in the margin of such deed (s. 84).

And the same person also signs a certificate of the taking of such acknowledgment, written or engrossed on a separate piece of parchment.

Every such certificate, together with an affidavit verifying the same, and the signature, shall be lodged with some officer of the Common Pleas, who, after examining it to see that everything is correct, files the same of record (s. 85). This certificate being filed, the deed takes effect by relation from the time of the acknowledgment (s. 86). An index of certificates is to be kept, and a copy of certificate filed, duly signed by the proper officer, is evidence (ss. 87, 88).

The Lord Chief Justice of the Common Pleas appoints the officer with whom the certificate shall be lodged, and the Court of Common Pleas is empowered to make orders touching the examination, memoranda, certificates, and affidavits, the time when the proceedings shall take place, and the amount of fees (s. 89).

In pursuance of this power, the Court of Common Pleas promulgated a set of rules in

Michaelmas Term 1833; but they were revoked (yet so as not to invalidate any proceedings under them, which might have taken place before the 1st of March, 1834) by the rules of Hilary Term 1834, which were varied in a very few points by the rules of Trinity Term 1834.

The substance of the rules now in force is as follows:—

One, at least, of the commissioners must not be in any manner interested in the transaction, or concerned therein as attorney, solicitor, or agent, or as his clerk.

The commissioners, before receiving the acknowledgment, or if one of them be interested, then the other who is not interested, must inquire of any married woman separately and apart from her husband, and from the solicitor or attorney concerned in the transaction, whether she intends to give her interest in the estate to be passed by such deed, without having any provision made for her in lieu of or return for or in consequence of her so giving up such interest, and if she declare there is no provision, and the commissioners believe it, then they shall receive the acknowledgment; but if it appear that provision is to be made, then they shall not take her acknowledgment until they are satisfied that such provision has been actually made by some deed or writing produced to them, or if not actually made, then the commissioners shall require the terms of such intended provision to be shortly reduced into writing, and shall verify the same by their signatures in the margin, at the foot, or at the back thereof.

The affidavit verifying the certificate shall (except the acknowledgment be taken elsewhere than in England, Wales, or Berwick-upon-Tweed) be made by some practising attorney or solicitor of one of the Courts of Westminster, or one of the counties palatine of Lancaster or Durham, and that in all cases it shall be deposed, in addition to the verification of the certificate, that the deponent (or if more than one person join in the affidavit), that one or more of the deponents knew the person making such acknowledgment, and that she is of full age and competent understanding, and that one at least of the commissioners, to the best of deponent's knowledge and belief, is not in any manner interested or concerned in the transaction, and that the names and residences of the commissioners, and also the place where the acknowledgment is taken, shall be set forth in such affidavit. And that previously to the acknowledgment, the deponent had inquired of her whether she intended to give up her interest in the estate to be passed, and also her answer thereto, and if she declare that she intends to give up her interest without any provision, the deponent shall state that he has no reason to doubt its truth, and he verily believes the same to be true. And where there is to be a provision, the deponent shall state that the same has been made by deed or writing, or if not actually made, that the terms of the intended provision have been reduced into writing, which he verily believes has been produced to the said commissioners.

The affidavit must further state the parish or several parishes, or place or several places, and the county or counties in which the several premises wherein any such married woman shall appear to be interested, shall by deed be described to be situate. The form of the affidavit is given, which is subject to such variations as the circumstances of the case render necessary, and it may be made (where it is found convenient) by one of the commissioners.

The certificates and affidavits verifying the same must, *within one lunar month* from making the acknowledgment, be delivered to the proper officer (whose office is at No. 7, Lancaster Place, Waterloo Bridge), who cannot receive the same after such time, without the direction of the Court or Judge.

The fees to be paid for the copies to be delivered by the clerks of the peace or their deputies, or by the officers of the Common Pleas, are then set forth.

The County Court Judges may take these acknowledgments under 19 & 20 Vict. c. 108, ss. 26 & 73. See 11 & 12 *Vict.* c. 70, and 17 & 18 *Vict.* c. 75.

(2.) Annual certificate of an attorney. It expires on the 15th November in every year, without any reference to the day on which it was issued. If taken out before the 16th December it will have relation back to the 15th November, and protect from penalties incurred before that time for having practised without a certificate; but if taken out on or after the 16th December it will have relation only to the day on which it was issued; and if it be not issued before the end of the year, the attorney's name will not appear in the Law List. The duty payable is thus regulated: if the attorney practise within 10 miles of the General Post-Office in London, then, for the first three years, the yearly duty is 4*l.* 10*s.*, and for every subsequent year 9*l.*; if he practise elsewhere, then, for the first three years 8*l.*, and for every subsequent year 6*l.*—16 and 17 *Vict.* c. 63. The Incorporated Law Society is appointed registrar of attornies and solicitors. Consult 7 & 8 *Vict.* c. 73, ss. 21–26.

(3.) Certificate of appointment of the creditors' assignees to a bankrupt's estate and effects. Statute 24 & 25 Vict. c. 134. s. 123, enacts that 'When the election of an assignee shall have been accepted by the person elected, and confirmed by the court, the court shall by

certificate under the hand of the commissioner and the seal of the court (to be called the certificate of appointment), declare such creditor's assignee to have been duly elected, and appoint him to the said office accordingly.'

(4.) Certificate of conformity of a bankrupt; an instrument whereby the court, before the passing of 24 & 25 Vict. c. 134, certified the adjudication, the bankrupt's surrender and conformity, and his having passed his last examination and made a true discovery of his estate and effects. By that act a certificate of conformity has been abolished, and instead of it a bankrupt receives an order of discharge. See s. 157, *et seq.*

(5.) Certificates of counsel; these are given as to a pauper having a good cause of suit or action, when he intends to sue *in formâ pauperis*; also in the case of petitions of appeal in Chancery suits, apprehending that the cause is proper to be reheard; also a certificate of respectability is required to be signed by two counsel before a student can be admitted to keep his terms at any of the Inns of Court.

(6.) Certificates of the Judges of the Superior Common Law Courts at Westminster. They are numerous; the chief, however, are:—(*α*) As to a special jury. The party upon whose application it is struck shall bear all the expenses occasioned at the trial of the cause by such special jury, and shall not be allowed upon taxation of costs, any more or other costs than he would have been entitled to if the cause had been tried by a common jury, unless the Judge shall, immediately after the verdict, certify, upon the back of the record, that it was a proper cause to be tried by a special jury. (*β*) For speedy execution. By 1 Wm. IV. c. 7, s. 2, it is enacted, 'that in all actions brought in either of the Superior Courts, by whatever form of process the same may be commenced, it shall be lawful for the Judge before whom any issue joined in such action shall be to be tried, in case the plaintiff or demandant therein shall become nonsuit, or a verdict shall be given for the plaintiff or demandant, defendant or tenant, to certify under his hand on the back of the record, at any time before the end of the sittings or assizes, that in his opinion execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification; and in case of a verdict for the plaintiff, then either for the whole or for any part of the sum found by such verdict; in all which cases a rule for judgment may be given, costs taxed, and judgment signed forthwith, and execution may be issued forthwith or afterwards, according to the terms of such certificate, on any day in vacation or term; and the postea, with such certificate as a part thereof, shall and may be entered of record as of the day on which the judgment shall be signed, provided always that it shall be lawful for the party entitled to such judgment to postpone the signing thereof.' As to the time for issuing execution when a cause is tried out of term, see *C. L. P. Act* 1852 (15 & 16 Vict. c. 76.) s. 120 & *Reg. Gen. Hil. T.* 1853, r. 57, and *Chitty's Archb. by Prent*, 412. (*γ*) By 43 Eliz. c. 6, s. 2, if in a personal action 'not being for any title or interests of lands, nor concerning the freehold or inheritance of any lands, nor for any battery, it shall be certified by the Judge (not the Sheriff or Judge of an inferior court, trying under the 3 & 4 Wm. IV. c. 42, s. 17, nor on a writ of inquiry, before whom it shall be tried), that the debt or damages to be recovered therein do not amount to 40*s.* the plaintiff shall have no more costs than damages, but less at the discretion of the Court.' (*δ*) By 22 & 23 Car. II. c. 9, 'in all actions of trespass, assault and battery, and all other personal actions, wherein the Judge at the trial shall not find and certify under his hand, upon the back of the record, that an assault and battery was sufficiently proved, or that the freehold and title of the land was chiefly in question, in case the jury find the damages to be under the value of 40*s.* the plaintiff shall not recover or obtain any more costs than the damages so found shall amount to.' (*ε*) For the preventing of wilful and malicious trespass, it is enacted by 8 & 9 Wm. III. c. 11, s. 4, 'that in all actions of trespass to be commenced or prosecuted in any of his Majesty's Courts of Record at Westminster, wherein at the trial of the cause it shall appear and be certified by the Judge under his hand, upon the back of the record, that the trespass upon which any defendant shall be found guilty, was wilful and malicious, the plaintiff shall recover not only his damages, but also his full costs of suit, any former law to the contrary notwithstanding.' The Judge has power to certify in actions for the infringement of patents under 5 & 6 Wm. IV. c. 83, s. 3, and where there are several issues, under 4 & 5 Anne, c. 16, ss. 4, 5. (*ζ*) The 3 & 4 Vict. c. 24, enacts that in actions of trespass, or trespass on the case, if the plaintiff recover less than 40*s.* he shall not have his costs, unless the Judge certify that the action was not frivolously brought. (*η*) Except where money is paid into court and taken out in full satisfaction of the plaintiff's demand in all actions of contract (except for breach of promise of marriage) where the plaintiff recovers a sum not exceeding 20*l.* and in all actions of tort (not being an action for malicious prosecution, or for libel or slander or seduction), except in the case of a judgment by default, where the plaintiff recovers a sum not exceeding 5*l.* the plaintiff gets no costs unless he obtain a certificate under 13 & 14 Vict. c. 61, s. 12, or

obtains an order of the Court or a Judge for his costs under the 15 & 16 Vict. c. 54. s. 4, or the 19 & 20 Vict. c. 108, s. 30. See 1 *Chit. Arch. Prac. by Pren.* 448, *et seq.*

(7.) Trial by certificate. This is now of very rare occurrence, but is still in force upon certain issues, which are enumerated in 3 *Steph. Com.* 610; one of the most important of which is the issue of *ne unques accouple en loial matrimonie.* This arises in the action of dower, in which the tenant may plead in bar that the demandant 'was never accoupled to her alleged husband in lawful matrimony.' Issue being joined upon this, the Court awards that it be tried by the diocesan of the place where the parish church in which the marriage is said to have been had is situate, and that the result be certified to it by the ordinary at a given day. It is said that this is a form of issue which can arise only in dower. The trial by certificate is, when competent, the only legitimate mode, and the issue cannot be tried by jury.—*Step. Plead.* 113.

(8.) As to a chief clerk's certificate in chancery, consult *Smi. Ch. Pr.* 544, *et seq.*

(9.) As to a magistrate's certificate of the dismissal of a charge, see 11 & 12 *Vict.* c. 43, s. 14; and 18 & 19 *Vict.* c. 126, s. 7.

(10.) As to a certificate of qualification as an apothecary, see 55 *Geo. III.* c. 194, & 6 *Geo. IV.* c. 133.

(11.) As to a certificate of medical men in lunacy, see 8 & 9 *Vict.* c. 100, and 16 & 17 *Vict.* c. 96.

(12.) As to a certificate of dissenting places of worship, see 1 *Wm. & M.* Sess. 1, c. 18; 52 *Geo. III.* c. 155; 31 *Geo. III.* c. 32; 2 & 3 *Wm. IV.* c. 115; 9 & 10 *Vict.* c. 59; 15 & 16 *Vict.* c. 36; 18 & 19 *Vict.* c. 81; and 19 & 20 *Vict.* c. 119, ss. 17 & 24.

Certificates in the Customs. No goods can be exported by certificate, except foreign goods formerly imported, on which the whole or a part of the customs paid on importation is to be drawn back. The manner of proceeding is regulated by 3 & 4 Wm. IV. c. 52, s. 68.

Certification, assurance; also when the Judge ascertains the party called, and not compearing what he will do in that case.—*Scotch Term.*

Certification of Assize, a writ anciently granted for the re-examining or re-trial of a matter passed by assize before justices, now entirely superseded by the remedy afforded by means of a new trial.

Certiorari (*to be more fully informed of*), an original writ issuing out of the common law jurisdiction of the Court of Chancery in civil cases, and the Crown side of the Court of Queen's Bench in criminal cases, addressed, in the Queen's name, to the Judges or the officers of inferior courts, commanding them to certify or to return the records of a cause depending before them, to the end the party may have the more sure and speedy justice, before such justices as shall be assigned to determine the cause.—*F. N. B.* 145, 242, 554. The *certiorari* in civil matters lies in all cases before judgment, whether the action were commenced by process against the person or not; and it may be sued out to remove an ejectment, as well as other actions pending in inferior courts of record.—2 *Chit. Arch. Prac. by Pren.* 1262. In criminal cases, it lies to remove into the Queen's Bench, which is the sovereign ordinary court of justice in criminal causes, all indictments, coroners' inquisitions, summary convictions by magistrates, orders of removal of paupers, and of poor's rates, also orders made by the poor law commissioners, commissioners of sewers, tithe commissioners, town councils, and railway companies, for the purpose of being examined and determined upon. The *certiorari* is taken away by the express words of some acts of Parliament. A *certiorari* is frequently granted, either (1) to consider and determine the validity of indictments, and the proceedings thereon, and to quash or confirm them as there is cause; (2) where it is surmised that a partial or insufficient trial will probably be had in the Court below, the indictment is removed in order to have the person against whom it is found tried at the bar of the Queen's Bench or before the justices of *nisi prius*; (3) it is so removed in order to plead the royal pardon there; (4) to issue a process of outlawry against the offender, in those counties or places where the process of the inferior courts will not reach him.—4 *Step. Com.* 469. The writ may be granted either at the instance of the prosecutor or the defendant. A prosecutor was formerly entitled to a writ of *certiorari* as a matter of right, but a defendant could only obtain it by express leave of the Court, and upon his entering into recognizances; but to prevent abuses, by the wanton and improvident application for it, the 5 & 6 Wm. IV. c. 33, and 16 & 17 Vict. c. 30, s. 5, provide that a prosecutor must obtain the previous leave of the Court to issue it, and enter into recognizances. And see 19 & 20 *Vict.* c. 16.

Certiorari, *bill of,* an original bill praying relief. It is filed for the purpose of removing a suit pending in some inferior court of equity into the Court of Chancery, on account of some alleged incompetency of the inferior court, or some hardship in its proceedings.

The Bill states the proceedings so far as they have gone; the cause of the incompetency of the inferior court, by suggesting that the cause is out of its jurisdiction; or that the witnesses live beyond it, or that the defendant lives beyond it, and is not able, from age, infirmity, or distance, to follow the suit there; or that for some other cause, substantial justice is not likely to be done to him, and then prays the writ to

certify and remove the record and cause into the superior court.

When the Bill is filed, the writ of *certiorari* is obtained on motion, and a certificate from the Clerk of Records and Writs that the Bill is filed. It is usually addressed to the judge of the inferior court, requiring him to certify, or send to the court, the tenor of the Bill or Plaint there, with the process and proceedings thereupon.

When the order is passed and entered, and the writ is about to be issued, then, as some protection against the delay of justice, a bond is entered into before the registrar by the plaintiff, together with a surety, in a penalty of 100*l.* conditioned that the plaintiff shall prove the suggestion of his Bill in *fourteen days* after the return of the writ, which is returnable within *fourteen days* after its being served on the defendant. Upon the writ of *certiorari* being served and returned, a motion is made to file it, which will thereupon be ordered to be filed, together with the proceedings removed. If it appear by the plaintiff's own showing in the Bill filed by him in the inferior court, that he lives out of the jurisdiction of such court, then the plaintiff in the *certiorari* Bill, without proving any allegation in his Bill, may obtain an order on motion or petition to retain the Bill removed. When the cause is removed from the inferior court, the bill exhibited in such court is considered as an original Bill in the Court of Chancery, and is proceeded upon as such.

If the suggestions of the *certiorari* Bill are not proved, a writ of *procedendo* may be obtained by the defendant, and addressed to the judge of the inferior court, requiring him to proceed in a cause which was sought to be removed into the court of equity by *certiorari*, the plaintiff in the *certiorari* Bill not having sufficiently proved his suggestions in such Bill.—*Stor. Eq. Pl.* 356, and 1 *Madd. Ch.* 249.

Cert Money, *quasi* certain money. Head-money paid yearly by the resiants of several manors to the lords thereof, for the certain keeping of the leet, and sometimes to the hundred. It is called *certum letæ* in ancient records.

Certum est quod certum reddi potest.—9 *Co.* 47.—(That is certain which can be rendered certain.)

Lord Ellenborough observed, that a reasonable time is as capable of being ascertained by evidence, and, when ascertained, is as fixed and certain, as if defined by a particular Act of Parliament.—2 *M. & S.* 50.

Cervisarii [fr. *cerevisia*, ale], a duty called by the Saxons *drinclean*, i.e. *retributio potûs*, paid by tenants.

Cerura, a mound, fence, or inclosure.

Cessa regnare, si non vis judicare.—*Hob.* 155. (Cease to reign, if you wish not to adjudicate.)

Cessante causâ, cessat effectus.—*Wing.* 29.—(The cause ceasing, the effect ceases.)

Cessante primitivo, cessat derivativus.—(The primitive ceasing the derivative ceases.)

Cessante ratione legis, cessat ipsa lex.—*Co. Litt.* 70.—(The reason of the law ceasing, the law itself ceases.)

This maxim may be thus illustrated:—Where a contract, not under seal, is made with an agent in his own name, for an undisclosed principal, and on which, therefore, either the agent or principal may sue, the defendant as against the latter, is entitled to be placed in the same situation at the time of the disclosure of the real principal, as if the agent dealing in his own name had been in reality the principal, and this rule is to prevent the hardship under which a purchaser would labor, if, after having been induced by peculiar considerations—such, for instance, as the consciousness of possessing a set-off—to deal with one man, he could be turned over and made liable to another, to which those considerations would not apply, and with whom he would not willingly have contracted.

Cessante statu primitivo, cessat derivativus.—8 *Rep.* 34.—(The original state ceasing, the derivative ceases.)

Cessavit, a writ which lay (by the Statute of Gloucester, 6 Edw. I. c. 4, and Westminster 2, 13 Edw. I. c. 21) when a man who held lands by rent or other services, neglected or ceased to perform his services for two years together, or where a religious house had lands given to it, on condition of performing some certain spiritual services, as reading prayers, giving alms, &c., and neglected it; in either of which cases, if the cesser or neglect had continued for two years, the lord, or donor, and his heirs, had a writ of cessavit to recover the land itself.—*F. N. B.* 208. This writ was abolished by 3 & 4 Wm. IV. c. 27.

Cesse [fr. *sess*, Fr. *assess*, spelled with a *c*, *cençer*, Fr. to rate], an assignment or tax. In Ireland, it was anciently applied to an exaction of victuals, at a certain rate, for soldiers in garrison.—*Antiq. Hibern.*

Cesser, *proviso for*. Where terms for years are raised by settlement, it is usual to introduce a proviso that they shall cease when the trusts are at an end. This proviso generally expresses three events:—(1) the trusts never arising; (2) their becoming unnecessary or incapable of taking effect; (3) the performance of them.—3 *Sug. V. & P.* 3, 10th edit.

Cesset executio (*let execution stay*). Where defendants plead severally, if they be found guilty of the same act of trespass, the damages cannot be severed, but the jury who try the first issue shall assess damages against all;

and there shall be a *cesset executio* until the other issues are tried, when the other defendants, if found guilty, shall be contributory to those damages.—11 *Co.* 6 & 7 *a.*

Cesset process, a stay of proceedings entered on the record.

C'est le crime qui fait la honte, et non pas l'échafaud.—(It is the offence which produces shame, and not the scaffold.)

Cessio bonorum (a surrender of goods). By the Roman law a *cessio bonorum* of the debtor was not a discharge of the debt, unless the property ceded was sufficient for that purpose. It otherwise operated only as a discharge *pro tanto*, and exonerated the debtor from imprisonment. Huberus informs us, that in Holland a *cessio bonorum* does not even exempt from imprisonment, unless the creditors assent; and Heineccius proclaims the same as the law of some parts of Germany. The Scottish law conforms to the Roman code in its leading outlines, and the modern code of France adopts the same system.—*Story's Conflict of Laws*, 492. A discharge under the Insolvency acts, now repealed, merely protected the person discharged from arrest, his future property remaining liable, subject to the claims of subsequent creditors.

An order of discharge from a Court of Bankruptcy under 24 & 25 Vict. c. 134, protects both the person of the bankrupt and his after-acquired property, except where protection is refused, in which case the bankrupt is liable to be arrested.

Cessio in jure, a fictitious suit in which the person who was to acquire the thing claimed (*vindicabat*) the thing as his own, the person who was to transfer it acknowledged the justice of the claim, and the magistrate pronounced it to be the property (*addicebat*) of the claimant.—*Sand. Just.* 176.

Cession, a ceasing, yielding up, or giving over. By 21 Hen. VIII. c. 13, if anyone having a benefice of 8*l. per annum*, or upwards, (according to the present valuation in the king's books), except deaneries, archdeaconries, chancellorships, treasurerships, chanterships, prebends, and sinecure rectories, accept any other, the first shall be adjudged void, unless he obtain a dispensation, which no one is entitled to have but the chaplains of the livings and others therein mentioned, the brethren and sons of lords and knights, and all doctors and bachelors of divinity, doctors of laws, and bachelors of the law canon, admitted by the universities of this realm. A vacancy thus made, for want of a dispensation, is called cession.—1 *Bl. Com.* 392. See PLURALITY.

Cessionary Bankrupt, one who has given up his estate to be divided amongst his creditors.

Cessment, an assessment, or tax.

Cessor, he who ceases or neglects so long to perform a duty, that he thereby incurs the danger of the law.—*Old Nat. Br.* 136.

Cessure, or **Cessor**, ceasing, giving over, departing from.

Cestui que trust, the person who possesses the equitable right to deal with property and receive the rents, issues, and profits thereof, the legal estate in which is vested in a trustee. There is such a confidence between the *cestui que trust* and his trustee, that no action at law will lie between them, except where the trustee admits that he has in his possession money belonging to the *cestui que trust*, in which case an action lies against the trustee; but they must settle their differences, and arrange their disputes in a Court of Equity.

The phrase, *cestui que trust*, is a barbarous Norman law French phrase; and is so ungainly and ill adapted to the English idiom, that it is surprising that the good sense of the English legal profession has not long since banished it, and substituted some phrase in the English idiom, furnishing an analogous meaning. In the Roman law the trustee was commonly called *Hæres Fiduciarius*; and the *cestui que trust*, *Hæres Fidei Commissarius*, which Dr. Hallifax has not scrupled to translate *Fide-Committee* (*Hallifax Anal. of Civil Law*, ch. vi. s. 16, p. 34; *Id.* ch. viii. ss. 2, 3, pp. 45, 46). Mr. Justice Story prefers Fide-commissary, as at least equally within the analogy of the English language. But Beneficiary, though a little remote from the original meaning of the word, would be a very appropriate expression, as it has not as yet acquired any general use in a different sense. *Hæres fidei commissarius* was sometimes used in the Civil Law, to denote the trustee. *Vicat, Vocab.* voce *Fidei commissarius.* The French Law calls the *cestui que trust*, *fidei commissaire. Ferrière, Dict.* voce *Fidei commissaire. Merlin, Répertoire*, voce *Substitution et Substitution fidei commissaire.* Dr. Brown uses the word *Fidei commissary*, 1 *Brown's Civil Law*, 190, n.

Cestui que use, in old law tracts *cestui à que use.* Previously to the Statute 27 Hen. VIII. c. 10 (usually called the Statute of Uses), the use was an equitable or beneficial interest enjoyed by the *cestui que use*, distinct from the legal property in the land, which was held by the feoffee to uses. The Statute of Uses destroyed the intervening estate of the feoffee to uses, and transferred the possession to the *cestui que use*, converting his equitable or beneficial interest into a legal estate; thus the use and possession being incorporated, the separate existence of the use is virtually extinguished, and he, who was called the *cestui que use* before the statute, is now to all intents and purposes the legal owner, the use being executed in him. Thus a conveyance transmuting the possession to A to the use of B, A's estate (feoffee to uses)

is destroyed by the statute, the possession is given to B (cestui que use), in whom the legal estate is vested.

Cestui que vie, the person for whose life any lands, tenements, or hereditaments may be held.

Chacea est ad communem legem.—Reg. Br. 806.—(A chace is by common law.)

Chacea, a station of game, more extended than a park, and less than a forest; also the liberty of chasing or hunting within a certain district; also the way through which cattle are driven to pasture, otherwise called a drove-way.—*Blount*; *Bract.* 1. 4, c. xliv.

Chaceare *ad lepores vel vulpes.* To hunt hares or foxes.—*Cart. Abb. Glast. MS.* 87.

Chacurus [fr. *chasseur*, Fr.], a horse for the chase, or a hound, dog, or courser.

Chaffery, traffic; the practice of buying and selling.

Chaffwax, an officer in Chancery, who fitted the wax to seal writs, commissions, and other instruments. The office was abolished by 15 & 16 Vict. c. 87, s. 23.

Chairman of Committees of the whole House. In the Commons, this officer, always a member, is elected by the House on the assembling of every new Parliament. When the House is in committee on bills introduced by the Government, or in committee of ways and means, or supply, or in committee to consider preliminary resolutions, it is his duty to preside; he sits, not in the Speaker's chair, but at the table in the seat of the clerk of the House. On divisions, when the numbers happen to be equal, he gives the casting-voice, but in Committees he never otherwise votes. In August 1853, it was, by a resolution of the House, decided that during the unavoidable absence of the Speaker, this officer should preside in his stead, being only so appointed however from day to day. See 18 & 19 *Vict.* c. 84. In the Lords, the Chairman of Committees of the whole House is elected by the House every session; he usually holds in addition the office of Deputy Speaker of the House of Lords.—*Dod's Parl. Comp.*

Chaldron, Chaldern, or **Chalder,** twelve sacks of coals, each holding three bushels, weighing about a ton and a half. In Wales they reckon twelve barrels or pitchers a ton or chaldron, and 29 cwt. of 120 lbs. to the ton.

Chalking, or **Caulking,** stopping the seams in a ship or a vessel.—*Rot. Parl.* 50 *Ed. III.*

Challenge [fr. *challenger*, O. Fr., to accuse of], an exception taken either against things or jurors.

In civil actions, when a full jury appear, either party may challenge them for cause, as well the talesmen as the jurors originally returned. Challenges are of two kinds: (1) to the array; (2) to the polls, and each of these is again subdivided into principal challenges, and challenges to the favour.

(1) A challenge to the array is an objection to all the jurors returned by the sheriff collectively, not for any defect in them, but for some partiality or default in the sheriff or his under-officer who arrayed the panel; this is either (α) a principal challenge, as that the sheriff or other returning officer is of kindred or affinity to the plaintiff or defendant, if the affinity continue; that one or more of the jury are returned at the nomination of the plaintiff or defendant; that an action of battery is pending at the suit of the plaintiff or defendant against the sheriff, or at the suit of the sheriff against the plaintiff or defendant; that an action of debt is pending at the suit of the plaintiff or defendant against the sheriff, but not if by the sheriff against the plaintiff or defendant; that the sheriff or returning officer holds land depending upon the same title with that in litigation between the parties; that the sheriff, &c., is under the distress of the plaintiff or defendant; that the sheriff, &c., is counsel, attorney, officer, servant, or gossip of either party, or is an arbitrator in the same matter, and has treated thereof. (β) A challenge for favor, being such as implies at least a probability of bias or partiality in the sheriff, but does not amount to a principal challenge, as that the plaintiff or defendant is tenant to the sheriff, or that the parties are connected by marriage, &c. It seems very doubtful if the array in special jury cases can be challenged. Challenges to the array are, however, seldom resorted to, since, for the causes above named, the jury-processes may be directed to the coroner, or they would be grounds for a new trial.

(2) A challenge to the polls, which is an exception to one or more of the jurors who have appeared individually, either (α) a principal challenge, which may be subdivided into (a) challenge *propter honoris respectum*, as if a lord of parliament be called, he may challenge himself or he may have his writ of privilege, but it is doubtful if either party can challenge him. 6 Geo. IV. c. 50, s. 2; (b) challenge *propter defectum*, that the juror is not qualified, or if a woman be impanelled she may be challenged *propter defectum sexus*, unless it be on a writ *de ventre inspiciendo*; (c) challenge *propter affectum*, by reason of some supposed bias or partiality; (d) challenge *propter delictum*, when, for some act of the juror, he has ceased to be, in consideration of law, *probus et legalis homo*. (β) A challenge to the polls for favor is of the same nature with the principal challenge *propter affectum*, but of an inferior degree.

No challenge can be made before a full jury have appeared; a challenge to the polls is made *ore tenus*, that to the array in writing.

The trial of challenges to the array is entirely in the discretion of the court, sometimes they

are tried by two of the coroners, sometimes by two of the jury, sometimes by the court itself. Challenges to the polls, if to the favor, are tried by two jurors, who have been sworn; if two have not been sworn, the court appoints two indifferent persons to try them, thence called triers, who are superseded as soon as two jurors are sworn; a principal challenge to the polls is tried by the court itself.—1 *Chit. Arch. Prac. by Pren.* 412.

In criminal cases, challenges may be made, either on the part of the Crown, or on that of the prisoner, and either to the whole array, or to the separate polls, for the very same reasons that they may be made in civil causes. In capital cases, the prisoner, *in favorem vitæ*, is allowed an arbitrary and capricious species of challenge, without showing any cause at all, limited, in cases of treason to thirty-five, and in felonies to twenty.—22 *Hen. VIII.* c. 14; 7 & 8 *Geo. IV.* c. 28, s. 3.

Challenges to fight, either by word or letter, or to be the bearer of such challenges, are misdemeanours, punishable by fine and imprisonment.—4 *Step. Com.* 338.

Chamber, the place where certain assemblies are held; also the assemblies themselves.

Chamber of commerce, an assembly of merchants and traders, where affairs relating to trade are treated of. There are establishments of this sort in most of the chief cities in France; and in this country, chambers of this kind have been established for various purposes.

Chamber-counsel, a barrister who confines his practice to chambers, and does not appear in court.

Chamber-practice, private and not court practice.

Chamberdekins, or **Chamber-deacons,** certain poor Irish scholars, clothed in mean habit, and living under no rule; also beggars banished from England, by 1 Hen. V. cc. 7 & 8.

Chamberlain [fr. *chambellan*, Fr.; *custos cubiculi*, or *cubicularius*, Lat.], a person who has the management or direction of a chamber or chambers. It is variously used in our laws, statutes, and chronicles. Among the most important, are:—(1) *The Lord Chamberlain of Great Britain*, the sixth high officer of the Crown, to whom belongs the government of the palace at Westminster, and upon all solemn occasions the keys of Westminster Hall and the Court of Requests are delivered to him; he disposes of the Sword of State, to be carried before the Queen when she comes to Parliament, and goes on the right-hand side, next to the Queen's person; he has the care of providing all things in the House of Lords during its sessions; to him belong livery and lodgings in the Queen's courts, &c., and the gentleman usher of the black rod, yeoman usher, &c., are under his authority. As to his power of licensing theatres, see 6 & 7 Vict. c. 68. The office is hereditary. (2) *The Lord Chamberlain of the Household*; he has the oversight and direction of all officers belonging to the Queen's chambers, except the precinct of the bed chamber. (3) *The Chamberlain of London*, who keeps the city money, presides over the affairs of the citizens and their apprentices, and presents the freedom of the city to those who have faithfully served their apprenticeships.

Chambers [fr. *chambre*, Fr.; *camera*, Lat.; *καμάρα*, Gk., a vault or arched roof, place with an arched roof. Probably from *cam*, crooked, *camera, gewölbe; camerare, krümmen; cameratus, gekrümmt, gebogen, gewölbt*, Dief. Sup.—*Wedgw.*], rooms or apartments belonging to the Inns of Court, or to the Judges for the dispatch of summary business.

Chambers of the king [*Regiæ cameræ*]. The exclusive territorial jurisdiction of the British crown over the inclosed parts of the sea along the coasts of the island of Great Britain, has immemorially extended to those bays called the *King's chambers*; that is, portions of the sea cut off by lines drawn from one promontory to another.—*Wheat. Internat. Law*, 235.

Chambre depeinte, anciently St. Edward's Chamber, called the Painted Chamber, destroyed by fire with the houses of Parliament.

Champart, field-rent; champerty.

Champarty, or **Champerty** [fr. *champ parti*, Fr.; *campi partitio*, Lat., a division of the land, &c.], properly a bargain between a plaintiff or defendant in a suit and a third person, *campum partire*, to divide between them the land or other matter sued for, in the event of the litigant being successful in the suit; whereupon the champertor is to carry on the party's suit or action at his own expense; or it is the purchasing the right of action, or suit of another person. It was chiefly upon the ground of champerty that the courts of common law refused to recognise the assignment of debts and other rights of action and securities; though the same doctrine obtains not in equity. Every champerty implies a maintenance, but every maintenance is not champerty (2 *Inst.* 108): And courts of equity being ever solicitous to enforce the principles of law respecting champerty and maintenance, they will not in any case uphold an assignment involving such offensive ingredients. Thus, for instance, courts of equity, as well as courts of law, will repudiate any agreement made between a creditor and a third person, to maintain a suit of the former, and share the profits resulting from the success of the suit; for it would be a clear case of champerty.—2 *Story's Comm.* p. 289; *Story on Contracts*, s. 208.

Champertors, persons who move pleas or suits, or cause them to be moved, either by their own procurement or by others, and sue

them at their proper costs, in order to have part of the land in variance, or part of the gain.—*33 Edw. I.* c. 2.

Champion [fr. *campus*, Lat.], a person who fights a combat in his own cause, or in place of another.—*Bract.* l. 3, tr. 2 c. 21.

Champion of the king or queen [fr. *campio regis*, Lat.], an ancient officer, who rode, armed *cap-à-piè*, into Westminster Hall at the coronation, while the king was at dinner, and by the proclamation of a herald, made a challenge, 'that if any man shall deny the king's title to the crown, he is there ready to defend it in single combat.' The king drank to him, and sent him a gilt cup covered, full of wine, which the champion drank, retaining the cup for his fee. This ceremony has been discontinued.

Chance, misfortune, accident, deficiency of will. Where a man commits an unlawful act by misfortune or chance, and not by design, his will not co-operating with the deed, such act wants one main ingredient of a crime. If an accidental mischief should follow from the performance of a *lawful* act, the party stands excused from all guilt; but if the act be *unlawful*, and a consequence ensues not foreseen or intended, as the death of a man, or the like, his want of foresight shall be no excuse, for, being guilty of one offence, in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequence may follow.—4 *Bl. Com.* 26.

But a very important distinction is made in such cases, viz. whether the unlawful act is also in its original nature wrong and mischievous; for a person is not answerable for the incidental consequences of an unlawful act, which is merely *malum prohibitum*; as, where any unfortunate accident happens from an unqualified person being in pursuit of game he is amenable only to the same extent as a man duly qualified.—*Fost.* 259; 1 *Hale's P. C.* 475.

Chancel, this part of a church belongs to the rector or the impropriator.—3 *Step. Com.* 69.

Chancellor, the Lord High [fr. *cancello*, Lat., to cancel], the highest judicial functionary in the kingdom, and superior, in point of precedency, to every temporal lord. He is appointed by the delivery of the Queen's great seal into his custody. He is a cabinet minister, a privy counsellor and prolocutor of the House of Lords by prescription, and vacates his office with the ministry by which he was appointed. When royal commissions are issued for opening the Session, for giving the royal assent to bills, or for proroguing Parliament, the Lord Chancellor is always one of the commissioners, and reads the royal speech upon the occasion. When the Sovereign opens or closes the Session in person, the Lord Chancellor stands on the right of the throne, and hands to him the royal speech opening or terminating the annual labours of the legislature. To him belongs the appointment of all justices of the peace throughout the kingdom. Being, in the earlier periods of our history, usually an ecclesiastic (for none else were then capable of an office so conversant in writings), and presiding over the royal chapel, he became keeper of the Sovereign's conscience, visitor, in right of the Crown, of all hospitals and colleges of royal foundation, and patron of all the Crown livings under the value of twenty marks *per annum* in the King's books. He is the general guardian of all infants, idiots, and lunatics, and has the general superintendence of all charitable uses. And all this, over and above the vast and extensive jurisdiction which he exercises in his judicial capacity in the High Court of Chancery.—3 *Bl. Com.* 47. His retiring pension is 5,000*l. per annum*.—2 & 3 *Wm. IV.* c. 111. There is also a Lord High Chancellor of Ireland; but the Chancellorship of Scotland was abolished at the Union.

Chancellor of a Cathedral, one of the *quatuor personæ*, or four chief dignitaries of the Cathedrals of the Old Foundation. The duties assigned to the office by the statutes of the different chapters vary; but they are chiefly of an educational character, with a special reference to the cultivation of theology.

Chancellor of a Diocese or **of a Bishop**, a law officer, appointed to hold the Bishop's Court in his diocese, and to adjudicate upon matters of ecclesiastical law. He is the Vicar-general of the Bishop, and must be a doctor of Civil Law, as created in some university.—37 *Hen. VIII.* c. 17; 3 *Steph. Com.* 14.

Chancellor of the Duchy of Lancaster, an officer before whom, or his deputy, the Court of the Duchy Chamber of Lancaster is held. This is a special jurisdiction concerning all matters of equity relating to lands held of the Crown in right of the Duchy of Lancaster; which is a thing very distinct from the county palatine (which has also its separate chancery for sealing of writs or the like), and comprises much territory lying at a vast distance from it, as particularly a very large district surrounded by the city of Westminster. The proceedings in this court are the same as in the High Court of Chancery; so that it seems not to be a court of record, and indeed it has been holden that the Court of Chancery has a concurrent jurisdiction with the Duchy Court, and may take cognizance of the same causes.—3 *Bl. Com.* 78. See COUNTY PALATINE.

Chancellor of the Exchequer, a minister of state, who presides in the Court of Exchequer, and takes care of the interests of the Crown, in addition to his other parliamentary duties. He has power with the Lord Treasurer to lease the Crown lands, and to compound for forfeiture of lands on penal statutes, bonds, and recognizances, entered into to the Queen; he has also great authority in managing the royal revenues,

and in all matters relating to the finance of the State.—25 *Hen. VIII.* c. 16; 33 *Hen. VIII.* c. 39.

Chancellor of the Order of the Garter, *and other military orders*, an officer who seals the commissions and the mandates of the chapter and assembly of the knights; keeps the register of their proceedings, and delivers their acts under the seal of their order.—*Stow's Annals*, 706.

Chancellor of the two Universities, the president of those bodies, the office being honorary.

The Chancellor's Courts in the two Universities enjoy the sole jurisdiction, in exclusion of the Queen's Courts, over all civil actions and suits whatsoever, excepting where a right of freehold is concerned, and of all injuries and trespasses against the peace; mayhem and felony excepted (*Brown* v. *Renouard*, 12 East, 13; *Thornton* v. *Ford*, 13 East, 635), when a scholar or privileged person is one of the parties; and these, by the University charter, they are at liberty to try and determine, either according to the common law of the land, or according to their own local customs, at their discretion.

The Judge of the Chancellor's Court at Oxford is the Vice-Chancellor, who is deputy or assessor. From his sentence an appeal lies to delegates appointed by the congregation; thence to other delegates of the house of convocation; and if they all three concur in the same sentence, it is final, at least by the statutes of the University, according to the rule of the civil law.—*Cod.* 7, 70, 1. But if there be any discordance or variation in any of the three sentences, an appeal lies in the last resort to Judges delegates appointed by the Crown under the Great Seal in Chancery.—3 *Bl. Com.* 84. By 17 & 18 Vict. c. 81, s. 45, the Court of the Vice-Chancellor of Oxford is now governed by the common and statute law of the realm, and no longer by the rules of the civil law. And see 18 & 19 Vict. c. 36; 19 & 20 Vict. cc. 31 and 95, and 20 & 21 Vict. c. 25. As to Cambridge, the right of the University, or any member thereof, to claim conusance of any action or criminal proceeding wherein any person who is not a member of the University is a party, has ceased and determined.—19 & 20 *Vict.* c. 17. s. 18, and see c. 88.

Chance-Medley [fr. *chaude meslée*, Fr.; fr. *chaud*, hot, and *meslée*, fray, *mesler*, *mêler*, to mingle, *mescolare*, It. When the element *chaud* lost its meaning to ordinary English ears, it was replaced by *chance*, in accordance with the meaning of the compound.—*Wedgw.*], a casual affray. Such killing of a person as happens either in self-defence on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief. 1 *Hawk. P. C.* c. xxx. s. 1. It is sometimes termed *chaud-medley*, which more properly signifies an affray in the *heat* of blood or passion.

It is frequently difficult to distinguish this species of homicide, upon chance-medley in self-defence, from that of manslaughter in the proper legal sense of the word. But the true criterion between them seems to be this, when both parties are actually combating at the time when the mortal stroke is given, the slayer is then guilty of manslaughter; but if the slayer has not begun to fight, or, having begun, endeavours to decline any further struggle, and afterwards, being closely pressed by his antagonist, kills him to avoid his own destruction, this is homicide, excusable by self-defence. For which reason the law requires that the person who kills another in his own defence should have retreated as far as he conveniently or safely can to avoid the violence of the assault before he turns upon his assailant, and that not fictitiously, or in order to watch his opportunity, but from a real tenderness of shedding another's blood. The civil law, in this respect, goes further than ours—'*qui cum aliter tueri se non possunt, damni culpam dederint, innoxii sunt.*' (Those who, when they cannot otherwise defend themselves, destroy their assailants, are innocent.)—4 *Bl. Com.* 184.

Chancery [fr. *cancelli*, *cancellarii*, Lat.; *chancellerie*, Fr.], the highest Court of judicature in this kingdom next to Parliament.

The jurisdiction of Chancery is fourfold:—

1st. The common law or ordinary jurisdiction, by which the Lord Chancellor is a privy councillor and prolocutor of the House of Lords. The writs for a new parliament issue out of this department; but in case of a vacancy during the session, the Speaker, on the motion of a member, directs the clerk of the crown, by warrant, to issue a new writ. The Petty Bag Office is in this jurisdiction; it is a Court of Common Law and of Record; pleas of *scire facias* to repeal letters-patent are here exhibited, together with many other matters, and all original writs issue hereout. See 11 & 12 *Vict.* c. 94; 12 & 13. *Vict.* c. 109, and *Gen. Ords.* 29th Dec. 1848.

2nd. The Statutory Jurisdiction. Under the head of jurisdiction the Lord Chancellor exercises the power conferred by the celebrated *Habeas Corpus* Act, inquires into charitable uses, and formerly heard appeals in bankruptcy, now exercised by the Lords Justices of Appeal. Under it also the Judges in Chancery are entrusted with numerous authorities which are conferred upon them wholly and solely by acts of parliament. The statutes which regulate or enlarge the Equity jurisdiction are not to be classed under this division.

3rd. The Specially Delegated Jurisdiction. Under this head the Lord Chancellor and the Lord Justices of Appeal have exclusive authority over the persons and property of idiots and lunatics.

4th. The Equity or Extraordinary Juris-

diction, which is distributable into three subdivisions, namely :—

I. The assistant being auxiliary to the common law, under which range matters of—

(*a*) Discovery for the promotion of substantive justice at Common Law.

(*b*) Preservation of testimony relating to a question at law, from persons not being the litigants.

(*c*) Removal of improper impediments, and prevention of unconscientious defences, at Common Law.

(*d*) Giving effect to, and relieving from the consequences of, Common Law judgments.

II. The Concurrent with the Common Law, comprehending—

(*a*) The remedial correction of fraud.
(*b*) The prevention of fraud by injunction.
(*c*) Accident.
(*d*) Mistake.
(*e*) Account.
(*f*) Dower.
(*g*) Interpleader.
(*h*) The delivery up of documents and specific chattels.
(*i*) The specific performance of agreements. And

III. The Exclusive, relating to—

(*a*) Trusts.
(*b*) Infancy.
(*c*) The equitable rights of wives.
(*d*) Legal and equitable mortgages.
(*e*) The assignment of choses en action.
(*f*) Partition.
(*g*) The appointment of receivers.
(*h*) Charities or public trusts.

The Courts of Chancery are either superior or inferior. The superior is called the High Court of Chancery, consisting of six separate tribunals, which rank in the following order : —

(1) The Court of the Lord High Chancellor of Great Britain, whose name has given to these courts their appellation.

(2) The Court of the Master of the Rolls, so called from his being the Keeper of the Records in Chancery.

(3) The Court of the two Lords Justices of Appeal appointed by letters-patent, pursuant to 14 & 15 Vict. c. 83, and having precedence next after the Lord Chief Baron of the Court of Exchequer.

The Lord Chancellor, together with these Judges, forms the Court of Appeal in Chancery, which Court exercises and performs the ministerial, judicial, and statutory powers, authorities, and duties hitherto possessed by the Lord Chancellor as a judge in his own Court of Chancery. It also exercises the appellate jurisdiction of the Vice-Chancellor sitting in Bankruptcy, pursuant to the Bankrupt Law Consolidation Act, 1849, the appeal to the Lord Chancellor having been taken away.

This Court is constituted by one of the Lords Justices and the Lord Chancellor sitting together ; or by the two Lords Justices sitting apart from the Lord Chancellor, who, while sitting alone or apart from the Lords Justices, exercises the same powers as though this Court of Appeal had not been established. The Lord Chancellor regulates the sittings and business of this Court.

(4, 5, and 6) The separate Courts of the three Vice-Chancellors. The inferior Courts of Chancery are the Equity Courts of the Palatine counties of Durham and Lancaster; the Courts of the two Universities (Oxford and Cambridge), the Lord Mayor's Court in the City of London, and the Court of Chancery in the Isle of Man. The jurisdiction of the Cinque Ports is abolished by 18 & 19 Vict. c. 48.

Chancery Common Law Seal, for the sealing of writs, &c. out of the Petty-Bag-Office.—12 & 13 *Vict.* c. 109, ss. 11, 14.

Chancery Regulation Act, 1862, 25 & 26 Vict. c. 42, for England, and 25 & 26 Vict. c. 47, for Ireland.

Chandala, the most degraded Hindu caste.

Changer, or **Chaunger,** an officer belonging to the mint, who exchanges coin for bullion brought in by merchants or others.—6 *Hen. II.* c. 12.

Chantry, or **Chauntry** [fr. *cantaria*, Lat.], a little church, chapel, or particular altar, in some cathedral church, &c., endowed with lands, or other revenues, for the maintenance of one or more priests, daily to sing mass, and perform divine service for the souls of the donors and such others as they appointed. See 1 *Edw. VI.* c. 14, abolishing them.

Chapel [fr. *capella*, Lat. *chapelle,* Fr.], a building either adjoining to a church, for performing divine service, or separate from the mother-church, where the parish is large, and then called a *chapel of ease*, for the accommodation of those parishioners who dwell at a distance from the parish church. These may be parochial, and have a right to sacraments and burials, and to a distinct minister, by custom, though subject, in some respects, to the mother church. The *chapels in the Universities*, belonging to the different halls and colleges, though they are consecrated, and sacraments are administered there, yet are not liable to the visitation of the bishop, but of the founder.—2 *Inst.* 363.

Chapelry, the precincts and limits of a chapel.

Chaperon, a hood or bonnet anciently worn by the knights of the garter, as part of the habit of that noble order ; also a little escutcheon fixed in the forehead of horses drawing a hearse at a funeral.

Chapitres [fr. *capitula*, Lat., chapters of a book], a summary of such matters as are to be inquired of or presented before justices in eyre,

justices of assize, or the peace, in their sessions. Also articles delivered by the justice in his charge to the inquest.—*Britton*, c. iii.

Chaplain [fr. *capellanus*, Lat.], an ecclesiastic who performs divine service in a chapel; but it more commonly means one who attends upon a king, prince, or other person of quality, for the performance of clerical duties in a private chapel.—4 *Rep.* 90.

Chaplain of the Queen's Prison. He is appointed by the Secretary of State for the Home department during pleasure. Sec 5 & 6 *Vict.* c. 22, s. 22.

Chapman [fr. *ceapman*, Sax.], a cheapner. one that offers as a purchaser.

Chapter [fr. *capitulum*, Lat.], a congregation of ecclesiastical persons in a cathedral church, consisting of canons, or prebendaries, whereof the dean is the head, all subordinate to the bishop, to whom they act as assistants in matters relating to the church, for the better ordering and disposing the things thereof, and the confirmation of such leases of the temporality and offices relating to the bishopric, as the bishop shall make from time to time. And they are termed *capitulum*, as a kind of head, instituted not only to assist the bishop in manner aforesaid, but also anciently to rule and govern the diocese in the time of vacation.—*Burn's Dict.*

Charge, the instructions given by a judge to a grand jury; the judge's summing up of the evidence at a trial by jury; the taking proceedings against a prisoner; an obligation imposed on property; a commission.

Chargé d'affaires, or **Chargé des affaires**, a diplomatic representative at a foreign court, to whose care are confided the affairs of his nation.

Charge and Discharge, the old mode of taking accounts in Chancery. For an explanation of it see *Dan. Ch. Pr.* 1173, 2nd edition. As to the present mode see *Smi. Ch. Pr.* 569.

Charger, a person in whose favour a decree suspended is pronounced.—*Scotch Law.*

Charges, expenses, costs.

Charging order, an order obtained from a Court or judge under 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82, binding the stocks or funds of a judgment debtor with the judgment debt. See *Smi. Ch. Pr.* 757; 1 *Chit. Arch. Prac. by Pren.* 537.

Charitable Uses and Trusts. The 9 Geo. II. c. 36, s. 1, after reciting that gifts or alienations of land in mortmain were prohibited by *Magna Charta* and other wholesome laws, as prejudicial to the common utility, and that such public mischief had greatly increased by many large and improvident dispositions, made by languishing or dying persons to *charitable* uses, to take place after their deaths, to the disherison of their lawful heirs, enacts that after the 24th June, 1736, no lands or other hereditaments whatsoever, nor any sums of money, or any other personal estate whatsoever, to be laid out or disposed of in the purchase of any lands or hereditaments should be given, or any ways conveyed to any person or persons, bodies politic, or corporate, or otherwise, for any estate or interest whatsoever, or any ways charged or incumbered by any person or persons whatsoever in trust, or for the benefit of any charitable uses whatsoever; unless such gift or conveyance of any such lands or hereditaments, sums of money, or personal estate (other than stocks in the public funds), be made by deed executed in the presence of two or more credible witnesses *twelve calendar months* before the death of such donor or grantor (including the days of the execution and death), and be enrolled in the Court of Chancery within *six calendar months* next after the execution thereof: and unless such stocks be transferred *six calendar months* before the death of such donor or grantor (including the days of the transfer and death), and unless the same be made to take effect in possession for the charitable use intended, immediately from the making thereof, and be without any power of revocation, reservation, trust, condition, limitation, or agreement whatsoever, for the benefit of the donor or grantor, or of any person or persons claiming under him.

Nothing in the act relating to the sealing and delivering of any deed twelve calendar months before the death of the grantor, or to the transfer of any stock six calendar months before the death of the grantor or person making such transfer shall extend, or be construed to extend, to any purchase of any estate or interest in lands, tenements, or hereditaments, or any transfer of any stock to be made really and *bonâ fide*, for a full and valuable consideration, actually paid at or before the making such conveyance or transfer, without fraud or collusion (s. 2).—This section is explained by a later act to have been intended only to prevent such purchases from being avoided by reason of the death of the grantor, within twelve calendar months after the sealing and delivery of the deed relating thereto, and not wholly to exempt such purchases from the operation of the act.—9 *Geo. IV.* c. 85.

All gifts, grants, conveyances, appointments, transfers, and settlements, whatsoever, of any lands or other hereditaments, or of any estate or interest therein, or of any charge or incumbrance affecting any lands or hereditaments, or of any stock, money, or other personal estate or securities for money to be laid out or disposed of in the purchase of any lands or hereditaments or of any estate or interest therein, or of any charge or incumbrance affecting the same, to or in trust for any charitable uses whatsoever, which shall at any time after the 24th June 1736, be made in any other manner or form

than by the act directed and appointed, are absolutely and to all intents and purposes null and void (s. 3).

Land, therefore, given by will to charitable uses will generally descend to the heir-at-law. When a bequest of personal property for charitable purposes, which if standing alone would be valid, is connected with and dependant upon a devise of real estate which is void; the devise being the principal, and failing, the accessory must fail with it; and the next of kin or residuary legatees will take it.

The act is not to make void the dispositions of any lands, tenements, hereditaments, or of any personal estate to be laid out in the purchase of any lands, tenements, or hereditaments, which should be made in any other manner or form than by such act is directed, to or in trust for either of the two universities in England (Oxford and Cambridge), or any of the colleges or houses of learning within either of the said universities, or to or in trust for the colleges of Eton, Winchester, or Westminster, or any or either of them, for the better support and maintenance of the scholars only upon the foundations of the said colleges of Eton, Winchester and Westminster (s. 4). And see 45 *Geo. III.* c. 101.

The following dispositions are also exempted from the mortmain laws: where a power given to invest money, destined for charitable purposes, either in lands or in the funds, is merely discretionary and not imperative, for which a testator has pointed out two modes, the one consistent but the other inconsistent with the statute, Equity will adopt the legal mode and carry it into effect (The Mayor, &c. of Faversham *v.* Ryder, 2 Eq. Rep. 749, 1854). '*Semper in dubiis benigniora præferenda sunt*' (Dig. lib. i. t. xvii. 56), is a good maxim of the Civil Law, which says '*Quoties ambigua oratio est commodissimum est id accipi quo res de quâ agitur in tuto sit*' (Dig. lib. xlv. tit. r. 80). Where money is not to be laid out in acquiring realty, but in meliorating any land, or for beautifying, sustaining, or repairing buildings already vested in trustees for charitable uses; bequests of annuities, stock in the public funds, or pure personalty; devises of lands or monies charged thereon to the trustees of the British Museum for the benefit of that institution (5 Geo. IV. c. 39, s. 3); or to the governors of Queen Anne's Bounty (2 & 3 Anne, c. 11, s. 4; 43 Geo. III. c. 136, s. 1; and 45 Geo. III. c. 84, s. 3); the commissioners of Greenwich Hospital, and of the Royal Naval Asylum, the members of the Seamen's Hospital Society, the governors of St. George's Hospital, and of Magdalen Hospital for the reception of penitent frail ones, and devises by freemen according to the custom of London, together with a few other public charities, are enabled by several acts of Parliament to take land by devise. A bequest of pure personalty to be granted to trustees of contemplated almshouses, in case any person should, within twelve months after the testator's decease, purchase or give land as a site, is not struck at by 9 Geo. II. c. 36. Philpott *v.* St George's Hospital, 5 W. R. (House of Lords) 845 (1857), overruling the decision of M. R. The Mortmain Act does not extend to gifts of realty and personalty in Scotland and Grenada or the West Indies. See also, as to cases in which the law of Mortmain has been relaxed, 4 & 5 Vict. c. 38; 7 & 8 Vict. c. 37; 16 & 17 Vict. c. 137, s. 27; 17 & 18 Vict. c. 112; 18 & 19 Vict. c. 124, s. 41; 22 Vict. c. 22; 25 & 26 Vict. c. 61, s. 9, and c. 89, s. 18. See also 24 & 25 Vict. c. 9, amending the law as to the conveyance of land for charitable uses, amended by 25 & 26 Vict. c. 17.

Charities, or public trusts. It is highly probable that the rudiments of the law of charities were derived from the Roman Civil Law. One of the earliest fruits of the Emperor Constantine's zeal, or pretended zeal, for Christianity was a permission to his subjects to bequeath their property to the church. This permission was soon abused to so great a degree as to induce the Emperor Valentinian to enact a mortmain act by which it was restrained. But this restraint was gradually relaxed; and in the time of Justinian, it became a fixed maxim of Roman jurisprudence, that legacies to pious uses (which included all legacies destined to works of charity, whether they related to spiritual or temporal concerns), were entitled to peculiar favor, and to be deemed privileged testaments.

The high authority of the Roman law, coinciding with the religious notions of the times, could hardly fail to introduce these principles of pious legacies into our Common Law; and the zeal and learning of the ecclesiastical tribunals must have been constantly exercised to enlarge their operation. Lord Thurlow was clearly of opinion that the doctrine of charities grew up from the civil law; and Lord Eldon, in assenting to that opinion, has judiciously remarked, that, at an early period, the ordinary had the power to apply a portion of every man's personal estate to charity; and when afterwards the statute compelled a distribution, it is not impossible that the same favor should have been extended to charity in wills, which by their own force, purported to authorise such a distribution.

The history of the law of charities prior to the 43rd Eliz. c. 4, which is emphatically called the Statute of Charitable Uses, is extremely obscure. This statute provided a new mode of enforcing charitable uses by a commission from the Court of Chancery.

Charity (as Sir William Grant has justly observed) in its widest sense, denotes all the good affections men ought to bear towards each other; in its more restricted and common sense, relief to the poor. In neither of these senses is it employed in the Court of Chancery. In that court it means a general public use, and comprehends 'relief of aged, impotent and poor people; maintenance of sick and maimed soldiers and mariners, schools of learning, free-schools, and scholars of universities; repairs of bridges, ports, havens, causeways, churches, sea-banks, and highways; education and preferment of orphans; the relief, stock, or maintenance of houses of correction; marriages of poor maids; supportation, aid, and help of young tradesmen, handicraftsmen, and persons decayed; relief or redemption of prisoners or captives; and aid or ease of any poor inhabitants, concerning payments of fifteenths, setting out of soldiers, and other taxes.'—*Preamble of* 43 *Eliz.* c. 4.

It is clear that no superstitious uses are within the purview of the statute; such as are gifts of money for the finding or maintenance of a stipendiary priest; or for the maintenance of an anniversary or obit, or of any light or lamp in any church or chapel; or for prayers for the dead; or for such purposes as the superior of a convent, or her successor, may judge expedient. But there are certain uses which, though not within the letter, are yet deemed charitable within the equity of the statute. Such is money given to maintain a preaching minister; to maintain a schoolmaster in a parish; for the setting up a hospital for the relief of poor people; for the building of a sessions-house for a city or county; for the making of a new, or for the repairing of an old pulpit in a church; or for the buying of a pulpit-cushion, or pulpit-cloth; or for the setting of new bells where there were none, or for mending of them when they are out of repair.

Upon the whole, it seems to be the better opinion, that the jurisdiction of the Court of Chancery over charities, where no trust is interposed, or where there is no person *in esse* capable of taking, or where the charity is of an indefinite nature, is not to be referred to the general jurisdiction of that court, but sprung up after the statute of Elizabeth, and rests mainly on its provisions.

The jurisdiction exercised by the Lord Chancellor, under the 43 Eliz. c. 4, over charities, is held to be personal in him, and not exercised in virtue of his ordinary or extraordinary jurisdiction in Chancery; and in this respect it resembles the jurisdiction exercised by him in cases of idiots and lunatics, which he exercises purely as the personal delegate of the Crown, which has a right to guard and enforce all charities of a public nature, by virtue of its general superintending power over the public interests, where no other person is entrusted with that right.

But as the Court of Chancery may also proceed in many, although not in all, cases of charity by original bill, as well as by commission under the statute of Elizabeth, the jurisdiction has become mixed in practice, that is to say, the jurisdiction of bringing informations in the name of the Attorney-General has been mixed with the jurisdiction given to the Chancellor by the statute. So that it is not always easy to ascertain in what case he acts as a judge, administering the common duties of a Court of Equity, and in what cases he acts as a mere delegate of the Crown, administering its peculiar duties and prerogatives. And again, there is a distinction between cases of charity, where the Chancellor is to act in the Court of Chancery, and cases where the charity is to be administered by the Queen, under her sign manual. Lord Eldon, after a full review of all the cases, came to the conclusion (which is now the settled rule), that where there is a general indefinite purpose of charity, not fixing itself upon any particular object, the disposition and administration of it are in the Queen by her sign manual.* But where the gift is to trustees with general objects, or with some particular objects pointed out, there the Court of Chancery will take upon itself the administration of the charity, and execute it under a scheme to be reported by a chief clerk.—*Moggridge* v. *Thackwell*, 7 *Ves.* 36–86; *Story's Equity Jurisp.* c. xxxi.; *Shelford's Law of Charities.* See the *Charitable Trusts Acts*, 16 & 17 Vict. c. 137; 18 & 19 Vict. c. 124; 19 & 20 Vict. c. 76; 20 & 21 Vict. c. 76; 21 & 22 Vict. c. 51; and 22 & 23 Vict. c. 50. See also 23 & 24 *Vict.* c. 134, amending the law as to Roman Catholic charities; c. 136, amending the law as to the administration of endowed charities.

Charity Commissioners, persons empowered by the Charitable Trusts statutes to act in cases of charity. See 25 & 26 *Vict.* c. 112.

Charre of lead, thirty pigs of lead.

Charta Chyrographata, or **Communis,** an indenture.

Charta de non ente non valet.—Co. Litt. 36. (A charter concerning a thing not in existence avails not.)

Charta de una parte, a deed-poll.

Charta est legatus mentis.—Ibid.—(A charter is the representation of the mind.)

Charta non est nisi vestimentum donationis.—Ibid.—(A charter is nothing else than the vestment of a gift.)

Chartæ libertatum are Magna Charta and Charta de Foresta. See 4 *Bl.* 423.

Charta de Foresta is taken from the roll of 25 Edward I. and has a confirmation of that date prefixed to it, similar to that prefixed to

Magna Charta. This charter, though of infinite importance at the time it was made, contains in it nothing interesting to a modern lawyer, any further than as it gives some specimen of the nature of the institution of Forest Laws, and the burthens thereby brought on the subject. In this light, the Charter of the Forest is a curious remnant of ancient legislation. It contains sixteen chapters.—1 *Reeves*, c. v. p. 254; 4 *Bl. Com.* 423; 1 *Steph. Com.* 678.

Chartarum super fidem, mortuis testibus, ad patriam de necessitudine recurrendum est.—*Co. Litt.* 36.—(The witnesses being dead, the truth of charters must of necessity be referred to the country, i. e. a jury.)

Charte, a cart, chart, or plan, which mariners use at sea.—14 *Car. II.* c. 33.

Chartel [fr. *cartel*, Fr.], a letter of defiance, or challenge to a single combat; also an instrument or writing between two states for settling the exchange of prisoners of war.

Charter [fr. *charta*, Lat.; *chartre*, Fr.], an evidence of things done between man and man; also a statute or act of Parliament. *Charters of the Queen* are written instruments granting certain privileges or exemptions to towns, corporations, bodies politic. *Charter of pardon*, forgiving a felony or other offence committed against the crown and its dignity. *Charter of the forest* comprises the laws of the forest.—*Fleta*, l. 3, c. xiv.; *Co. Litt.* 6.

Charter-House [fr. *chartreux*, Fr.], formerly a convent of Carthusian monks in London, now a college founded and endowed by Thomas Sutton. The Governors of the Charter-House are a corporation aggregate without a head, president, or superior, all the members being of equal authority.—3 *Steph. Com.* 138.

Charter-land, otherwise called *book-land*, properly held by deed under certain rents and free-services. It in effect differs nothing from the free socage lands, and hence have arisen most of the freehold tenants, who hold of particular manors, and owe suit and service to the same.—2 *Bl. Com.* 90.

Chartered ship, a ship hired or freighted.

Charterer, a person who charters or hires a ship for a voyage or for a certain period; also a Cheshire freeholder.—*Sir P. Ley's Antiq.* f. 356.

Charter-party [fr. *charta partita*, Lat., a divided charter; *charte partie*, Fr. According to Boyer, the derivation of the word is 'quia per medium charta incidebatur et sic fiebat charta partita,' because when notaries were less common there was only one instrument made for both parties; this they cut in two, and gave each his portion, joining them together at their return, to know if each had done his part.—4 *Encycl. Brit.* 1797, 360]. An agreement in writing, sometimes under seal, by which a shipowner agrees to let an entire ship, or the principal part thereof, to a merchant, for the carriage of goods on a specified voyage, or during a specified period, for a sum of money which the merchant agrees to pay as freight for their carriage. By such an agreement the ship is said to be *chartered* to the merchant, who is called the *charterer*. There are certain terms usually to be found in all charter-parties, e. g. a statement of the burthen of the ship, an undertaking by the shipowner that the ship, being seaworthy and furnished with necessaries, shall be ready by a certain day to receive the cargo, shall sail when loaded, and deliver her cargo at her port of destination (the act of God or the king's enemies excepted), the charterer undertaking to load and unload the ship, within a certain number of days, called the *lay* or *running* days, and if he detains her longer, to pay *demurrage*, i. e. a certain sum of money for each extra day, and also to pay freight agreed. See 2 *Instit.* 673; *Abbot on Shipping; Maude & Pollock on Shipping; and Smith's Mercantile Law.*

Charters sont appelé 'muniments,' *à* 'muniendo,' *quia muniunt et defendunt hæreditatem.*—4 *Co.* 153.—(Charters are called *muniments*, from *muniendo*, because they fortify and defend the inheritance.)

Chartis Reddendis, an ancient writ which lay against one who had charters of feoffment entrusted to his keeping, and refused to deliver them.—*Reg. Orig.* 159.

Chase [fr. *chasse*, Fr.], a privileged place for the preservation of deer and beasts of the forest, of a middle nature between a forest and a park. It is commonly less than a forest, and not endowed with so many liberties, as officers, laws, courts; and yet is of larger compass than a park, having more officers and game than a park. Every forest is a chase, but every chase is not a forest. It differs from a park in that it is not enclosed, yet it must have certain metes and bounds, but it may be in other men's grounds as well as in one's own.—*Mainw.* 49.

Chastisement of a wife. It is a great error to suppose that a husband can beat his wife, for she can have the security of the peace against him, should he attempt anything of the kind.

Chattel-interests, the most inferior order of estates, and in the old time, when feudality flourished in all its stern and frowning grandeur, the little interests of the humble cottager and the laboring farmer in the soil of England were treated with contempt and trampled upon. But in these latter days, when the increase of knowledge has expanded commercial enterprise, and awakened the sleeping energies of the mass of the people, these minor properties are properly respected, and their value and importance much increased.—*Pres. Est.* 604, 1st edit.

The difference between freeholds and non-freeholds, or chattel-interests, consists, for the most part, in the fixity or non-fixity of their duration. It is the latter property, viz. uncertainty, that characterises a freehold; it is the former, viz. certainty, that characterises a non-freehold. Hence every tenancy of a definite duration is a term, i. e. a period accurately ascertained during which the interest or estate is to endure. The non-freeholds are deemed merely chattel-interests, and differ from freeholds not only in quantity but in order and kind; for freeholds are considered of greater interest than non-freeholds, and therefore if a term of 1,000 years and an estate for life vest in the same person, in the same right, the term will merge in the life estate, unless an intervening estate prevent such an union of interests. Chattel-interests devolve upon the personal representatives of the owner. Five species of estates rank as chattel-interests:—(*a*) for years; (*b*) from year to year; (*c*) at will; (*d*) by *elegit*; and (*e*) on sufferance.

Chattels, or **Catals** [fr. *catalla*, Lat.; *chatel*, Fr.; *chaptel*, old Fr.], goods moveable and immoveable, except such as are in the nature of freehold or parcel of it. They are either (1) *personal*, which belong immediately to the person of the owner, and for which, if they are injuriously withheld from him, he has no other remedy than by a personal action; (2) *real*, which either appertain not immediately to the person, but to some other thing by way of dependency, as a box with writings of land; or issue out of some immoveable thing, as a lease, or rent for a term of years; and they concern the realty, lands and tenements; such as an interest in advowsons, in statutes-merchant, and the like.—1 *Inst.* 118.

Chaud-medley. See CHANCE-MEDLEY.

Chaumpert, an ancient tenure.—*Blount.*

Chauntry rents, money paid to the Crown by the servants or purchasers of chauntry-lands. 22. *Car. II.* c. 6.

Cheap, *subst.* purchase, bargain; *adj.* low in price, [fr. *ceap*, A. S., price, sale, goods, cattle; *kaupon*, Goth., to deal; *kaup*, Icel., to buy, to negotiate; *koopen*, Du., *kaufen*, Germ., to buy; *kaufmann*, chapman, a dealer; *kupiti*, Slav., *kaupiti*, Bohem., to buy; κάπηλος, Gr., *campo*, Lat., a tavern-keeper, a tradesman.—*Dief.*] The word cheap forming part of the name of a place, denotes that in that place there was a market e. g. Cheapside, Eastcheap, Westcheap. The adjective, when used in its modern sense, low in price, is an ellipsis for good cheap, equivalent to *bon marché*, Fr.

Cheap railway trains. See 7 & 8 Vict. c. 85; 21 & 22 Vict. c. 75; and 23 & 24 Vict. c. 41.

Cheaters, or **Escheaters,** were officers appointed to look after the king's escheats, a duty which gave them great opportunities of fraud and oppression, and in consequence many complaints were made of their misconduct. Hence it seems that a *cheater* came to signify a fraudulent person, and thence the verb *to cheat* was derived.—*Wedgw.*

Cheats, deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice, by causing an illiterate person to execute a deed to his prejudice, or reading it over to him in words different from those in which it is written; selling one commodity for another, or using false weights and measures, and the like.—1 *Hawk.* 188.

Checks, Cheques, or **Drafts,** orders addressed to some person, generally a banker, directing him to pay the sum specified in the check to the person named in it, or bearer, or order, on demand. See BANKERS' CHECKS.

Check-roll, a list or book, containing the names of such as are attendants on, or in the pay of, the Queen or other great personages, as their household servants.—19 *Car. II.* c. 1.

Chelsea Hospital. See 47 Geo. III. st. 2, c. 25; 55 Geo. III. cc. 125, 136; 7 Geo. IV. c. 16; 2 & 3 Wm. IV. c. 106, ss. 3, 4; 5 & 6 Vict. c. 70; 6 & 7 Vict. cc. 31, 95; 9 & 10 Vict. cc. 9. 10; 10 & 11 Vict. cc. 4, 54; 11 & 12 Vict. cc. 84, 103.

Chelsea Hospital Out-pensioners. See 19 & 20 Vict. c. 15.

Chemists and Druggists. See 55 Geo. III. c. 194, s. 28.

Chester, a county of England. It was declared to be no longer a county palatine by 11 Geo. IV. and 1 Wm. IV. c. 70, s. 13.—3 *Reeves*, 156.

Chevage, Chevagium, or **Cherage** [fr. *chef*, Fr.], a tribute sum of money formerly paid by such as held land in villenage to their lords in acknowledgment, and was a kind of head or poll-money.—*Bract.* l. 1, c. x.

Chevantia [fr. *chevance*, Fr.], a loan or advance of money upon credit; also goods, stock, &c.—*Mon. Ang.* t. 1. p. 629.

Chevisance [fr. *chevir*, i. e. *venir à chef de quelque chose*, Fr., to come to the end of a business], an agreement or composition; an end or order set down between a creditor or debtor; an indirect gain in point of usury, &c.; also an unlawful bargain or contract.

Chezé, a homestead or homesfall which is accessory to a house—*Div. of Purl.* 162, *note.*

Chicane [fr. *chicaner*, Fr., to wrangle], the use of tricks and artifice.

Chief Baron of the Exchequer, the presiding Judge in the Court of Exchequer of Pleas at Westminster, with whom four *puisné* judges are associated for the administration of justice.

Chief Clerks of Judges in Equity, appointed under 15 & 16 Vict. c. 80, s. 16, to act in the place of the abolished Masters in Ordinary. For their duties see *Smi. Eq. Pr.* 506.

Chief Justice of the Common Pleas, the presiding Judge in the Court of Common Pleas at Westminster. He has four *puisné* judges associated with him.

Chief Justice of England, the presiding Judge in the Court of Queen's Bench at Westminster, with whom four *puisné* judges are associated. These judges are by their office the sovereign conservators of the peace, and supreme coroners of the land.

Chief-rents [fr. *reditus capitales*, Lat.], the annual payments of freeholders of manors; also denominated quit rents (*quieti reditus*), because thereby the tenant goes free of all other services.—2 *Bl. Com.* 42.

Chief, *tenants in*, persons who held their lands immediately under the king (*in capite*) in right of his Crown and dignity.

Chiefrie, a small rent paid to the lord paramount.

Chievance, usury.

Childbearing. It is generally conceded that in our own climate, no female under the age of thirteen, nor above that of fifty, can conceive, provided that she have been previously barren. This, however, is only to be taken as a general rule, subject to exceptions. See *Capuron*, pp. 93, 98. The question at what age pregnancy is possible, and when it ceases to be possible, has been much canvassed. As to premature pregnancy in European countries, the most astonishing instance, probably, is given by Meyer, of a Swiss girl becoming a mother at nine years of age. The English law admits of no presumption as to the time when a woman ceases to bear children, though this enters into most other codes.—*Beck's Med. Juris.* 148, 402.

Childwite, a fine or penalty of a bondwoman unlawfully begotten with child.—*Cowel.*

Chiltern-Hundreds, a member of the House of Commons, not in any respect disqualified, can only vacate his seat by the acceptance of the Stewardship of the Chiltern-Hundreds, or some other nominal office in the gift of the Chancellor of the Exchequer. The practice began about the year 1750; but the duties of the stewardship have long since ceased, and the office is but retained to serve this particular purpose. The Chiltern Hills are a range of chalk eminences separating the counties of Bedford and Hertford, passing through the middle of Bucks from Tring in Hertfordshire to Henley in Oxfordshire. Formerly these hills were covered with thick beechwood, and sheltered numerous robbers; to put these marauders down, and protect the inhabitants of the neighbourhood from their depredations, an officer was appointed under the Crown, called the Steward of the Chiltern-Hundreds, which were Burnham, Desborough, and Stoke. The clump of noble 'Burnham beeches' remains to remind us of the old stewardship duties.

The Crown, for the convenience of the House at large, is always ready to confer on any member 'the Stewardship of Her Majesty's Chiltern-Hundreds, the Stewardship of the Manor of Poynings, of East Hendred and Northstead, or the Escheatorship of Munster,' sinecures which he continues to hold till some other member solicits a similar accommodation.—*Dod's Parl. Comp.*; 2 *Steph. Com.* 396.

Chimin [fr. *chemin*, Fr.], a way, which is either the Queen's highway (*chiminus reginæ*), or a private way: the first is that over which the subjects of this realm, and all others under the protection of the Crown, have free liberty to pass, though the property in the soil itself belong to some private individual; the last is that in which one person or more have liberty to pass over the land of another, by prescription or charter. This is divided into *chimin in gross*, where a person holds a way principally and solely in itself, and *chimin appendant*, where a person has it as appurtenant to some other thing; as if he rent a close or pasture, with covenant for ingress and egress through and over other land, over which otherwise he might might not pass.—*Kitch.* 117; *Co. Litt.* 56.

Chiminage, or **Pedagium,** toll due by custom for having a way through a forest.—*Co. Litt.* 56.

Chimney-money, or **Hearth-money,** a crown duty for every fire-place in a house.—14 *Car. II.* c. 2. Repealed.

China trade. See 3 & 4 *Wm. IV.* c. 93, amended by 3 & 4 Vict. c. 56; 6 & 7 Vict. c. 80, and 22 & 23 Vict. c. 9.

Chinese Passengers' Act, 18 & 19 Vict. c. 104.

Chip, Cheap, Chipping, signify the place to be a market town, as Chippingham, Chipping-Norton, Chipping-Wicomb.—*Blount.*

Chippingavel, or **Cheapingavel,** toll for buying and selling.

Chirchgemot, Chirgemot, Kirkmote [fr. *forum ecclesiasticum*, Lat.], a synod, a meeting in a church or vestry.—*Blount.*

Chirograph [fr. χείρ, a hand, and γράφω, Gk., to write], a deed or other public instrument in writing, which anciently was attested by the subscription and crosses of witnesses; afterwards, to prevent frauds and concealment, people made their deeds of mutual covenant in a script and rescript, or in a part and counterpart, and in the middle between the two copies they drew the capital letters of the alphabet, and then tallied or cut asunder, in an *indented* manner, the sheet or skin of parchment; which,

being delivered to the two parties concerned, were proved authentic by matching with and answering one another. Deeds thus made were denominated *syngrapha* by the canonists, and with us *chirographa*, or handwritings. Chirograph was also used for a fine, the manner of engrossing which and cutting the parchment into two pieces was observed in the chirographer's office of the Court of Common Pleas until those assurances by matter of record were abolished by the 3 & 4 Wm. IV. c. 74.—2 *Bl. Com.* 296; 2 *Inst.* 468; *Kenn. Antiq.* 177; *Mon. Ang.* t. 2, p. 94.

Chirographa, writings emanating from a single party, the debtor.—*Civil Law.*

Chirographer, an officer of the Court of Common Pleas, who kept the fines. His office is abolished.

Chirographum apud debitorem repertum præsumitur solutum.—(A deed found with the debtor is presumed to be paid.)

Chirurgeon [fr. χειρουργός, Gk.], the ancient denomination of a surgeon.

Chivalry [fr. *chevalier*, Fr., a knight], a military dignity, supposed by some to have taken its rise soon after the death of Charlemagne, and by others during the crusades, because in these expeditions many chivalrous exploits were performed, and a proud feeling of heroism engendered. In describing the origin, object, and character of this military institution, Gibbon, the historian, thus alludes to a successful candidate for the honour of knighthood, and eulogises the institution:—'He was created a Knight in the name of God, of St. George, and of St. Michael the Archangel. He swore to accomplish the duties of his profession and education; example, and the public opinion were the inviolable guardians of his oath. As the champion of God and the ladies, he devoted himself to speak the truth; to maintain the right; to protect the distressed; to practice courtesy (a virtue less familiar to the infidels); to despise the allurements of ease and safety; and to vindicate in every perilous adventure the honor of his character. The abuse of the same spirit provoked the illiterate knight to disdain the arts of luxury and peace; to esteem himself the sole judge and avenger of his own injuries; and proudly to neglect the laws of civil society and military discipline. Yet the benefits of this institution to refine the temper of barbarians, and to infuse some principles of faith, justice, and humanity, were strongly felt and have been often observed. The asperity of national prejudice was softened; and the community of religion and arms spread a similar color and generous emulation over the face of Christendom. Abroad in enterprise and pilgrimage, at home in martial exercises, the warriors of every country were perpetually associated; and impartial taste must prefer a Gothic tournament to the Olympic games of classic antiquity. Instead of the naked spectacles which corrupted the manners of the Greeks and banished from the *stadium* the virgins and matrons, the pompous decoration of the lists was crowned with the presence of chaste and high-born beauty, from whose hands the conqueror received the prize of his dexterity and courage.' See TENURE.

Chivalry, Court of, anciently held as a court of honor merely, before the Earl-Marshal, and as a criminal court before the Lord High Constable, jointly with the Earl-Marshal. It had jurisdiction as to contracts and other matters touching deeds of arms or war, as well as pleas of life or member. It also corrected encroachments in matters of coat-armour, precedency, and other distinctions of families. It is now grown entirely out of use, on account of the feebleness of its jurisdiction and want of power to enforce its judgments, as it could neither fine nor imprison, not being a court of record.—3 *Bl. Com.* 68, and 3 *Steph. Com.* 459, note.

Chivalry, Guardian in. See TENURE.

Chloroform, administering. It is a felony for any person to administer or attempt to administer chloroform, or other stupefying drug, with intent to enable himself or another to commit, or to assist another in the commission of any indictable offence.—24 & 25 *Vict.* c. 100, s. 22.

Choky, Chokee, a chair, seat, guard, watch. The station of a guard or watchman. A place where an officer is stationed to receive tolls and customs.—*Indian.*

Cholera Act, 2 Wm. IV. c. 10, continued by 3 & 4 Wm. IV. c. 75. It has expired and not been revived.

Chop-church [*ecclesiarum permutatio*, Lat.], changing benefices.—9 *Hen. VI.* c. 95.

Chorepiscopi, bishops of the country in the early times of the church.

Chose [Fr., a thing], it is used in divers senses, of which the four following are the most important:—

(1) *Chose local*, a thing annexed to a place, as a mill, &c.

(2) *Chose transitory*, that which is moveable, and may be taken away, or carried from place to place.

(3) *Chose in action*, otherwise called *chose in suspense*, a thing of which a man has not the possession or actual enjoyment, but has a right to demand it by action or other proceeding. It is rather in *potentia* than in *esse*, as a debt, bond, &c. A well-known rule of the common law is, that no possibility, right, title, or thing in action, can be granted to third parties; for it was thought that a different rule would be the occasion of multiplying litigation; as it would in effect be transferring a lawsuit to a mere stranger. At law, therefore, with the

exception of negotiable instruments, an *interesse termini*, and some few other securities, this still continues to be the general rule, unless the debtor assents to the transfer; if he assent, then the right of the assignee is complete at law, so that he may maintain an action against the debtor, upon the implied promise to pay him the debt, which results from such assent. When, therefore, in common acceptation, a debt or bond is said to be assigned over, it must still be sued (i. e. at law) in the original creditor's name; the person to whom it is transferred being rather an attorney than an assignee, unless, as we have seen, the debtor assents to such transfer.

Courts of Equity, however, have long since totally disregarded this nicety. They accordingly give effect to assignments of trusts, and possibilities of trusts, and contingent interests, whether they are in real or personal estates, as well as to assignments of *choses in action*, such equitable transfer being in the nature of an agreement, of which the Court of Chancery directs the performance.—*Co. Litt.* 214 *a*; 2 *Bl. Com.* 442; 2 *Sanders on Uses*, 40; 2 *Story's Eq. Jurisp.* 278; *Watkins's Conv.* 36.

(4) *Choses in possession*, where a person has not only the right to enjoy, but also the actual enjoyment of the thing.

Chout, a fourth, a fourth part of sums litigated; **Mahratta chout,** a fourth of the revenues extracted as tribute by the Mahrattas.—*Indian.*

Chrematistics [fr. χρῆμα, Gk.], the science of wealth.

Chrismatis denarii [fr. χρῖσμα, Gk.], chrisom pence, paid to the diocesan or his suffragan, by the parochial clergy about Easter. It is otherwise called *quadragesimals*, or *paschals*, or *Easter-pence.* Obsolete.

Christian-name, the name given at the font, distinct from the gentilitious name, or surname.

Christianity, the religion of Christians, who derive their name from the founder Christ [fr. χριστός, Gk., the anointed), and were first so designated at Antioch, in Syria. It is part of the law of England, and all offences against it are punished by fine and imprisonment.

Christmas-day, a festival of the Christian church, observed on the 25th of December, in memory of the birth of Jesus Christ. As to its antiquity, the first traces we find of it are in the second century, about the time of the Emperor Commodus. The decretal epistles, indeed, carry it up a little higher, and say that Telesphorus, who lived in the reign of Antoninus Pius, ordered divine service to be celebrated, and an angelical hymn to be sung the night before the nativity. It is one of the usual quarter days for the payment of rent and salaries; it is also a *dies non juridicus.*

Chrysology [fr. χρυσός and λόγος, Gk.], that branch of political economy relating to the production of wealth.

Church [fr. *kerch*, Dut.; *kerche*, high Ger.; *kyrichia*, Su.; *chirich*, Teut.; *cyric circe*, Sax. of κυριακή, Gk. scil. *οἰκία*, i. e. the Lord's house], used in several senses:—(1) The collective body of persons professing one and the same religion; or the religion itself; thus we say, the church of Christ. (2) Any particular congregation of Christians associating, as the church of Antioch. (3) A particular sect of Christians, as the Greek church, or the church of England. (4) The body of ecclesiastics, in contradistinction to the laity. (5) The building in which a congregation of Christians assembles.

Church-building Commissioners. Their commission expired on 1st Jan. 1857, and their powers were transferred to the Ecclesiastical Commissioners for England.—19 & 20 *Vict.* c. 55.

Church-building Commissioners' Acts. For the purpose of extending the accommodation afforded by the national church, so as to make it more commensurate with the wants of the people, the following statutes have been passed: 58 Geo. III. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72; 5 Geo. IV. c. 103; 7 & 8 Geo. IV. c. 72; 1 & 2 Wm. IV. c. 38; 2 & 3 Wm. IV. c. 61; 7 Wm. IV. and 1 Vict. c. 75; 1 & 2 Vict. cc. 106, 107; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60; 4 & 5 Vict. c. 38; 6 & 7 Vict. c. 37; 7 & 8 Vict. c. 56; 8 & 9 Vict. c. 70; 9 & 10 Vict. cc. 68, 88; 11 & 12 Vict. cc. 37, 71; 14 & 15 Vict. c. 97; 17 & 18 Vict. cc. 14, 32; and 18 & 19 Vict. c. 127; these are known by the denomination of the Acts for Church Building.—1 *Chit. Stat.* 430.

Church Discipline Act, 3 & 4 Vict. c. 86; which repealed 1 Hen. VII. c. 4. See *Reg.* v. *Bp. Chichester*, 7 *W. R.* 619.

Church Estate Commissioners, a committee of the ecclesiastical commissioners. See 13 & 14 *Vict.* c. 94, ss. 1. 3.

Church-rates, tributes, by which the expenses of the church are to be defrayed: which rates are to be made by the parishioners at large, that is, by the majority of those that are present at a vestry to be summoned for that purpose by the church-wardens; and when made are recoverable in the ecclesiastical court, or, if the arrears do not exceed 10*l.* and no question be raised as to the legal liability, before two justices of the peace.—4 & 5 *Vict.* c. 36; 12 & 13 *Vict.* c. 14, s. 9. See *Prid. Churchwardens' Guide.*

Church-scot, customary obligations paid to the parish priest; from which duties the religious sometimes purchased an exemption for themselves and their tenants.

Church-wardens, anciently styled *Church-Reeves*, or *Ecclesiæ Guardiani*, the guardians or keepers of the church, and representatives of

the body of the parish; but though in some sort ecclesiastical officers, they are always lay persons. They are a *quasi* corporation (Smith *v.* Adkins, 8 M. & W. 362). They are sometimes appointed by the minister, sometimes by the parish in vestry assembled, sometimes by both together as custom directs. But where there is no custom, it is said the election must be according to the canons, that they shall be chosen by the joint consent of the minister and parishioners, if it may be; but if they cannot agree, then the minister is to choose one and the parishioners another. They are to be chosen yearly in Easter-week, and are generally two in number; are obliged when chosen to serve, and are sworn to execute the office faithfully. Several persons are, however, exempted from the office, viz. peers of the realm, members of Parliament, Roman Catholic clergy, dissenting ministers, barristers, attornies, physicians, surgeons, apothecaries, aldermen, dissenting teachers, and persons living out of the parish, unless they occupy a house of trade there (Steer's P. L. 84). One of their chief duties is the care and management of the goods belonging to the church, such as the organ, bells, bible, and parish books. But as to the church and church-yard, they have no sort of interest therein; and if any damage be done thereto, the parson only or vicar shall have the action. It is also part of their office, unless other persons are appointed by the ordinary for that purpose, to have the care of the benefice during its vacancy, or while it is under sequestration for the debts of the incumbent. They are moreover required to see to the reparation of the church and the making of the church-rates, also to make such order relative to seats in the church and chancel, not appropriated to particular purposes, as the ordinary (who has in general the sole power in this matter) shall direct, and in practice, the arrangements are usually made by the church-wardens, even without any special direction from the ordinary. It is incident also to their office to enforce proper and orderly behaviour during divine service. Formerly too they were joined with the overseers in the care and maintenance of the poor; but this duty is now in general taken from them by the effect of the act for the amendment of the poor law (4 & 5 Wm. IV. c. 76), and of the regulations introduced under its authority by the poor law commissioners. If church-wardens waste the goods of the church, or be guilty of other misbehaviour, they are liable to removal; at the end of the year they are bound to render an account of all their receipts and disbursements.—*Prid. Churchwardens' Guide*; 3 *Step. Com.* 40.

Churchesset [fr. *churchset*, *ciricseat*, Sax.], corn paid to the church. Fleta says, it signifies a certain measure of wheat, which, in times past, every man, on St. Martin's day, gave to holy church, as well in the times of the Britons as of the English; yet many great persons, after the coming of the Romans, gave their contributions according to the ancient law of Moses, in the name of first fruits; as in the writ of King Canutus, sent to the Pope is particularly contained, in which they call it *churchsed*.—*Seld. Hist. Tithes*, 216.

Churchyard, the freehold of the rector or vicar.—3 *Step. Com.* 69.

Churle [fr. *ceorl*, Sax.; *carl*, Germ.], a tenant at will, of free condition, who held lands of the Thanes, on payment of rents and services: of two sorts; one who hired the lord's tenementary estate, like our farmers; the other that tilled and manured the demesnes (yielding work and not rent), and were called his *sockmen* or *ploughmen*.—*Spelm.*

Ciltre, corruptly *Siltre*, Chiltern.

Cinque Ports [*quinque portus*, Lat.], the five most important havens in the kingdom, lying on the coast towards France, viz. Dover, Sandwich, Romney, Hastings, and Hythe; to which Winchelsea and Rye have since been added. The 18 & 19 Vict. c. 48 (amended by 20 & 21 Vict. c. 1), abolishes all jurisdiction and authority of the Lord Warden of the Cinque Ports and Constable of Dover Castle, in or in relation to the administration of justice in actions, suits, or other civil proceedings at law or in equity.

Circada, a tribute anciently paid to the bishop or archbishop for visiting churches.—*Du Fresne.*

Circar, head of affairs; the state or government; a grand division of a province; a headman. A name used by Europeans in Bengal to denote the Hindu writer and accountant employed by themselves, or in the public offices. See SIRCAR.

Circuits, eight certain divisions of England and Wales, appointed for the Common Law Judges to go twice a year, in the respective vacations after Hilary and Trinity terms, to administer justice in the several counties. Two judges go on each of the eight circuits, with the exception of those of North and South Wales, to each of which one judge is found sufficient. Where there are two judges, they preside simultaneously in the civil and criminal courts; but the judge who takes the civil side in one county, takes the criminal side in the next county, and so alternately throughout the circuit. In presiding in the criminal court, the judge sits robed in scarlet and ermine, and wears a full-bottomed wig; but in the civil court he wears a black silk gown and a short wig. The following are the circuits:—

(1) *Northern Circuit*: York, Durham, Newcastle, Carlisle, Appleby, Lancaster, and Liverpool.

(2) *Home Circuit:* Hertford, Chelmsford, Maidstone, Lewes, Kingston, *in spring*; Guildford or Croydon, *in summer.*

(3) *Western Circuit*: Winchester, Salisbury, *or* Devizes, Dorchester, Exeter, Bodmin, Taunton, *in spring*; Wells *and* Bridgewater *alternately in summer, and* Bristol *in summer only.*

(4) *Oxford Circuit*: Reading *in spring*, Abingdon *in summer*, Oxford, Worcester, Stafford, Shrewsbury, Hereford, Monmouth, Gloucester.

(5) *Midland Circuit*: Northampton, Oakham, Lincoln, Nottingham, Derby, Leicester, Coventry, Warwick.

(6) *Norfolk Circuit*: Aylesbury *or* Buckingham, Bedford, Huntingdon, Cambridge, Bury, St. Edmund's, *in spring*; Ipswich *in summer*, Norwich.

(7) *North Wales Circuit*: Newtown, Dolgelly, *in summer*; Welchpool, Bala, *in spring*; Carnarvon, Beaumaris, Ruthin, Mold, Chester.

(8) *South Wales Circuit*: Swansea *in spring*, Cardiff *in summer*, Carmarthen, Haverfordwest, Cardigan, Brecon, Presteign, Chester.

The judges, upon their circuits, sit by virtue of four several authorities:—(1) The commission of the peace; (2) a commission of *oyer* and *terminer*; (3) a commission of general gaol-delivery; (4) a commission of *Nisi Prius.* See ASSIZE. The Judges may try causes pending in another Court, 13 Edw. I. c. 30 (West 2); and 2 & 3 Vict. c. 22; and also make orders on circuit, 1 Geo. IV. c. 55, and 1 & 2 Vict. c. 45; and see 2 & 3 Vict. c. 72; 13 & 14 Vict. c. 25, and 18 & 19 Vict. c. 45.

In Ireland there are six circuits, called the Home, North-west, North-east, Leinster, Munster, and Connaught.

Circuity of Action, a longer course of proceeding to recover a thing sued for than requisite.—*Termes de la Ley.*

Circuitus est evitandus; et boni judicis est lites dirimere, ne lis ex lite oritur.—5 *Co.* 31.—(Circuity is to be avoided; and it is the duty of a good judge to determine litigations, lest one lawsuit arise out of another). On this maxim depends the law of set-off.—2 *Geo. II.* c. 22, s. 13; 8 *Geo. II.* c. 24, s. 5.

Circulating medium, more comprehensive than the term money as it is the medium of exchanges, or purchases and sales, whether it be gold or silver coin or any other article.

Circumduction, the time allowed for bringing proof of allegiance.—*Scotch Law.*

Circumspecte agatis (*that you act cautiously*), the statute 13 Edw. I. st. 4, A.D. 1285, relating to prohibitions.—2 *Inst.* 187; 2 *Reeves*, 215.

Circumstantial Evidence, presumptive proof, when the fact itself is not proved by direct testimony, but is to be inferred from circumstances, which either necessarily or usually attend such facts. It is obvious that a presumption is more or less likely to be true, according as it is more or less probable that the circumstances would not have existed unless the fact which is inferred from them had also existed: and that a presumption can only be relied on until the contrary is actually proved. Circumstantial evidence has, in some instances, undoubtedly been found to produce a much stronger assurance of a prisoner's guilt than could have been produced by more direct and positive testimony. As a general principle, however, it is true that positive evidence of a fact from credible eye-witnesses is the most satisfactory that can be produced; and the universal feeling of mankind leans to this species of evidence in preference to that which is merely circumstantial. If positive evidence of a fact can be produced, circumstantial evidence ought not to be trusted. Chief Baron Gilbert, therefore, considers it a higher species of proof. He says, 'when the fact itself cannot be proved, that which comes nearest to the proof of the fact is the proof of the circumstances which necessarily or usually attend such facts, and which are called presumptions and not proofs, for they stand instead of the proofs of the fact till the contrary be proved.'—1 *Phill. Evid.* c. 7, s. 2.

Still we must not overlook the danger of trusting too implicitly to *circumstantial evidence.* If the connection between cause and effect in the material world has so long baffled every philosophical inquirer, surely we ought to approach with diffidence a similar investigation in the moral world. Who can pretend to ascribe to each act of man its real motive, and to hit with an unerring aim the hidden indefinable source of human impulse.—*Nicolas on Adulterine Bastardy*, 448.

Circumstantibus, tales de (so many of the bystanders). In civil and criminal trials, where by reason of the default of the jury, or of challenge, there is not a sufficient number of the jurors impanelled, the judge may direct the sheriff to add to the panel the names of a sufficient number of persons qualified to act as jurymen who may be present or can be found, who are called *tales de circumstantibus.*—6 *Geo. IV.* c. 50. s. 37; 3 *Step. Com.* 628.

Circumvention, any act of fraud, whereby a person is reduced to a deed by deceit.—*Scotch Dict.*

Ciric-Bryce, any violation of the privileges of a church.—*Anc. Inst. Eng.*

Ciric-Sceat [*punicitiæ seminum*], church-scot, or shot, an ecclesiastical due, payable on the day of St. Martin, consisting chiefly of corn.—*Anc. Hist. Eng.*

Cisleu, or **Chisleu,** the ninth month of the ecclesiastical and the third of the civil Hebrew year, answering nearly to our November.—*Jahn's Bib. Antiq.*

Citation, a summons to appear, applied particularly to process in the spiritual, probate and matrimonial courts; also a reference to authorities in support of an argument.

Citationes non concedantur priusquam exprimitur supra quâ re fieri debet citatio.—12 *Co.* 44.—(Summonses should not be granted, before that it is explained for what cause a summons ought to issue.)

Citatio est de jure naturali.—*Ca. B. R. W.* 3, 453.—(A summons is by natural right.)

Citatio ad reassumendam causam, a citation which issued when a party died pending a suit against his heir to revive the cause.

Citizen. Aristotle, in the beginning of the third book of the politics, defines a citizen to be one who is a partner in the legislative and judicial power (*μέτοικος κρίσεως καὶ ἀρχῆς*).

City [fr. *cité*, Fr.], a town corporate, which has usually a bishop and cathedral church. It is called *civitas*, because it is governed by justice and order of magistracy; *oppidum*, for that it contains a great number of inhabitants, and *urbs*, because it is in due form begirt about with walls.—*Cowel.*

Civil, stands for the opposite of criminal, of ecclesiastical, of military, of political.—1 *Mill's Log.* 44.

Civil Commotion, an insurrection of the people for general purposes, though it may not amount to rebellion, where there is an usurped power.

Civil Division of England. For civil purposes England is divided into counties, which are subdivided into hundreds, and these are again subdivided into tithings or towns. See 1 *Steph. Comm.* 126.

Civil Law, that rule of action which every particular nation, commonwealth, or city has established peculiarly for itself, more properly distinguished by the name of municipal law.

The term 'civil law,' is now chiefly applied to that which the old Romans compiled from the laws of nature and nations.

The 'Roman Law,' and the 'Civil Law,' are convertible phrases, meaning the same system of jurisprudence; it is now frequently denominated 'the Roman Civil Law.'

The collections of Roman Civil Law, before its reformation in the 6th century of the Christian æra by the eastern emperor Justinian, were the following:—

(1) *Leges Regiæ.* These laws were for the most part promulgated by Romulus, Numa Pompilius, and Servius Tullius. To Romulus are ascribed the formation of a constitutional government, and the imposition of a fine, instead of death, for crimes; Numa Pompilius composed the laws relating to religion and divine worship, and abated the rigour of subsisting laws, and Servius Tullius, the sixth king, enacted many wise and good laws to maintain the cause of the poor, and to stop the oppression of the rich. He also revived many of the obsolete laws of Romulus and Numa Pompilius.

Sextus Publius, Papyrius, Pontifex Maximus, in the reign of Tarquinius Superbus, collected the royal laws, which collection is known by the name of *Jus Civile Papyrianum.* Legislation under the regal dynasty must have been extremely simple; very few reliques of it, however, have been preserved, and among them it is almost impossible to distinguish the genuine from the spurious. The *Leges Regiæ* have been edited by Lipsius, and other men of learning; and of the supposed laws of Romulus, a separate collection was published by Balduinus.

(2) *Leges Decemvirales*, or the Laws of the Twelve Tables. The uncertain state of the law, in the republican æra, and the uneasiness occasioned by the continued quarrels of the patricians and plebeians, rendered systematic legislation indispensable, so after great opposition on the part of the patricians, a law was proposed by Caius Terentelius Horsa (B.C. 560, A.U.C. 293), to appoint a commission to draw up a body of laws; and (in B.C. 452, A.U.C. 301), three commissioners are said to have been chosen by the patricians to visit Greece, in order to collect materials for a code; upon their return, after an absence of three years, ten commissioners, including the three, were appointed, with the title *De Legibus Scribendis*, whose duty it was to revise, digest, and enforce the new laws. All other magisterial offices were then suspended, and these ten commissioners, or *Decemviri*, became invested with the sole management of state affairs. The Ten Tables they drew up, having been approved by the senate and comitia, were engraved on metal, and suspended in the Comitium, and all parties were so well satisfied with the result of the first year's administration of the *Decemviri*, that it was resolved to continue the same sort of government for another year, new members were elected to sit upon this commission, the only one re-elected being Appius Claudius. In the former year the whole ten had been taken from the patrician class, but this year three of them were plebeians. The new laws drawn up by this new commission having been duly approved, and reduced to writing on two supplementary tables, made up the total number of Twelve Tables, by which name they were subsequently known, and under which they became famous. To judge from the fragments of these laws which have survived, they were very epigrammatic and positive in their nature, they formed the catechism of education for the Roman youth; indeed, all well-educated persons were expected to know them by heart. Cicero, in his book *De Oratore*, describes the law of the Twelve Tables as a summary of all that is excellent in the libraries of the philosophers.

The laws of the Twelve Tables were illustrated by the commentaries of several ancient lawyers, especially Antistius, Labeo, and Caius; the fragments of these laws have been collected and explained by many of the moderns, by Balduinus, Rœvardus, Marcilius, Augustinus, Gravina, Funccius, Bouchaud, Gothofredus, and others.

(3) *Jus Civile Flavianum*, and its subsequent edition *Jus Civile Ælianum*. This collection consists of the forms of pleadings, called *Actiones Juris*, adapted in all proceedings and acts of court. It was compiled about 446 A.U.C. or B.C. 312, by Appius Claudius Cæcus, who, being blind, was obliged to employ an amanuensis, Gaius Flavius, hence the title of the collection.

The Flavian collection being the first, was naturally imperfect; in consequence of which *Sextus Ælius Pœtus*, surnamed Catus, published about 553 A.U.C. or 200 B.C. a supplement to it, again promulgating the new formulæ subsequently introduced, together with an interpretation of the laws of the Twelve Tables, whence it is called Tripartita, because the first part contained the laws of the Twelve Tables; the second, their interpretation; and the third, the forms of pleadings.

(4) *Edictum Perpetuum Juliani*. Ofilius, in Julius Cæsar's time, made a compilation of the Prætor's Edicts, which was made perpetual by Salvius Julianus, at the command of the Emperor Adrian, many years later.

(5) The Codes of *Gregorius*, *Hermogenius*, and *Theodosius* the Younger.

Gregorius, or Gregorianus, appears to have collected the imperial constitutions belonging to the intermediate reigns from Adrian to Constantine the Great.

Hermogenianus, or Hermogenes, is supposed to have formed a supplementary collection, and the remaining fragments consist entirely of the constitutions of Diocletian and Maximian.

The compilations are to be esteemed as the works of two private lawyers; the fragments which Cujacius (the most celebrated of all the interpreters of the Roman law) has placed at the end of the Theodosian code are all the remains of these two productions.

The Theodosian Code collects the constitutions enacted from the time of Constantine the Great (A.D. 312) up to A.D. 438. This work is of considerable magnitude, and is still extant, it is supposed, in an imperfect state, from three hundred and twenty constitutions being found in Justinian's Code, which are sought in vain in that which remains to us of the Theodosian. It is probable that this book, having been compiled by imperial command, had the stamp of authority. There are added to it the newer constitutions of Theodosius, Valentinianus III., Marcianus, Majoranus, Severus, and Anthemius. Theodosius the Younger also made another code, divided into seventeen books, called the Theodosian code, which, however, was never completed.

This code was followed, until suppressed, by Justinian's order, and is not unworthy of the attention of the learned. The editor and expounder of the Theodosian Code is Jacobus Gothofredus, or Godefroy, who is the first and most illustrious of modern civilians. He bestowed his assiduous labor upon this code for thirty years, and left his great commentary to be completed by Antoine Marville, who published it at Lyons in 1665. It is an immense storehouse of judicial and historical knowledge. Ritter published another edition of it some seventy years afterwards.

Such were the several collections of laws before Justinian's reign; I will now speak of those made by that emperor's order, which compose the body of the Civil Law in its present state.

The Imperial, or Civil Law, as consolidated by Justinian, consists of four parts:—

(1) The Institutions, in which the elements of jurisprudence are disposed in a didactic form, its chief and leading objects are explained in a regular series, and the whole arranged in such a way as neither to oppress the student with a multitude and a variety of matter, nor yet to leave him destitute of any necessary helps to facilitate his progress in legal knowledge.

These Institutes were composed chiefly from Gaius, and especially from his *Aureorum* (of important matters), in order to teach the rudiments of law, and the great principles of equity, and were divided so as to form an elementary introduction to legal study. This division is in four books, each book into several titles, and every title into several parts; the first (not numbered) is called *Principium*, which is the beginning of the title, and those which follow paragraphs. The Institutes are quoted with the letter *I.* or *Inst.* thus, § *si adversus*, 12 *I. De Nuptiis*, is nothing more than twelve paragraphs of the title *De Nuptiis*, which on reference to the index, will be found to be the tenth of the first book; this is usually now cited I. i. 10, 12.

(2) The Digest or Pandects, which are rules founded on the pure spirit of jurisprudence. The words 'Digest' and 'Pandect' are not synonymous; the former means an abstract of the opinions of lawyers upon certain points of law; the latter, from πᾶν, all, and δέχομαι, to receive, signifies a compendium of the law.

Tribonian received the imperial command, De Conceptione Digestorum, A.D. 530, with directions to choose his colleagues; and seventeen were ultimately appointed with absolute power to make such use of preceding works as should appear most conducive to the object in view. Tribonian's library afforded forty of the works of the most renowned civilians, which,

with above two thousand other treatises, containing three millions of lines, were abridged into a hundred and fifty thousand; the work was completed in the incredibly short space of three years, and published on the 16th December, A.D. 533, a month after the appearance of the Institutes; its publication having been delayed a month, in order that the elementary work might precede it.—1 *Colqu. R. C. L.* 66.

The Digest is compiled from the decisions, conjectures, questions, and disputes of the most famous lawyers who had existed up to that time; and thus the substance of many thousand treatises are compressed into one work, which superseded all the then existing Digests, and render unnecessary references which had become not only laborious, but almost impossible. The Pandects were divided into fifty books, each book containing several titles, divided into laws, and the laws generally into several parts or paragraphs.

Besides this distribution of the Digest into fifty books, it was divided into seven parts, but the reason that induced the emperor to make this division is not known; some supposed it was done in order to separate the different matters, and include all that related to one subject in one part, consisting of several books. Others attribute it to the superstitious respect of the ancients for the number seven, as the most perfect. This book is variously quoted by the letters D. P. or π, or Π, and ff, which latter is supposed to be a corruption of the D with a stroke through the middle, or perhaps a corruption of the Greek π. The most ancient method of quotation is by mentioning the initial words of the law and paragraph with those of the book or title, which necessitates a reference to the general index, with which all modern editions are not furnished; thus, § *sin. ver. l. quæsitum est D. de Peculio.* The second by citing the initial words and numbers of the law or paragraph with the initial words of the book or title; thus, § *sin. ver.* 3 *l. quæsitum est* 30 *D. de Peculio.* The third by mentioning the number of the law or §, with the initial words of the book or title; thus, § 3 *l.* 30 *D. de Peculio*, which is the method adopted by Heineccius. The modern mode, which avoids all reference to the index, is thus, D. 15, 1, 30, 3. The first paragraph is not numbered, and is usually quoted by the abbreviation *in pr.* (*in principio*), in like manner the last paragraph is sometimes quoted by the words *in fin.* (*fine*), or § *ult.* (*paragraphus ultimus*).

(3) The Code. Within six years after the publication of the code, it was suppressed as imperfect, and replaced by a new edition entitled the *Codex Repetitæ Prælectionis*, containing 200 of Justinian's own laws, and the 50 decisions on the most obscure and debateable points of jurisprudence. The code was divided into twelve books, each book into titles, and each title into laws, each law containing several parts. The first is called Principium, being the beginning of the law, and those which follow, paragraphs. The letter C is the invariable mark of the codex, which may be variously quoted by the initial words of the paragraph, law, book, or title. The nine first books were emphatically called the codex; the latter three (tres libri) contained the Jus Publicum, which had been separated from the whole at an early period, as of less practical utility, and often bound up with other works.

(4) The Novels, or New Constitutions, which are explanatory of the code. After Justinian's decease, some parts of his novels, to the number of 168, were collected and reduced into one volume, together with thirteen of the Greek edicts; which, together, make up the fourth and last division of the *Corpus Juris Romano-Civilis.* The greatest part of these novels was composed in Greek, owing to the seat of the empire being then at Constantinople, where few or none spoke Latin in perfection; notwithstanding which, some of them were published in Latin, and have been noticed by Antonius Augustinus. There are four Latin translations of the novels. The novels are quoted by their respective numbers. They are directed either to magistrates, bishops, or citizens of Constantinople, and were of equal force and authority for those private persons to whom they were addressed, and who were enjoined to have them proclaimed and to see them executed according to their form and tenor. See *Whart. Art. Clerks Man.* p. 2. c. ii.

By the civil law was governed the greater part of Britain, for the space of about 360 years (from Claudius to Honorius), during which period some of the greatest masters of that law, whose opinions appear collected in the body of it—as Pampinian, Paulus, and Ulpian—sate in the seat of judgment in this island. After the declension of the Roman empire, the Saxon, Danish, and Norman laws, superseded a great portion of the Roman law; but not very long afterwards, it begun again to manifest its influence, and entered largely into the composition of the common law. Under the influence of the foreign ecclesiastics who, pouring into this country after the Conquest, long monopolized the administration of the law, great encouragement was given to the adoption of the civil law; till the nobility and laity became so jealous of its prosperity, and alarmed at its progress, that a long and fierce feud ensued between the laity, stoutly struggling for the common law, and the clergy, for the civil and canon law; to which, in the end, they entirely betook themselves; and, withdrawing from the temporal courts, left them to the superintendence of the common lawyers: still,

however, keeping an ecclesiastic at the head of affairs, in the high station of chancellor, who, as his office gradually increased in influence and power, was enabled, in time, to introduce much of the spirit of the civil law into the administration of municipal law, especially in the courts of equity.

'The whole body of the civil law' (remarks Chancellor Kent, 1 *Comm.* 548), 'will excite never-failing curiosity, and receive the homage of scholars, as a singular monument of wisdom. It fills such a large space in the eye of human reason; it regulates so many interests of man, as a social and civilised being; it embodies so much thought, reflection, experience, and labour; it leads us so far into the recesses of antiquity, and it has stood so long against the waves and weathers of time, that it is impossible, while engaged in the contemplation of the system, not to be struck with some portion of the awe and veneration which are felt in the midst of the solitudes of a majestic ruin.'

Civitas et urbs in hoc differunt, quod incolæ dicuntur civitas, urbs verò complectitur ædificia.—Co. Litt. 109.—(A city and a town differ in this, that the inhabitants are called the city, but town includes the buildings.)

Civil List, an annual sum granted by Parliament at the commencement of each reign, for the expenses of the royal household and establishment, as distinguished from the general exigencies of the state, and is the provision made for the Crown out of the taxes, in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. This arrangement has prevailed from the time of the Revolution downwards, though the amount fixed for the civil list has been subject in different reigns to considerable variation. At the commencement of the present reign a civil list was settled upon her Majesty for life, to the amount of 385,000*l.* per annum, payable quarterly, out of the consolidated fund, of which the sum of 60,000*l.* is assigned for her Majesty's privy purse; in return for which grant it was provided, that the hereditary revenues of the Crown (with the exception of the hereditary duties of excise on beer, ale, and cyder, which were to be discontinued during the present reign) should, during the present Queen's life, be carried to and form part of the consolidated fund. The civil list is properly the whole of the sovereign's revenue, in her own distinct capacity; the rest being rather the revenue of the public or its creditors, though collected and distributed again in the name and by the officers of the Crown. The civil list, therefore, now stands in the same place as the hereditary income did formerly, but with this great difference, that it is not chargeable, as the hereditary income was, with the general and public expenses of government.

By the Civil List Act, passed at the Queen's accession, 1 & 2 Vict. c. 2, her Majesty is also empowered to grant pensions to the amount of 1,200*l.* per annum, chargeable on her civil list revenues, which are intended for the remuneration of those who have just claims on the royal beneficence, or by their services or discoveries have merited the gratitude of their country.

Civil obligation, one binding in law.

Civil remedy, one open to a private person, as opposed to a criminal prosecution.

Civilian, one that professes the knowledge of the old Roman law, and of general equity.

Civiliter mortuus (*civilly defunct*, i. e. *dead in law*).

Civilization, a law; an act of justice, or judgment which renders a criminal process civil; performed by turning an information into an inquest, or the contrary.—*Harris.*

Clades [fr. *clida*, *cleta*, *cleia*, fr. the Brit. *clie* and *clia*, Irish], a wattle or hurdle.—*Paroch. Antiq.* 575.

Claim [fr. *clamer*, Fr.; *clamo*, Lat., to call], a challenge of interest of anything which is in another's possession, or at least out of a man's own possession, as claim by charter, descent, &c.—*Plow.* 359, *a.*

Claim in Equity. In simple cases, where there was not any great conflict as to facts, and a discovery from a defendant was not sought, but a reference to chambers was nevertheless necessary before final decree, which would be as of course, all parties being before the Court, the summary proceeding by claim was sometimes adopted, thus obviating the recourse to plenary and protracted pleadings.

This summary practice was created by orders 22nd April, 1850, which came into operation on the 22nd May following.—See *Sm. Ch. Pr.* 644. By Consolid. Ord. 1860, viii. r. 4, claims were abolished.

Claim of Liberty, a suit or petition to the Queen in the Court of Exchequer, to have liberties and franchises confirmed there by the Attorney-General.

Clam delinquentes magis puniuntur quam palam.—8. *Co.* 127.—(Those sinning secretly are punished more severely than those sinning openly.)

Clamea admittenda in itinere per attornatum. An ancient writ by which the king commanded the justices in eyre to admit the claim by attorney of a person who was in the royal service, and could not appear in person.—*Reg. Orig.* 19.

Clandestine Mortgages. Statute of 4 & 5 Wm. & Mary, c. 16, A.D. 1692, enacted that if any person, having once mortgaged his lands for a valuable consideration, shall again mortgage the same lands or any part thereof, to any person, the former mortgage being in force, and shall not discover in writing to the second

mortgagee the first mortgage, such mortgagor so again mortgaging his lands shall have no relief or equity of redemption against the second mortgagee. But this act is not to bar any widow of dower who does not legally join her husband in such second mortgage.

Clarendon (*Constitutions of*). At a great council held at Clarendon, a village in Wiltshire, A.D. 1164, in the tenth year of the reign of Henry II., a code of laws was brought forward by the king, under the title of the ancient customs of the realm, and known as the famous 'Constitutions of Clarendon;' and as Becket had solemnly promised he would observe what were really such, the king procured the principal propositions in dispute to be enacted, and declared by the council under that denomination. Nothing will enable us to judge so well of the pretensions of the clergy as a perusal of these constitutions. They are contained in sixteen articles, ten of which were considered by the see of Rome as so hostile to the rights of the clergy, that Pope Alexander, in full consistory, passed a solemn condemnation on them; the other six he tolerated, not as good, but less evil. These six articles were the 2nd, 6th, 11th, 13th, 14th, and 16th.

The 2nd. Churches belonging to the see of our lord the king cannot be given away in perpetuity, without the consent and grant of the king.

6th. Laymen ought not to be accused, unless by certain legal accusers and witnesses, in presence of the bishop, so that the archdeacon may not lose his right, nor anything which should thereby accrue to him; and if the offending persons be such as none will or dare accuse them, the sheriff, being thereto required by the bishop, shall swear twelve lawful men of the vicinage or town before the bishop, to declare the truth, according to their conscience.

11th. Archbishops, bishops, and all dignified clergymen (*universæ personæ*), who hold of the king in chief, have their possessions from the king as a barony, and answer thereupon to the king's justices and officers, and follow and perform all royal customs and rights, and, like other barons, ought to be present at the trials of the king's court, with the barons, till the judgment proceeds to loss of members or death.

13th. If any nobleman of the realm shall forcibly resist the archbishop, bishop, or archdeacon, in doing justice upon him or his, the king ought to bring him to justice, that he may make satisfaction to our lord the king.

14th. The chattels of those who are under forfeiture to the king ought not to be detained in any church or church-yard against the king's justice, because they belong to the king, whether they are found within churches or without.

16th. The sons of villains ought not to be ordained without the consent of their lords, in whose lands they are known to have been born.

Thus was the pope pleased to tolerate such of these articles as either did not at all affect the clerical state, or rather contributed to aid and support it; and were thrown in, probably, to qualify and temper those which were evidently hostile to the ecclesiastical sovereignty. The ten which were condemned by the pope were as follow:—

The 1st. If any dispute shall arise concerning the advowson and presentation of churches between laymen, or between ecclesiastics and laymen, or between ecclesiastics, let it be tried and determined in the court of our lord the king.

3rd. Ecclesiastics charged and accused of any matter, and being summoned by the king's justice, shall come into his court to answer there concerning that which it shall appear to the king's court is cognizable there; and shall answer in the ecclesiastical court concerning that which it shall appear is cognizable there; so that the king's justice shall send to the court of holy church, to see in what manner the cause shall be tried there; and if an ecclesiastic shall be convicted, or confess his crime, the church ought not any longer to give him protection.

4th. It is unlawful for archbishops, bishops, or any dignified clergymen of the realm, to go out of the realm without the king's license; and, if they go, they shall, if it so please the king, give security that they will not, either in going, staying, or returning, procure any evil or damage to the king or kingdom.

5th. Persons excommunicated ought not to give any security by way of deposit, nor take any oath, but only find gage and pledge to stand to the judgment of the church, in order to absolution.

7th. No tenant *in capite* of the king, nor any of the officers of his household, or of his demesne, shall be excommunicated; nor shall the lands of any of them be put under an interdict, unless application shall first have been made to our lord the king, if he be in the kingdom, and if not, to his justice, that he may do right concerning such person; and in such manner as that which shall belong to the king's court shall be there determined; and what shall belong to the ecclesiastical court shall be sent thither to be there determined.

8th. Concerning appeals, if any shall arise, they ought to proceed from the archdeacon to the bishop, and from the bishop to the archbishop; and if the archbishop shall fail in doing justice, the cause shall at last be brought to our lord the king, that, by his precept, the dispute may be determined in the archbishop's court, so that it ought not to proceed any further without the king's consent.

9th. If there shall arise any dispute between an ecclesiastic and a layman, or between a layman and an ecclesiastic about any tenement which the ecclesiastic pretends to hold *in*

eleemosynâ, and the layman pretends to be a lay fee, it shall be determined by the judgment of the king's chief justice, upon a recognition of twelve lawful men, *utrùm tenementum sit pertinens ad eleemosynam, sive ad fœdum laicum.* And if it be found to be *in eleemosynâ*, then it shall be pleaded in the ecclesiastical court; but if a lay-fee, then in the king's court, unless both parties claim to hold of the same bishop or baron; and if they do, the plea shall be in his court; provided that, by such recognition, the party who was first seised shall not lose his seisin till the plea has been finally determined.

10th. Whosoever is of any city, or castle, or borough, or demesne manor of our lord the king, if he shall be cited by the archdeacon or bishop for any offence, and shall refuse to answer to such citation, may be put under an interdict; but he ought not to be excommunicated till the king's chief officer of the town be applied to, that he may, by due course of law, compel him to answer accordingly; and if the king's officer shall fail therein, such officer shall be *in misericordiâ regis*; and then the bishop may compel the person accused by ecclesiastical justice.

12th. Pleas of debt, *quæ fide interpositâ debentur, vel absque interpositione fidei*, whether due by faith solemnly pledged, or without faith so pledged, belong to the king's judicature.

15th. When an archbishopric, or bishopric, or abbey, or priory of royal foundation, shall be vacant, it ought to be in the hands of the king, and he shall receive all the rents and issues thereof as of his demesne. And when such church is to be filled, the king ought to send for the principal clergy thereof, and the election ought to be made in the king's chapel, with the king's assent, and the advice of such of the prelates of the kingdom as he shall call for that purpose; and the person elect shall there do homage and fealty to the king as his liege lord, of life, limb, and worldly honour (saving his order) before he be consecrated.

These constitutions were calculated to give a rational limitation to the secular and ecclesiastical judicature; and furnished a basis on which these separate jurisdictions might have been founded, without any inconvenience to the nation, or diminution of the temporal authority; and they were with that view confirmed, A.D. 1176, at a council held at Northampton. But the king, overcome with shame for the murder of Becket, with which he was charged, and struck with a panic of superstition, gave way to the torrent, and endeavoured to reconcile himself to the holy see by an ample concurrence with all its demands; at least he desisted from executing those laws for which he had so many years been contending. It appears, moreover, from a letter which he sent to the pope by the hand of Hugo Petrileo, the legate, that notwithstanding the opposition of the greatest and wisest men in the kingdom, he had, at the intercession of the legate, and out of reverence and devotion to the see of Rome, made the following concessions:—That no clerk should for the future be brought personally before a secular judge for any crime or transgression whatsoever, except only for offences against the forest-laws, or in case of a lay-fee for which lay service was due to the king, or to some other secular person. He promised that any person convicted, or making confession before his justice, in the presence of the bishop, or his official, of having knowingly and premeditately killed a clerk, should besides the usual punishment for killing a layman, forfeit all his land of inheritance for ever. He also promised that clerks should not be compelled to submit to the trial by duel; and moreover he promised not to retain in his hands vacant bishoprics, or abbeys, beyond the term of one year, unless from urgent necessity, and evident cause of delay, not falsely pretended. It is said that Henry, by charter, granted to the clergy the cognizance of causes matrimonial; but neither this nor any of the foregoing concessions were enacted by authority of parliament, during any part of this king's reign; nor did he himself observe them, except in not compelling criminal clerks to appear before a lay judge as before stipulated, and in exempting them in all cases from the trial by duel. The statutes of Clarendon concerning ecclesiastical matters subsisted unrepealed and confirmed, but were suspended in part by a temporary connivance of the executive power.—1 *Reeves's Hist.* c. ii. 75–80; *Hale's Hist.* pp. 7 & 164, note (b).

Classiarius [fr. *classis*, Lat.], a seaman or soldier serving at sea.

Claud [Brit.], a ditch; *claudere*, to enclose, or turn open fields into enclosures.—*Paroch. Antiq.* 236.

Clausula generalis non refertur ad expressa. 8 *Co.* 154.—(A general clause does not refer to things expressed.)

Clausula quæ abrogationem excludit ab initio non valet.—Bac. Max. Reg. 19.—A clause w ich excludes abrogation avails not from the beginning.)—2 *Dwar. Stats.* 673.

Clausula vel dispositio inutilis per præsumptionem remotam vel causam ex post facto non fulcitur.—Bac. Max. Reg. 21.—(An invalid clause or disposition is not rendered valid by a remote presumption or a cause arising after the event.)

Lord Bacon explains *clausula vel dispositio inutilis*, when the acts or the words work or express no more than the law by intendment would have supplied; and such a clause or disposition is not supported by any subsequent matter which might give effect to the particular words or acts.

Clausulæ inconsuetæ semper inducunt suspicionem.—3 *Co.* 81.—(Unusual clauses always excite suspicion.)

Claves insulæ, the keys of the island of Man, or twelve persons to whom all ambiguous and weighty causes are referred.

Clavia, a club or mace.

Clavigeratus, a treasurer of a church.—*Mon. Angl.* t. 1. p. 184.

Clause irritant, any provision which makes a penalty incurred, and the obligation to be null for the future; or which upon any other account, makes the right to vacate or resolve.—*Scotch Law.*

Clause resolutive, a provision whereby the contract to which it is affixed is, for non-performance, declared to have been null from the beginning.—*Ibid.*

Clause rolls [*rotuli clausi*, Lat.], contain all such matters of record as were committed to close writs; these rolls are preserved in the Tower. See CLOSE ROLLS.

Clausum fregit (*he broke the close*). See CLOSE.

Clausum paschiæ, the morrow of the *utas*, or eight days of Easter; the end of Easter; the Sunday after Easter-day.—2 *Inst.* 157.

Clausura heyæ, an enclosure of a hedge.

Clawa, a close or small measure of land.—*Mon. Ang.* t. 2, p. 250.

Clear, in asserting an estate to be of any given 'clear' yearly rent, the parties should attend to the meaning of the word 'clear' in an agreement between buyer and seller, which is free of all outgoings, incumbrances, and extraordinary charges not according to the custom of the country, as tithes, poor-rates, church-rates, &c., as these are natural charges on the tenant, but subject nevertheless to the land-tax and all other outgoings which, according to such custom, ought to be borne by the landlord.—*St. Leonards, V. & P.* 22.

Clearance, a certificate that a ship has been examined and cleared at the custom-house.

Clear days. If a certain number of clear days be given for the doing of any act, the time is to be reckoned exclusively as well of the first day as the last.

Clearing, among London bankers, a method adopted by them for exchanging the drafts of each other's houses, and settling the difference. Daily at half-past three o'clock a clerk from each banker attends at the clearing-house, bringing all the drafts on the other bankers which have been paid into his house during that day, and deposits them in their proper drawers (a drawer being allotted to each banker); he then credits their accounts separately with the drafts which they have against him, as found in the drawer. Balances are then struck from all the accounts, and the claims transferred from one to another, until they are so wound up and cancelled that each clerk has only to settle with two or three others, and the balances are immediately paid.—*Gilbart's Prac. Treat. on Banking*, 16–20; *Tate's Modern Cambist.*

Clearing-house, the place where the operation termed clearing is carried on, situated in a corner of Post Office Court at the back of the Guardian Insurance Office, in Lombard Street.—2 *Mill's Pol. Eco.* 48.

Clementines, the collection of decretals or constitutions of Pope Clement V. made by order of John XXII. his successor, who published it in 1317.

Clergy [fr. *clergé*, Fr.; *clerus*, Lat.; κλῆρος, Gk.], the assembly or body of clerks or ecclesiastics set apart from the rest of the people or laity, in order to superintend the public worship of Almighty God, and the other ceremonies of religion, and to administer spiritual counsel and instruction.

The clergy, in general, were heretofore divided into (1) *regular*, which lived under certain rules, being of some religious order, and were called men of religion, or the religious; such as abbots, priors, monks, &c.; and (2) *secular*, that did not live under any certain rules of the religious orders, as bishops, deans, parsons, &c. Now, the term comprehends all persons in holy orders, and in ecclesiastical offices, viz. archbishops, bishops, deans and chapters, archdeacons, rural deans, parsons (either rectors or vicars), and curates, to which may be added parish clerks.—3 *Step. Com.* 2.

Clerical error, a mistake in copying.

Clerico infra sacros ordines constituto, non eligendo in officium, a writ directed to those who have thrust a bailiwick or other office upon one in holy orders, charging them to release him.—*Reg. Orig.* 143.

Clerico capto per statutum mercatorum, &c., a writ for the delivery of a clerk out of prison, who is taken and incarcerated upon the breach of a statute-merchant.—*Ibid.* 147.

Clerico convicto commisso gaolæ in defectu ordinarii deliberando, an ancient writ, that lay for the delivery to his ordinary, of a clerk convicted of felony, where the ordinary did not challenge him, according to the privilege of clerks.—*Ibid.* 69.

Clericum admittendum, a writ of execution directed not to the sheriff, but to the bishop or archbishop, and requiring him to admit and institute the clerk of the plaintiff.—3 *Bl. Com.* 413.

Clericus et agricola et mercator, tempore belli, ut oretque, colat, commutet, pace fruuntur.—2 *Inst.* 58.—(Clergymen, husbandmen, and merchants, in order that they may preach, cultivate, and trade, enjoy peace in time of war.)

Clericus non connumeretur in duabus ecclesiis.—1 *Rol. R.*—(A clergyman should not be appointed to two churches.)

Clerici non ponantur in officiis.—Co. Litt. 96. (Clergymen should not be placed in offices.)

Clerici, vel monachi, ne sæcularibus negotiis se immisceant.—Ferrier's Rom. Hist. 117.—(Clergymen or monks should not mix themselves in secular matters.)

Clerk [fr. *cleric*, Sax.; *clericus*, Lat.], originally a learned man or man of letters, whence the term is appropriated to churchmen, who were called clerks and now clergymen; the nobility and gentry being bred to the exercise of arms, and none left to cultivate the sciences but ecclesiastics. Where the canon law has full power, the word 'clerk' comprehends *sacerdotes*, *diaconi*, *subdiaconi*, *lectores*, *acolyti*, *exorcistæ*, and *ostiarii*. The word has been anciently used for a secular priest, in opposition to a religious or a regular.

In modern usage, the word means a writer, one who is employed in the use of the pen, in an office, public or private, either for keeping accounts or entering minutes. It is synonymous with secretary, but not always. A clerk is generally an officer subordinate to a higher officer, board, corporation, or private individual; but a secretary may either be a subordinate officer, or the head of a department.—*Blount.* There are numerous officers in the public departments called clerks, which it is impossible to specify.

Clerk of Affidavits in Chancery. The office was abolished by 15 & 16 Vict. c. 87, s. 27.

Clerk of the Custodies, of lunatics and idiots, the office of, abolished. See 2 & 3 *Wm. IV.* c. 111; 3 & 4 *Wm. IV.* c. 84; and 5 & 6 *Vict.* c. 84, s. 10.

Clerk of Reports in Chancery, abolished by 15 & 16 Vict. c. 87, s. 27.

Clerk of the House of Commons, an officer of great trust and importance. He, with two assistants, sits at the upper end of the table. The Crown appoints him by letters patent, and when necessary he can appoint a deputy. The appointment of the other clerks in the service of the house is vested in him. It is his duty to make minutes, not of the arguments held in the house, but of the decisions at which it arrives; in other words to record its votes, resolutions, addresses, orders, reports, divisions, and all other proceedings in which it may be engaged; to see that they are correctly printed and distributed to the members, to read aloud all such documents as the house may order to be read, to perform the duty (without taking the chair) of president or moderator during the choice of a Speaker, putting a question and directing a division in the same manner as a chairman would.—*Dod's Parl. Comp.*

Clerk of Warrants in Common Pleas, for registering deeds in Middlesex. See 7 *Wm. IV.* and 1 *Vict.* c. 30, s. 28.

Clerks of Assize, officers who officiate as associates on the circuits.

Clerks of the Enrolments in Chancery. Their offices and those of their deputies are abolished by 5 & 6 Vict. c. 103.

Clerks of Records and Writs. Three officers in Chancery appointed under 5 & 6 Vict. c. 103. See their duties, *Smi. Ch. Pr.* 28.

Client [fr. *cliens*, Lat., said to contain the same element as the verb *clueo*, to hear or obey, and is accordingly compared by Niebuhr with the German word *hoeriger*, a dependent], a person who seeks advice of a lawyer or commits his cause to the management of one, either in prosecuting a claim, or defending a suit in a court of justice. The relation between solicitor and client, and the power which his situation gives the former over the latter, makes it impossible to be perfectly assured whether in their transactions, the client is a free agent or under influence and imposition; a court of equity, therefore, will not let a solicitor take a security from his client, pending a suit by way of gratuity, however reasonable it might be; and equity will not allow a solicitor to make a purchase from his client whilst the relation subsists.

Among the Romans, nearly all citizens were comprehended in two classes, patron and client. Their relative rights and duties were as follows:—The patron was the legal adviser of the client; he was the client's guardian and protector, as he was the guardian and protector of his own children; he maintained the client's suit when he was wronged, and defended him when another complained of being wronged by him; in a word, the patron was the guardian of the client's interests both public and private. The client contributed to the marriage portion of the patron's daughter, if the patron were poor; and to his ransom, or that of his children, if taken prisoners; he paid the costs and damages of a suit which the patron lost, and of any penalty in which he was condemned; he bore a part of the patron's expenses incurred by his discharging public duties, or filling the honorable places in the state. Neither party could accuse the other or bear testimony against the other, or give his vote against the other. This relationship between patron and client subsisted for many generations, and resembled in all respects a relationship by blood. It was the glory of illustrious families to have many clients, and to add to the number transmitted to them by their ancestors. But the clients were not limited to the *δημοτικοί*; the colonies and states connected with Rome by alliance and friendship, and the conquered states, had their patrons at Rome, and the senate frequently referred the disputes between such states to their patrons and abided by their decision.

In the Greek writers on Roman history, patronus is represented by *προστάτης*, and *cliens*

by πελάτης. The early Romans threw a sanctity around this obligation on the patron's part. It was expressly enforced by a law of the Twelve Tables, *patronus, si clienti fraudem fecerit, sacer esto.* Virgil, many ages after, places the unjust patron in Tartarus, among the violators of natural and moral decorum: *hìc quibus invisi fratres, pulsatusve parens, et fraus innexa clienti,* Æ. vi. 608. This state of mutual dependence, which commenced with the monarchy, was productive of the happiest effects; till, as riches and pride increased, new duties were imposed on the clients; they were harassed with constant attendance, and mortified by neglect; in a word, they were little better than slaves.—*Smith's Dict. of Antiq.*

Cloere [fr. *cloaca*, Lat.], a prison or dungeon.

Close, a field or piece of land parted off from other fields or common land by banks, hedges, &c. Every entry upon another's lands (unless by the owner's leave, or in some very particular cases) is an injury or wrong, for satisfaction of which an action of trespass will lie to recover such damages as a jury may think proper to assess, and this injury is called trespass *quare clausum fregit*, or trespass for breaking a man's close.

Close rolls, and **Close writs,** royal letters, under the Great Seal, addressed to particular persons for particular purposes, which, because they are not intended for public inspection, are closed and sealed, and recorded in the close rolls; hence their name.—2 *Bl. Com.* 346.

Closing evidence in Chancery. The evidence of both sides must be completed and closed within eight weeks from issue joined.—*Consol. Ord.* 1860 xxxvii. r.15; *Smi. Ch. Pr.* 384. It superseded publication.

Clough, a valley.—*Domesday.* Also an allowance of two lbs. in every cwt. for the turn of the scale, on buying goods wholesale by weight.—*Lex Mercat.*

Club-law, regulation by force; the law of arms.

Clubs, or **Club-houses,** associations to which individuals subscribe for purposes of mutual entertainment and convenience; the affairs of which are generally conducted by a steward or secretary, who acts under the immediate superintendence of a committee. The members of a club, merely as such, are not liable for debts incurred by the committee, for work done or goods supplied to the club.

Clypeus, a shield; metaphorically one of a noble family. *Clypei prostrati,* a noble family extinct.—*Mat. Paris,* 463.

Co, a prefix, meaning one of several; also an abbreviation for Company or County.

Coadjutor, an assistant, helper, or ally; particularly a person appointed to assist a bishop, who from age or infirmity is unable to perform his duty.—52 *Geo. III.* c. 62; 1 *Gibs. Cod.* 155. As to the distinction between an executor and a coadjutor, see 1 *Wm. Exs.* 212.

Coal-note, a particular description of promissory note in the coal trade, for which there are some peculiar provisions, it having been enacted that all lightermen and other buyers or contractors of coal aboard ship, in the port of London, shall, at the time of delivery of such coals, either pay for the same in ready money, or give their promissory note for payment, expressing therein the words 'value received in coals,' and that such notes may be protested and noted as inland bills; and that in default of such protest or noting, and notice thereof given to the endorsers within twenty days after non-payment, they shall be discharged from liability; and it is enacted, that such buyer of coals, and the master of the vessel, shall, for refusing to insert the words 'value received in coals,' or receiving a note for coals without those words, forfeit 100*l.*—3 *Geo. II.* c. 26, ss. 7, 8. Upon this act it has been decided, that it extends only to contractors for coals, and to cases between an indorser and indorsee; and that though the act directs that the instrument shall be drawn in a particular form, under a severe penalty, yet, if drawn in a different form, it is not void, and that the effect of the act is only to subject a party to a penalty.

Coast-guard. See 19 & 20 *Vict.* c. 83.

Coasting trade. See 12 & 13 *Vict.* c. 29; 17 & 18 *Vict.* c. 5; and 18 & 19 *Vict.* c. 96.

Coat-armour, heraldic ensigns, introduced by Richard I. from the Holy Land, where they were first invented. Originally they were painted on the shields of the Christian knights, who went to the Holy Land during the Crusades, for the purpose of identifying them, some such contrivance being necessary in order to distinguish knights when clad in armour from one another. See CHIVALRY, COURT OF.

Cocherings, or **Cosherings,** Irish exactions, or tributes, now reduced to chief rents. See BONAUGHT.

Cock-fighting, a criminal offence.—12 & 13 *Vict.* c. 92; and 17 & 18 *Vict.* c. 60.

Cocket, a seal belonging to the custom-house, or rather a scroll of parchment, sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandizes are entered; likewise a sort of measure.—*Fleta,* l. 2, c. ix.

Cock-pit, a name familiarly given to the Judicial Committee of the Privy Council, the council-room being built on the old cock-pit of Whitehall Palace.

Cocksetus, a boatman, cockswain; contracted into coxen.—*Cowel.*

Code, a collection or system of laws. The collection of laws and constitutions, made by order of the Emperor Justinian, is distinguished by the appellation of 'The Code,' by way of

eminence. See CODEX JUSTINIANEUS. *The Code Napoleon*, or civil code of France, proceeding from the French revolution, and the administration of Napoleon, while First Consul, effected great changes in the laws of that country. In 1800 Bonaparte directed a commission of jurists of the first eminence in France, under the presidency of Cambacérès, to frame a code of laws for the kingdom. The commission consisted of Tronchet, president of the Court of Cassation, Bigot de Préameneu, Portalis, and Malleville. The first code which was framed, and of which a *projet* was printed early in 1801, was sent to the different courts of justice for their remarks and suggestions. The remarks and suggestions were also printed, and the whole was then laid before the section of legislation of the Council of State, consisting of Boulay, Berlier, Emmery, Portalis, Rœdérer Réal, and Thibaudeau. Bonaparte and Cambacérès, his colleague in the consulship, took an active part in the debate. The various heads of the code were successively discussed, and then laid before the tribunate, where some of the provisions met with considerable opposition. At length the code passed both the tribunal and the legislative body, and was promulgated in 1804, as the 'Code Civil des Français.' When Napoleon became emperor, the name was changed to that of Code Napoleon, by which it is still often designated, though it is now styled by its original name of Code Civil. A Code de Procédure Civile, a Code de Commerce, Code d'Instruction Criminelle, and Code Pénal, were afterwards compiled and promulgated under Bonaparte's administration. To these was subsequently added a Code Forestier, or regulations concerning the forests, which was promulgated under Charles X. in 1827. All these codes are sometimes called 'Les six Codes.' A Code de la Conscription, and a Code Militaire, were also promulgated under Napoleon. All these codes under his administration are sometimes confusedly designated by the name of the Code Napoleon.—*Life of Napoleon, by Vieusseux; Savigny; Von Beruf unsrer Zeit zur Gesetzgebung und Rechtswissenchaft; Meyer's Esprit des Institutions Judiciaires.*

Codex, a roll or volume.

Codex Gregorianus, and **Hermogenianus.** It does not appear quite certain whether this title denotes one or two collections. The general opinion, however, is, that there were two codices, compiled respectively by Gregorianus and Hermogenianus, who are sometimes, though, as it seems, incorrectly, called Gregorius and Hermogenes. The codex of Gregorianus consisted of thirteen books at least, which were divided into titles. The fragments of this codex begin with constitutions of Septimus Severus, and end with Diocletian and Maximian. The codex of Hermogenianus, so far as we know of it, is only quoted by titles, and it also contains constitutions of Diocletian and Maximian; it may perhaps have consisted of one book only, and it may have been a kind of supplement or continuation to, or an abridgment of, the other. The name Hermogenianus is always placed after that of Gregorianus when this code is quoted.—*Smith's Dict. of Antiq.* · See CIVIL LAW.

Codex Justinianeus. In February of the year A.D. 528, Justinian appointed a commission, consisting of ten persons, to make a new collection of imperial constitutions. Among these ten were Tribonianus, who was afterwards employed on the Digesta and the Institutiones, and Theophilus, a teacher of law at Constantinople. The commission was directed to compile one code from those of Gregorianus, Hermogenianus, and Theodosius, and also from the constitutions of Theodosius made subsequently to his code from those of his successors, and from the constitutions of Justinian himself. The instructions given to the commissioners empowered them to omit unnecessary preambles, repetitions, contradictions, and obsolete matter; to express the laws to be derived from the sources above mentioned in brief language, and to place them under appropriate titles; to add to, take from, or vary the words of the old constitutions, when it might be necessary; but to retain the order of time in the several constitutions, by preserving the dates and the consuls' names, and also by arranging them under their several titles in the order of time. The collection was to include rescripts and edicts, as well as constitutiones, properly so called. Fourteen months after the date of the commission, the code was completed, and declared to be law, under the title of the Justinianeus Codex; and it was declared that the sources from which this code was derived were no longer to have any binding force, and that the new code alone should be referred to as of legal authority.—*Smith's Dict. of Antiq.*

The Code was divided into twelve books, each book into titles, and each title into laws, each law containing several parts. The first is called *Principium*, being the beginning of the law, and those which follow, *paragraphs*, so that the part next to the beginning is the first paragraph: a Greek term, signifying a part of a section of a law that contains one article, the sense whereof is complete.

The first book of the Code treats of the Catholic faith, churches, bishops, ecclesiastical persons, heretics, Jews, pagans, church privilege; then of laws and their different kinds, and lastly, of magistrates.

The second book explains the forms to be observed in commencing a suit; then it treats of restitutions; and after that of compromises; sureties that are to be given, and the oath of calumny.

The third book speaks of those who may stand in judgment of *contestatio litis* in a cause; of holydays; of the jurisdiction wherein we are to pursue our rights; after which it treats of undutiful testaments, undutiful donations, and dowries; of the demand of inheritance; of the real actions of services; of the law aquila; of mixed actions; of actions for crimes done by slaves; of the action ad exhibendum; of gaming; of burying-places, and funeral expenses.

The fourth book begins with the explanation of personal actions, arising out of loans and other causes; after which it speaks of obligations and actions, which have their effect in relation to heirs and other persons bound by them; then it speaks of testimonial or written evidence; of things borrowed for the use of the contract by pledge; and the personal action thereon founded on the senatus consulta macedonianum, and velleinum; of compensation; usury; deposits; mandate; partnership; buying and selling; permutation; hiring and mortgages.

The fifth book treats of espousals; donations in contemplation of marriage; then of marriages; women's portions; of the action for the recovery of the dowry; of the donations made between married persons; of estates given in dowry; of alimony due from fathers to their children, and from children to their fathers; of concubines; of natural children, and the ways of making them legitimate; after which it treats of testamentary, legal, or dative tutorships; of those who have a power to appoint or be appointed tutors; of the administration of tutors; and the action arising thereon against them and their heirs and bondmen; then it shows after what manner the office of a tutor ceases; and lastly, it speaks of the alienation of minors' estates.

The sixth book first treats of slaves and theft by freemen, of the rights their patrons have over them and their goods; then it explains at large the prætorian possession called bonorum possessio; after which it explains the whole question of testaments, e. g. institutions and substitutions, preteritions and disinherisons, the right of deliberate refusal of an inheritance, the opening of wills, of codicils, of legacies, and fiduciary bequests; and lastly, of successions to intestate estates.

The seventh book begins with manumissions; after which it treats of matters relating to prescriptions; and then of sentences and appeals of the session; of estates or goods; of the seizure of the debtor's goods and sale thereof; and lastly, of the privileges of the exchequer, those of dowries; and the revocation of goods alienated to defraud creditors.

The eighth book begins with possessory judgment in law, called injunctions; then of pledges and pawns; of stipulations, novations, and delegations; of payments, acceptilations, and evictions; after which it treats of paternal power, emancipations of children, and their ingratitude; it explains the jus postliminii; what is meant by custom or unwritten law; donations, their different kinds and their revocation; and lastly, of abrogations, and the penalty on celibacy.

The ninth book treats of criminal judgments and the punishment of crimes. The first title explains what relates to accusations, public or private; prisons; how the accusation drops by the death of the accuser or accused. The following titles speak of criminal judgments, which are treasons, adulteries, and other unlawful copulations, public and private violence, rape, homicide; and under this last head of the correction of slaves. The rest of the crimes which are under criminal judgments and are explained in this book are parricide; malificium, which comprehends poisoning, sacrilege, jugglery, sorcery, and witchcraft, the robbing of sepulchres, and forging certificates and wills, extortion, cheating the public, sacrilege, and raising sedition and tumult. Afterwards this book treats of judgments commenced for private offences, such as stealing, or abstracting anything out of another man's inheritance before administration be taken, rapine, cozenage, called crimen-stellionatus, injury, and some others; then it speaks of abolition of accusations proceeding either from the accuser or the accused; and lastly explains punishment, under which is comprised the confiscation of goods.

The tenth book treats of the rights and prerogative of the exchequer; of unclaimed property, and how the same may be incorporated into the prince's domain; of those by whose means such unclaimed property is discovered; after which it speaks of treasurer's tributes levied upon the people; tolls; super-impositions; magistrates called decuriones, and matters relating to them; of the freedom of citizens, of the inhabitants of cities, of the domicile or place of abode of public officers, and the causes which exempt persons from bearing them; of ambassadors; of the different kinds of public offices, and functions of officers, and of those who were entrusted with civil government and the reformation of manners.

The last two books treat of the rights common to municipal towns with the city of Rome, which were four in number.

The rights of bodies corporate and communities;

The rights of the public; or censor's registers;

The rights of dignities and the military;

The rights of magistrates to execute judgment;

Of these the first two are set forth in the eleventh, and two last in the twelfth book.

Irnerius (the founder of the celebrated law-school of Bologna in the 12th century), it would appear, first possessed the first nine books of the Codex only, the latter three, which contained

the jus publicum, had been separated from the whole at an early period, as of less practical utility, and often bound up with other works. These three latter books are termed the Tres Libri, while the nine first were emphatically called the Codex.

Within six years after the publication of the Code, it was suppressed as imperfect, and replaced by a new edition entitled the Codex Repetitæ Prælectionis, containing 200 of Justinian's own laws, and the 50 decisions on the most obscure and debateable points of Jurisprudence.

They had the force of law given them by the emperor's constitution placed at the head of the work by way of preface.

The letter C is invariably the mark of the Codex, which may be variously quoted by the initial words of the paragraph, law, book, or title, thus: § *ad fil. l. Meminimus, C. De Jur. Fisc.* or *Quando et quibus.*

By the initial words and numbers of the paragraphs and law, and the initial words of the book and title, thus: § *ad fil.* 1, *l. Meminimus* 2, *C. De Jur. Fisc.* or *Quando et quibus.*

By the number of the law and paragraph, with the initial words of the book or title, thus: § 1, *l.* 2, *De Jur. Fisc.* or *Quando et quibus.*

The modern method adopts simply numbers, thus: *C.* 10, 32. 2 *l. Pr.* stands for the *Principium*, or first paragraph not numbered, and *in fin.* or *fine* for the latter part of the *lex.*—1 *Colqu. R. C. L.* 58–60. See Civil Law.

Codex Theodosianus. In the year 429, Theodosius II. commonly called Theodosius the Younger, appointed a commission consisting of eight persons, to form into a code all the edicta and leges generales from the time of Constantine, and according to the model of those of Gregorianus and Hermogenianus. In 435, the instructions were renewed or repeated; but the commissioners were now sixteen in number, Antiochus was at the head of both commissions. It seems, however, to have been originally the design of the emperor, not only to make a code which should be supplementary to, and a continuation of, the Codex Gregorianus and Hermogenianus, but also to complete a work on Roman law from the classical jurists, and the constitutions prior to those of Constantine. However this may be, the first commission did not accomplish this, and what we have now is the code which was compiled by the second commission. This code was completed and promulgated as law in the Eastern empire in 438, and declared to be the substitute for all the constitutions made since the time of Constantine. In the same year the code was forwarded to Valentinian III., the son-in-law of Theodosius, by whom it was laid before the Roman senate, and confirmed as law in the Western empire.—*Smith's Dict. of Antiq.*

Codicil [fr. *codicillus*, Lat., a little book, tablet, or writing], a supplement to a will, containing anything which the testator wishes to add, or any explanation or revocation of what the will contains.—See *Irving's Civil Law*, 4.

Co-emptio, the solemn sale of a wife to a husband.—*Civil Law.*

Co-emption, the act of purchasing the whole quantity of any commodity.

Cofferer of the queen's household, a principal officer of the royal establishment, next under the controller, who, in the counting-house and elsewhere, has a special charge and oversight of the other officers, whose wages he pays. He passes his accounts in the Exchequer.—39 *Eliz.* c. 7.

Cogitationis pœnam nemo meretur.—2 *Inst. Jur. Civ.* 658.—(No man deserves punishment for a thought.)

Cognati, relations by the mother's side, i. e. derived *per fœminei sexus personas.* A cognate is related by conception; thus, my mother, grandmother, daughter's children, and maternal uncle and aunt, are cognate to me.

Cognatione. See Cosenage.

Cognisor, and **Cognisee,** the former is he who passed or acknowledged a fine of lands or tenements to another; the latter is the person to whom the fine of the said lands, &c., was acknowledged.—32 *Hen. VIII.* c. 5.

Cognition, the process whereby molestation is determined.—*Scotch Term.*

Cognitiones, ensigns and arms of a military coat painted with arms.—*Mat. Par.* 1250.

Cognitionibus mittendis, an abolished writ to one of the Justices of the Common Pleas, or other, who has power to take a fine, who having taken the fine defers to certify it, commanding him to certify it.—*Reg. Orig.* 68.

Cognomen majorum est ex sanguine tractum, hoc intrinsecum est; agnomem extrinsecum ab eventu.—6 *Co.* 65.—(The cognomen is derived from the blood of ancestors, and is intrinsic; an agnomen arises from an event, and is extrinsic.)

Cognitor, a person appointed by one of the parties to a suit to conduct it for him.—*Civil Law.*

Cognizance, or **Conusance,** the hearing of a thing judicially; also an acknowledgment of a fine; and in replevin it is the pleading of a defendant who has acted as bailiff, &c., to another, in making a distress, by which he alleges the right or title to be in that person by whose command he acted.—*Step. Plead.* 225. *Cognizance of pleas* is a privilege granted by the Crown to a city or town, to hold pleas of all contracts, &c., within the liberty of the franchise; and when a person is impleaded for such matters in the courts of Westminster, the mayor, &c., of such franchise may ask cognisance of the plea, and demand that it shall be determined

before them; but if the courts at Westminster are possessed of the plea before cognisance be demanded, it is then too late.—*Termes de la Ley.*

Cognovit actionem (*he has confessed the action*). A defendant's written confession of an action brought against him, to which he has no available defence. It is usually upon condition that he shall be allowed a certain time for the payment of the debt or damages, and costs. It is supposed to be given in court, and it impliedly authorizes the plaintiff's attorney to do everything necessary in order to obtain judgment. The cognovit should be given after declaration, as required by 1 Wm. IV. c. 7, s. 7, in order not to be affected by the Bankrupt Laws; if it be given after plea pleaded, it contains an agreement to withdraw the plea, in which case it is termed a *cognovit actionem relictâ verificatione* (he has confessed the action, having abandoned the plea). A mere cognovit does not require any stamp, but if it contain any terms of agreement, the subject matter of which is of the value of 5*l.* or upwards, as if it be conditional for the payment of a debt amounting to 5*l.* by instalments and implies an agreement to wait accordingly, it must be stamped as an agreement, and it may be stamped, like other agreements not under seal, within fourteen days after it is executed, without payment of any penalty. By 1 & 2 Vict. c. 110, s. 9, no *cognovit* given by any person shall be of any force, unless there shall be present some attorney of one of the superior courts on behalf of such person, expressly named as attorney at his request, to inform him of the nature and effect thereof before it is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney. Sec. 10 enacts that if not executed in this manner, it shall not be rendered valid by proof that the person executing the same did, in fact, understand the nature and effect thereof, and was fully informed of the same. The 3 Geo. IV. c. 39, s. 3, enacts that every *cognovit* given in the Court of Queen's Bench, or a true copy thereof, if given in any other court, shall, together with an affidavit of the time of the execution thereof, be filed as therein directed, within twenty-one days after execution, otherwise the same shall be void against the assignees, if the defendant become bankrupt. The 6 & 7 Vict. c. 66, provides that in addition to the book directed to be kept by the 3 Geo. IV. c. 39, and which might be inspected for 6*d.*, another book or index shall be kept, containing the names, additions, and descriptions of the respective defendants or persons giving any *cognovit*, but containing no further particulars thereof, which book might be inspected by any person on payment of 1*s.* in addition to the aforesaid 6*d.* This statute was passed to prevent frauds on creditors by a secret *cognovit*.—See 12 & 13 *Vict.* c. 106, s. 136; 2 *Chit. Arch. Prac. by Pren.* 898.

Cohæredes unâ personâ censentur, propter unitatem juris quod habent.—Co. Litt. 163.—(Coheirs are deemed as one person, on account of the unity of right which they possess.)

Coheir, one of several to whom an inheritance descends.

Coheiress, a woman who has an equal share of an inheritance with other women.

Cohuagium, a tribute made by those who meet promiscuously in a market or fair.—*Du Cange.*

Coif [fr. *coiffe*, Fr.; *caffia*, It..; *σκουφια*, Gk.; apparently from *kufiyah*, Arab., a head kerchief], the badge of serjeants-at-law, who are called serjeants of the coif, from the lawn patch or coif they wear on their heads under their caps when they are created serjeants.

Coigne, horse-meat, man's meat and money at pleasure.—*Irish Term.*

Coin [fr. *coign*, Fr.; *cuneus*, Lat., a wedge], a piece of metal stamped with certain marks, and made current at a certain value. Strictly speaking, coin differs from money, as the species differs from the genus. Money is any matter, whether metal, paper, beads, shells, &c., which have currency as a medium in commerce. Coin is a particular species, always made of metal, and struck according to a certain process called coining. The coining of money is in all States the prerogative of the sovereign power; and, as money is the medium of commerce, it is the Crown's prerogative and monopoly as arbiter of domestic commerce, to give it authority or make it current.

The most ancient coin of which we have any knowledge, is the Persian gold coin, called the *daric*, *δαρεικός*, stamped on one side with the figure of an archer, crowned, and kneeling upon one knee, and on the other with a sort of *quadrata incusa*, or deep cleft. Genesius (*Heb. Lexicon*) supposes the name to be derived from an ancient Persian word, signifying king or royal palace, or the bow of the king, in allusion to the figure stamped upon it. The value of the daricus in our money, computed from the drachma, is 16*s.* 3*d.*; but if reckoned in comparison with our gold money, it is worth much more.—*Jahn's Bib. Antiq.* c. vii. s. 117. As to offences relating to the coin, see the Coinage Offences Act, 24 & 25 *Vict.* c. 99.

Cold-water-ordeal, the trial which was ordinarily used for the common sort of people, who, having a cord tied about them, under their arms, were cast into a river; if they sank to the bottom until they were drawn up, which was in a very short time, then were they held guiltless; but such as did remain upon the

water were held culpable, being, as they said, of the water rejected and kept up.—*Verstegan's Rest of Decayed Intelligence.*

Coliberts, tenants in socage, particularly such villains as were manumitted or made freemen; but they had not an absolute freedom, for though their condition was better than that of servants, yet they had superior lords, to whom they paid certain duties, and in that respect they might be called servants, though they were of middle condition, between freemen and servants.—*Du Cange.*

Collateral, indirect, sideways, that which hangs by the side; applied in several ways, thus:—*collateral assurance*, that which is made over and above the deed itself; *collateral consanguinity or kindred*, which descend from the same stock or ancestor as the lineal relations, but do not descend from each other, as the issue of two sons; *collateral issue*, where a criminal convict pleads any matter allowed by law, in bar of execution, as pregnancy, pardon, an act of grace, or diversity of person, viz. that he or she is not the same that was attainted, &c., the issue upon which when taken is tried by a jury *instanter*; *collateral security*, where a deed is made of other property, besides that already mortgaged, for the better safety of the mortgagee; *collateral warranty* was where the heir's title to the land neither was, nor could have been, derived from the warranting ancestor, as where a younger brother released to his father's disseisor, with warranty, this was collateral to the elder brother. The whole doctrine of collateral warranty seems repugnant to plain and unsophisticated reason and justice; and even its technical grounds are so obscure that the ablest legal writers are not agreed upon the subject.—*Wright's Tenures*, 168; *Gilbert's Tenures*, 143. But now warranty is abolished by 3 & 4 Wm. IV. c. 74, s. 14.

Collatio bonorum (*a contribution of goods*). Where a portion of money, advanced by the father to a son or daughter, is brought into *hotchpot*, in order to have an equal distributory share of his personal estate at his death, according to the intent of the 22 & 23 Car. II. c. 10.

Collation, the comparison of a copy with its original to ascertain its correctness; or the report of the officer who made the comparison.

Collation to a benefice, where the bishop and patron are one and the same person; in which case the bishop cannot present to himself, but he does, by the one act of collation or conferring the benefice, the whole that is done in common cases both by presentation and institution.—2 *Bl. Com.* 22.

Collatione factâ uni post mortem alterius, a writ directed to justices of the Common Pleas, commanding them to issue their writ to the bishop, for the admission of a clerk in the place of another presented by the Crown, where there had been a demise of the Crown during a suit; for judgment once passed for the king's clerk, and he dying before admittance, the king may bestow his presentation on another.—*Reg. Orig.* 31.

Collatione heremitagii, a writ whereby the king conferred the keeping of an hermitage upon a clerk.—*Reg. Orig.* 303, 308.

Collation of seals, when upon the same label one seal was set on the back or reverse of the other.

Collative advowson. See Advowson.

Collegatary, a person who has a legacy left to him in common with other persons.

College [fr. *colligo*, Lat., to bring to], a civil corporation, company, or society of men, having certain privileges and endowed with certain revenues, founded by royal license. An assemblage of several of these colleges is called an university.

College of Doctors of Laws, exercent in the Ecclesiastical and Admiralty Courts, called Doctors' Commons. See 20 & 21 *Vict.* c. 77, ss. 116, 117.

Collegia, the guild of a trade.—*Civil Law.*

Collegiate Church, a religious house built and endowed for a society or body corporate, a dean or other president, and secular priests as canons or prebendaries, independently of any cathedral.

Collegium est societas plurium corporum simul habitantium.—*Jenk. Cent.* 229. (A college is a society of several persons dwelling together.)

Colligendum bona defuncti (*Letters ad*), in defect of representatives and creditors to administer to an intestate, &c., the Probate Court may commit administration to such discreet person as it approves of, or grant him these letters *to collect the goods* of the deceased, which neither makes him executor nor administrator; his only business being to keep the goods in his safe custody, and to do other acts for the benefit of such as are entitled to the property of the deceased.—1 *Wm. Ex.* 242, 389.

Collision of ships, the striking or running foul of one ship against another. The remedy is either an action at law, or a suit in the Court of Admiralty. The possibilities under which a collision may occur, and the rules acted on by the Court of Admiralty, have been thus stated by Lord Stowell in The Woodrop Sims, 2 *Dods.* 85:—'In the *first* place, it may happen without blame being imputable to either party; as where the loss is occasioned by a storm or any other *vis major*, in that case the misfortune must be borne by the party on whom it happens to light, the other not being responsible to him in any degree. *Secondly*, a misfortune of this kind may arise where both parties are to blame, where there has been a want of due diligence or of skill on both sides; in such a case the rule of law is, that the loss must be apportioned be-

'tween them, as having been occasioned by the fault of both of them. *Thirdly*, it may happen by the misconduct of the suffering party only, and then the rule is that the sufferer must bear his own burthen. *Lastly*, it may have been the fault of the ship which ran the other down, and in that case the injured party would be entitled to an entire compensation from the other.'

In a court of common law the same rule prevails in the 1st, 3rd, & 4th cases; but in the 2nd, viz. where both parties are to blame, the rule is that if the negligence of both substantially contributed to the accident, neither can maintain an action against the other; but that if one of them by the exercise of ordinary care might have avoided the consequences of the other's negligence, the former is liable for any injury that the latter may have sustained. See *Maude and Pollock on Shipping*, and *Abbott on Shipping*, and *Tuff* v. *Warman*, 2 *C. B. N. S.* 740.

In pursuance of The Merchant Shipping Act Amendment Act 1862 (25 & 26 Vict. c. 63), and of an order of Council, dated Jan. 9th, 1863, Regulations for Preventing Collisions at Sea have been issued, which contain rules concerning lights, rules concerning fog signals, and steering and sailing rules.

Collistrigium, a pillory.

Collitigant, one who litigates with another.

Collocation, the order in which creditors are placed and paid.—*Fr. Law.*

Colloquium, a talking together; a conversation. A term in pleading applied to the statement in declarations for libel or slander, that the libellous or slanderous imputation had reference to the plaintiff.—1 *Chitty on Pleading*, 414.

Collusion [*collusio*, Lat., fr. *colludo*, to play together, to unite in the same play or game, and thus to unite for the purposes of fraud or deception], a deceitful agreement or compact between two or more persons to do some act in order to prejudice a third person, or for some improper purpose. Collusion in judicial proceedings is a secret agreement between two persons that the one should institute a suit against the other, in order to obtain the decision of a judicial tribunal for some sinister purpose, and appears to be of two kinds. (1) When the facts put forward as the foundation of the sentence of the court do not exist. (2) When they exist, but have been corruptly preconcerted for the express purpose of obtaining the sentence. In either case the judgment obtained by such collusion is a nullity. See *The Duchess of Kingston's case*, 20; *State Trials*, 355; 2 *Smith's leading cases*, 5th ed., 642. Collusion between the petitioner and either of the respondents in presenting or prosecuting a suit, for dissolution of marriage, is a bar to such suit.—20 & 21 *Vict.* c. 85, ss. 30 & 31.

Colonial dioceses. Calcutta, Madras, Bombay, Colombo, Mauritius, Victoria (Hong Kong), Labuan, Cape Town, Sierra Leone, Natal, Graham's Town, Quebec, Montreal, Toronto, Nova Scotia, Fredericton, Newfoundland, Rupert's Land, Jamaica, Barbadoes, Antigua, Guiana, Sydney, Newcastle, Melbourne, Adelaide, Tasmania, New Zealand, Gibraltar, and Jerusalem.

Colonial lands and casual revenues of the Crown.—15 & 16 *Vict.* c. 39.

Colonial laws repugnant to the home laws or statutes are void.—7 & 8 *Wm. III.* c. 22, and 16 & 17 *Vict.* c. 107, s. 190.

Colonial lighthouses.—18 & 19 *Vict.* c. 91.

Colonus, an husbandman or villager, who was bound to pay yearly a certain tribute; or, at certain times in the year, to plough some part of the lord's land; hence the word *clown*.

Colony [fr. *colo*, Lat., to cultivate], a settlement in a foreign country possessed and cultivated, either wholly or partially, by immigrants and their descendants, who have a political connection with, and subordination to, the mother-country whence they emigrated. In other words, it is a place peopled from some more ancient city or country.

The formation of colonies is among the oldest events recorded in history or handed down by tradition. Various motives have, in different countries and ages, led to the formation of colonies. Commercial and agricultural enterprise, however, seems to have led to colonization as much as any one single cause.

England was not the first among European nations that planted settlements in parts beyond Europe. But by her own colonization, and by the conquest of the settlements of other nations, she has now acquired a more extensive dominion of colonies and dependencies than any other nation. The colonies of Great Britain exceed in number, extent, and value, those of every other country.

Colonies are acquired either (1) by conquest, (2) by cession under treaty, (3) by occupancy, as Newfoundland, New South Wales, and Van Dieman's Land, and (4) by hereditary descent. By far the greater part of the colonies was acquired by conquest or cession. In the two first cases, the territory retains its former laws until they are altered by the Home Government, i. e. the Queen in Council, yet subordinate to the authority of parliament. The alterations may be general or partial, leaving the old laws still in force touching matters unprovided for. In the third case (which is strictly a plantation), the English laws, so far as they are applicable to the condition of an infant colony, are *ipso facto* in force in such colony, for there can be no existing

laws to contest the superiority; and besides, the occupants could not have any power to establish laws independently of the mother-country, to whom their allegiance is still due; and they also carry with them the laws of their country, which are their inalienable birthright. Such a colony is, then, not subject to legislation by the Crown, nor is a country which comes to the Crown by title or descent. Such colonies retain their own laws till changed by the Act of the Imperial Parliament, to whose legislative authority every kind of colony is subject, as portions of the British dominions, and whose protection they have a right to demand, for the resistance of hostile aggression, and the peaceful possession of their territory. As a general rule, an Act of Parliament must name the colony in order to bind it, but there are exceptions.—*Clark's Col. Law; Burge's Col. and For. Law*, and *Whart. Art. Cl. Man.* part 2, c. iv.

Color, a term of the ancient rhetoricians, and early adopted into the language of pleading. It is an apparent or *primâ facie* right; and the meaning of the rule, that pleadings in confession and avoidance should give color, is that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which requires to be encountered and avoided by the allegation of new matter. Color is either express, i. e. formally inserted in the pleading, or implied, which is naturally inherent in the structure of the pleading.—*Step. Plead.* 233; 3 *Bl. Com.* 309; 3 *Reeves*, pp. 24 & 438. Express color is abolished by *C. L. P. A.* 1852, s. 64.

Color of office, an act unjustly done by the countenance of an office, being grounded upon corruption, to which the office is as a shadow and color.—*Plowd.* 64.

Colpices, young poles, which, being cut down, are made levers or lifters.—*Blount.*

Colpo, a small wax candle.

Combarones, the fellow barons or commonalty of the Cinque Ports.

Combat, trial by single. See BATTEL.

Combaterræ [fr. *cumbe*, Sax.; *kum*, Brit.; *comb*, Eng.], a valley or piece of low ground between two hills.—*Ken. Gloss.*

Combe [*ccom*, W.] a narrow valley.

Combination, an assembly of workmen met to perpetrate unlawful acts.—6 *Geo. IV.* c. 129, explained by 22 *Vict.* c. 34; and 9 *Geo. IV.* c. 31.

Combustibility, Preternatural. A question may arise in cases where persons are found burnt to death, whether there can be such a thing as preternatural combustibility of the human body? Several cases are recorded, from which it appears that the phenomenon has been produced by the long and immoderate use of spirituous liquors. Some deductions have been drawn from these cases, viz.: (1) The subjects were nearly all females, and they were far advanced in life. (2) Most of them had, for a long time, made an immoderate use of spirituous liquors, and they were either very fat or very lean. (3) The combustion occurred accidentally, and often from a slight cause, such as a candle, a coal, or even a spark. (4) The combustion proceeded with great rapidity, usually consuming the entire trunk, while the extremities, as the feet and hands, were occasionally left uninjured. (5) Water, instead of extinguishing the flames, sometimes gave them more activity. (6) The fire did very little damage to, and often did not affect the combustible objects in contact with the human body, at the moment when it was burning. (7) The combustion of these bodies left as a residuum, fat, fœtid ashes, with an unctuous, stinking, and very penetrating soot. (8) The combustions have occurred at all seasons, but most frequently in winter, and in northern as well as southern countries.

As to its cause various opinions have been promulgated. Some suppose that there is an alcoholic impregnation of the body, and that the actual contact of fire is necessary to produce it. But there is no proof of such a saturation of the organs; and if it were so, it would not, judging from experiments, render the body combustible. Another theory refers the combustion to the agency of the electric fluid. It is difficult, however, on this hypothesis, to explain the rapidity of the combustion, and the complete reduction of the body, or its parts, to ashes. It has also been referred to an internal decomposition, and the formation of new products, which are highly inflammable. Another opinion is, that phosphuretted hydrogen may be generated in the system, an explanation which will almost justify the term in common use—spontaneous combustion. See *Dung.* 226.

These cases differ from ordinary combustion, which requires large quantities of fuel to convert the body into ashes, and is also slow in its progress, and, the heat required being high, extends itself to surrounding substances. It is often incomplete, and particularly so as to the bones. There will also be blisters, scars, &c., on various parts of the unconsumed body. But the empyreumatic odour, and the moist and sooty matter resting on the furniture and walls are wanting, and, if Fontenelle be correct, the hair, the most combustible part of the human frame, is never burnt, while the liver and spleen are always so.

The application of these distinctions to medico-legal cases is manifest.—*Beck's Med. Jurisp.* 575.

It is well known that vegetable substances, when highly dried and closely heaped, will

frequently burst into flame.—See *Notes and Queries*, No. 184.

Combustio pecuniæ, the ancient method of testing mixed and corrupt money, paid into the Exchequer, by melting it down.

Come ceo, as well for this.

Comes, the count or superior officer of a county.

Comitatus, a county.

Comitatu commisso, a writ or commission whereby a sheriff is authorized to enter upon the charges of a county.—*Reg. Orig.* 295.

Comitatu et castro commisso, a writ by which the charge of a county, together with the keeping of a castle, is committed to the sheriff.—*Ibid.*

Comites, earls, courtiers, or companions.

Comitiva, a companion or fellow-traveller; a troop or company of robbers.

Comity of nations, the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. It is derived altogether from the voluntary consent of the latter; and it is inadmissible, when it is contrary to its known policy, or prejudicial to its interests. In the silence of any positive rule, affirming, or denying, or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless repugnant to its policy. It is not the comity (courtesy) of the courts, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning, by which all other privileges of the municipal law are ascertained and guided.—*Story's Conflict of Laws*, s. 38.

Commandery, a manor or chief messuage with lands and tenements thereto appertaining, which belonged to the priory of St. John of Jerusalem, in England; he who had the government of such a manor or house was styled the commander, who could not dispose of it, but to the use of the priory, only taking thence his own sustenance, according to his degree. The manors and lands belonging to the priory of St. John of Jerusalem were given to Henry the Eighth, by 32 Hen. VIII. c. 20, about the time of the dissolution of abbeys and monasteries; so that the name only of commanderies remains, the power being long since extinct.

Commandite, or **in commendam,** partnerships which are limited where the contract is between one or more persons, who are general partners, and jointly and severally responsible, and one or more other persons, who merely furnish a particular fund or capital stock, and thence are called *commandataires*, or *commendataires*, or partners in *commandite*; the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complimentary partners, the partners in *commandite* being liable to losses only to the extent of the funds or capital furnished by them.—*Code of Commerce of France*, art. 23, 24; *Watson on Partn.* ch. i. p. 2; *Pothier, de Société*, n. 60, 102; *Story on Partn.* 109, 119, 120.

Commandment, order, direction; also the offence of inducing another to transgress the law, or do anything contrary to it. The civilians call it *mandatum.*

Commarchio, the confines of the land.

Commenda, or **Ecclesia commendata,** a living commended by the Crown to the care of a clerk, to hold till a proper pastor is provided for it. This may be temporary for one, two, or three years, or perpetual, being a kind of dispensation to avoid the vacancy of the living, and is called a *commenda retinere*, and has been usually granted to bishops in the poorer sees to aid the deficiency in their episcopal revenue. There is also a *commenda recipere*, which is to take a benefice *de novo* in the bishop's own gift, or the gift of some other patron consenting to the same; and this is the same to him as institution and induction are to another clerk.—*Mire. on Adv.* c. vii. s. 6. But now by 6 & 7 *Wm. IV.* c. 77, s. 18, no ecclesiastical dignity, office, or benefice shall be hold *in commendam* by any bishop unless he shall have held the same when the act passed; and every *commendam* thereafter granted, whether to retain or to receive, and whether temporary or perpetual, shall be absolutely void.

Commenda est facultas recipiendi et retinendi beneficium contra jus positivum à supremâ potestate.—Moor, 905.—(A commendam is the power of receiving and retaining a benefice contrary to positive law, by supreme authority.)

Commendators, secular persons upon whom ecclesiastical benefices are bestowed, called so, because the benefices were commended and intrusted to their oversight; they are not proprietors, but only trustees or tutors.—*Scotch Term.*

Commendatory, he who holds a church living or preferment *in commendam.*

Commendatory letters, such as are written by one bishop to another in behalf of any of the clergy, or others of his diocese travelling thither, that they may be received among the faithful; or that the clerk may be promoted; or necessaries administered to others, &c.

Commendatum. See DEPOSIT.

Commendatus, one who lives under the protection of a great man.—*Spelm.*

Commerce [fr. *commutatio mercium*, Lat.], the intercourse of nations in each other's produce and manufactures, in which the

superfluities of one are given for those of another, and then re-exchanged with other nations for mutual wants. There is a distinction between commerce and trade; the former relates to our dealings with foreign nations, colonies, &c.; the latter to mutual dealings at home.

The affairs of commerce are regulated by the Law Merchant, *Lex Mercatoria*, or Commercial Law. 'Lord Mansfield,' said Mr. Justice Buller (*Lickbarrow* v. *Mason*, 2 *T. R.* 631), 'may be truly said to be the founder of the commercial law of this country. We all know that, from his time, the great study has been to find out some certain general principles which shall be known to all mankind, to rule not only one particular case, but to serve as a guide to the future. Most of us have heard those principles stated, reasoned upon, enlarged, and explained, till we have been lost in admiration at the strength and stretch of the human understanding.' Commercial law is based upon very different principles from those which govern real property law, and is derived from a variety of sources and authorities—from international law, from the different maritime codes of ancient Europe, and from the imperial code of Rome.—*McCull. Com. Dict.*

Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum.—3 *Inst.*—(Commerce, by the law of nations, ought to be common, and not converted to monopoly and the private gain of a few.)

Commissariate, the whole body of officers in the commissaries' department.

Commissary, one who is sent or delegated to execute some office or duty as the representative of his superior. In ecclesiastical law, an officer of the bishop, who exercises spiritual jurisdiction in distant parts of the diocese. In military affairs, an officer who has the charge of furnishing provisions, clothing, &c., for an army.

Commission, the warrant or letters-patent which all persons exercising jurisdiction, either ordinary or extraordinary, have, to authorize them to hear or determine any cause or action, or do other lawful things, as the commission of the Judges, &c. There was formerly a High Commission Court founded on 1 Eliz. c. 1, but it was abolished in the reign of Charles II. though an impotent attempt was made to re-establish it during the succeeding reign.

In commerce, the order by which any one traffics or negotiates for another; also the percentage given to factors or agents for transacting the business of others. See PROCURATION FEE.

Commission of anticipation, an authority under the Great Seal to collect a tax or subsidy before the day.—15 *Hen. VIII.*

Commission of Array, issued to send into every county officers to muster or set in military order the inhabitants. The introduction of commissions of lieutenancy, which contained in substance the same powers as these commissions, superseded them.—2 *Step. Com.* 608.

Commission of Bankruptcy, the authority formerly given by the Lord Chancellor to certain commissioners, empowering them to proceed in the bankruptcy of a trader. Abolished by 1 & 2 Wm. IV. c. 56, s. 12.

Commission of Charitable Uses, issues out of Chancery to the bishop and others, where lands given to charitable uses are misemployed, or there is any fraud or dispute concerning them, to enquire of and redress the same, &c.—43 *Eliz.* c. 4.

Commission-day, the opening day of the assizes.

Commission del Credere, where an agent of a seller undertakes to guaranty to his principal the payment of the debt due by the buyer. The phrase *del credere* is borrowed from the Italian language, in which its signification is equivalent to our word guaranty or warranty.—*Story's Agency*, 28.

Commission of Delegates, issued under the Great Seal to certain persons, usually lords, bishops, and judges, to sit upon an appeal to the king in the Court of Chancery, where a sentence was given in any ecclesiastical cause by the archbishop.—25 *Hen. VIII.* c. 19, repealed by 2 & 3 Wm. IV. c. 92.

Commission of Patents for Inventions. See LETTERS-PATENT.

Commission to enquire of Faults against the Law, anciently sent forth on extraordinary occasions and corruptions.

Commission to examine Witnesses, issued in Chancery suits, where the witnesses reside abroad. See 15 & 16 *Vict.* c. 86, s. 35. As to the examination of witnesses abroad in Common Law actions, see 13 *Geo. III.* c. 63; 1 *Wm. IV.* c. 22; and 22 *Vict.* c. 20.

Commission of Lunacy, issued out of Chancery, to enquire whether a person alleged to be a lunatic, be so or not. But see IDIOTS AND LUNATICS.

Commission-merchant. A factor is commonly said to be an agent employed to sell goods or merchandize, consigned or delivered to him by or for his principal for a compensation commonly called factorage or commission. Hence he is often called a commission-merchant or consignee; and the goods received by him for sale are called a consignment.—*Story's Agency*, 28.

Commission of the Peace, issues under the Great Seal for the appointment of justices of the peace.

Commission of Railways, appointed by 9 & 10 Vict. c. 105; but this act is repealed by

14 & 15 Vict. c. 64, and the jurisdiction restored to the Board of Trade.

Commission of Rebellion, an attaching process, formerly issuable out of Chancery, to enforce obedience to a process or decree, but abolished by the 6th *Order* of 26th August 1841.

Commission of Sewers, directed to certain persons to see drains and ditches well kept and maintained in the marshy and fenny parts of England for the better conveyance of the water into the sea, and the preservation of the grass upon the land.—13 *Eliz.* c. 9.

Commission to take answer in Chancery, issued when defendant lives abroad, to swear him to such answer. See 15 & 16 *Vict.* c. 86, s. 21.

Commission to take up Men for War, issued to press or force men into the Queen's service.—*Fost. Rep.* 154.

Commission of Treaty with Foreign Princes, leagues and arrangements made between states and kingdoms, by their ambassadors and ministers, for the mutual advantage of the kingdoms in alliance.

Commissioner, a person authorised by letters-patent, or other lawful warrant, to examine any matters, or execute any public office, &c. There are many appointed for different judicial purposes, as the commissioners of bankruptcy, insolvency, &c.; and for other purposes, an almost infinite number.

Commissioners of Northern Lighthouses. 17 & 18 Vict. c. 104, pt. vi. s. 389, *et seq.*

Commissioners to Administer Oaths in Chancery, officers who exercise the powers and discharge the duties formerly appertaining to the office of Master Extraordinary.—16 & 17 *Vict.* c. 78. Solicitors of ten years' standing are eligible for the appointment.

Commissioners for taking Affidavits in the Common Law Courts. Attornies so appointed under 29 Car. II. c. 5. See 11 Geo. IV. and 1 Wm. IV. c. 43, s. 4. The 22 Vict. c. 16, enables the judges to appoint Commissioners within ten miles of London, and in the Isle of Man and Channel Islands.

Commissioners of Turnpike Roads. See 3 *Geo. IV.* c. 126, ss. 61, 62, 65, and 4 *Geo. IV.* c. 95, s. 32.

Commissioners of Woods, Forests, Land Revenues, Works, and Buildings, Board of, established by 2 & 3 Wm. IV. c. 1, and divided into a board of 'Commissioners of her Majesty's Woods, Forests, and Land Revenues,' 15 & 16 Vict. c. 62 (with power to the Crown to appoint in lieu of them a Surveyor-general of her Majesty's Woods, Forests, and Land Revenues), and a board of 'Commissioners of her Majesty's Works and Public Buildings,' which has the management of the royal parks in and near London.—14 & 15 *Vict.* c. 42, s. 21.

Commissoria lex, the term applied to a clause often inserted in conditions of sale, by which a vendor reserved to himself the privilege of rescinding the sale, if the purchaser did not pay his purchase-money at the time agreed on. *Dig.* 18, tit. 3.

Commitment, the sending a person to prison by warrant or order, either for a crime, contempt, or contumacy.—4 *Step. Com.* 419.

Committee, certain persons elected or appointed, to whom any matter or business is referred, either by a legislative body or by any corporation or society.

Committee of a Lunatic or Idiot, the person to whom the care and custody of a lunatic is committed by the Court of Chancery.

Committees in Parliament, first, those of the whole house, which may be to consider of certain resolutions, as to the nature of which considerable latitude prevails; or the house resolves itself into such committee to consider the details of a bill, the principle of which may be discussed at any or all of its other stages; or there may be committees for financial purposes, as those of 'supply' or 'ways and means.' Secondly, there are select committees, chosen by ballot or otherwise, for some specific purpose; the numbers composing such bodies seldom exceed twenty or thirty members; occasionally these are declared committees of secrecy. Thirdly, election committees, which are judicial tribunals, appointed to try the merits of controverted elections; these are always chosen by ballot. Fourthly, committees on private bills; when the whole house is in committee, the Speaker vacates the chair, the mace is placed under the table, and some other member is called on to preside, who sits in the seat of the senior clerk. For committees of supply, and ways and means, and bills introduced by ministers, there is a chairman, who receives a salary.—*Dod's Parl. Comp.*

Committitur piece, an instrument in writing on parchment, which charges a person already in prison, in execution at the suit of the person who arrested him.

Commodatum, one of those obligations which are contracted *re.* He who lends to another a thing for a definite time, to be enjoyed and used under certain conditions, without any pay or reward, is called *commodans*; the person who receives the thing is called *commodatarius*, and the contract is called *commodatum.* It differs from locatio and conductio in this, that the use of the thing is gratuitous.—*Dig.* 13, tit. 6; *Instit.* iii. 14, 2.

Commodum ex injuriâ suâ nemo habere debet. Jenk. Cent. 161.—(No person ought to have advantage from his own wrong.)

Common, a profit which a man has in the land of another; it derives its name from the

community of interest which thence arises between the claimant and the owner of the soil, or between the claimant and other commoners entitled to the same right; all which parties are entitled to bring actions for injuries done to their respective interests, and that both as against strangers and against each other. It is called an incorporeal right, which lies in grant, as if originally commencing in some agreement between lords and tenants, for some valuable consideration which, by lapse of time, being formed into a prescription, continues, although there be no deed or instrument in writing which proves the original contract or agreement. It differs from a rent, principally in freedom of enjoyment on the one hand, and in freedom from obligation on the other; which the law expresses by the quaint antithesis that it lies not in *render* but in *prender*. It is also incidentally distinguished by its fruits being always taken in kind, and being in general not otherwise measured than by limiting the instruments of enjoyment. The 2 & 3 Wm. IV. c. 71, s. 1, enacts, that after thirty years' enjoyment a right of common cannot be defeated by merely showing it commenced within time of memory, and after sixty years' enjoyment the right shall be absolute and indefeasible, unless it appear that the same was taken and enjoyed under some deed or writing.

There are four sorts of common, viz.:—

(1) Common of pasture, limited or unlimited, which is the right of feeding one's beasts in another's land, and this is sub-divided into:—

(*a*) Appendant, which is a privilege belonging to the owners or occupiers of arable land holden of a manor, to put upon its wastes their commonable beasts, viz. horses, kine, or sheep, being such as either plough or manure the soil.

(*b*) Appurtenant, which arises from no connection of tenure, nor from any absolute necessity, but may be annexed to lands in other lordships, or extend to other beasts besides such as are generally commonable, as swine, goats, or geese. This can only be claimed by grant, or by title of prescription, which supposes a now forgotten grant.

(*c*) Because of vicinage or neighbourhood (*pur cause de vicinage*), which takes place where the tenants of two adjoining manors have suffered their cattle to range indiscriminately over both wastes, and it seems that either lord may put an end to it by erecting a fence. In close connection with this, and substantially of the same kind is *common of shack*, or the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest, to feed promiscuously in that field.

(*d*) In gross or at large, which is neither appendant nor appurtenant to land, but is annexed to a man's person, by granting it to him and his heirs by deed, or it may be claimed by prescriptive right, as by a parson of a church, or a corporation sole. As to the enclosure of commons, see 41 *Geo. III.* c. 109, and 6 & 7 *Wm. IV.* c. 115.

(2) Common of piscary, a liberty of fishing in another's water. It is either appendant, appurtenant, or in gross.

(3) Common of turbary, a license to dig turf upon the land of another, or in the lord's waste. It may be either appendant, appurtenant, i. e. appendant or appurtenant to a house, and not to lands, for turfs are to be burnt in the house, or it may be in gross.

(4) Common of estovers or estouviers, or necessaries, a liberty of taking necessary wood, for the use or furniture of a house, or farm, from off another's estate. The Saxon word *bote*, is used by us as synonymous with the French *estovers*. House-bote, then, is a sufficient allowance of wood to repair, or to burn in the house; which latter is sometimes called fire-bote; plough-bote and cart-bote are wood to be employed in making and repairing all instruments of husbandry; and hay-bote or hedge-bote is wood for repairing of hays, hedges, or fences.—2 *Bl. Com.* 32.

Commonable beasts, such as are necessary for the ploughing or manuring of land, as horses, oxen, cows, and sheep.

Common assurances, the legal evidences of the translation of property, whereby every person's estate is assured to him, and all controversies, doubts, and difficulties are either prevented or removed.

The common assurances are of four kinds:—(1) By matter in *pais*, or deed, which is an assurance transacted between two or more private persons *in pais* in the country; that is (according to the old common law) upon the very spot to be transferred. (2) By matter of *record*, or an assurance transacted only in the sovereign's public courts of record, or under the authority of a public board or commission empowered by Act of Parliament to record its proceedings. (3) By special *custom* obtaining in some particular places, and relating only to some particular species of property: which three are such as take effect during the life of the party conveying or assuring. (4) The fourth takes no effect till after his death, and that is by *devise*, contained in his last will and testament.—2 *Bl. Com.* 290.

Common bar, otherwise called a *bar at large* or *blank bar*. If a plaintiff declare in trespass *quare clausum fregit*, for breaking his close in a certain parish, without naming or otherwise describing the close, if the defendant happen to have any freehold land in the same parish, he may be supposed to mistake the close in question for his own, and may therefore plead what is called the common bar, viz. that the

close in which the trespass was committed is his own freehold. And then it would be necessary for the plaintiff to new assign, alleging that he brought his action in respect of a different close from that claimed by the defendant as his freehold. But by rule of court, Reg. Gen. Trin. T. 1853, r. 18, the plaintiff is now bound to designate the close or place in the declaration, by name or abuttals or other description.—*Step. Plead.* 256.

Common Bench [fr. *banc*, Sax., bench], the ancient name of the Court of Common Pleas, because the pleas of controversies between common persons were there tried and determined. C. B. sometimes stands for this court.

Common Council, the assembly of a city or corporate town, empowered to make by-laws for the government of the citizens.

Common Counts. It is to be observed that several causes of action do not always form the subject of several counts in a declaration, but are sometimes thrown, for the sake of brevity and convenience, into one; and in the actions of debt and *assumpsit* the claims of most frequent occurrence, viz. those for goods sold, for work done, for money lent, for money paid, for money received to the use of the plaintiff, for money due on an account stated, are always condensed (when they occur in the same action) under the allegation of a single promise, pursuant to a form promulgated by rule of court.—*Step. Pl.* 304.

Common day of plea in land, an ordinary day in court, as *Octabis Hilarii, Quindena Paschæ*, &c.—51 *Hen. III.* st. 2 & 3.

Common fine, a small sum of money.—*Fleta*, l. 7, c. xlviii.

Common Hall, a court in the city of London at which all the citizens, or such as are free of the city, have a right to attend.

Common informer, a person who prosecutes others for breaches of penal laws, or furnishes evidence on criminal trials.

Common intendment, ordinary meaning or understanding, according to the plain matter; not strained to any extraordinary or foreign sense.

Common Law [*lex communis*, Lat.], the meaning of this term is very ambiguous, the expression being used in various senses according to the objects with which it is contrasted, it being so contradistinguished, sometimes from the statute law, sometimes from the civil and canon law; occasionally from the *lex mercatoria*, and frequently from equity. Many use it to designate simply a law '*common*' to all the realm. It is also sometimes adopted in opposition to criminal law, which is certainly erroneous, since the common law includes all the criminal law, which is not of positive statutory origin. 'Our English lawyers,' observes Hallam (*Midd. Ages*, ii. 465), 'prone to magnify the antiquity, like the other merits, of their system, are apt to carry up the date of the common law, till, like the pedigree of an illustrious family, it closes in the obscurity of ancient time: Sir Matthew Hale not hesitating to say that its origin is as undiscoverable as that of the Nile.' It may upon the whole be received as generally true, that our common law traces its origin to the early usages and customs of the aboriginal Britons, and was necessarily augmented, in different ages, by the admixture of some of the laws and usages of the Romans, the Picts, the Saxons, the Danes, and the Normans, who spread themselves over the country: 'our laws becoming as mixed as our language.'

The common law includes those principles, usages, and rules of action, applicable to the government and security of person and property, which do not rest for their authority upon any express or positive declaration of the will of the legislature.

This at once marks the leading distinction between common law (*lex non scripta*) and statute law (*lex scripta*). The distinction between written and unwritten law is adopted from the Romans, who borrowed it from the Greeks (*Inst.* l. 1, t. 2, ss. 3, 9, 10). In thus distinguishing our own laws into the *scriptæ* or statute, and *non scriptæ* or common, we use the latter in a peculiar and restrained sense; signifying by it nothing more than that the original institution and authority of the law are not set down in writing, as is the case with Acts of Parliament; but that it receives its binding power, as a law, from long and immemorial usage, and universal reception throughout the realm. The authenticity of these customs, rules, and maxims, rests entirely upon reception and usage, as declared by our judges, who are the sworn depositaries and interpreters of our law. This common law is properly distinguished into three kinds. (1) General customs, or those applicable to and governing the whole kingdom, comprehending the law of nations and the law merchant. (2) Particular customs, i. e. affecting the inhabitants of particular districts. (3) The civil and canon laws, properly denominated the ecclesiastical, military, maritime, and academical laws.—1 *Bl. Com.* 35; 1 *Step. Com.* 10; *Hale's Hist. of the Com. Law*, c. iii.; *Encyc. Americana*, vol. iii. p. 394; *Mackintosh's England*, 274; 1 *Kent's Com.* 447, 468.

Common Law Procedure Acts, 1852, 15 & 16 Vict. c. 76; 1854, 17 & 18 Vict. c. 125; and 1860, 23 & 24 Vict. c. 126.

Common Pleas, the Court of, one of the three Superior Courts of common law at Westminster, presided over by a Lord Chief Justice and four *puisné* judges. It was detached from the King's Court (*Aula Regis*), as early as the reign of Richard I. and the 14th clause of

Magna Charta enacted, that it should not follow the King's Court, but be held in some certain place, which is at Westminster. Its jurisdiction is altogether confined to civil matters, having no cognizance in criminal cases, and is concurrent with that of the Queen's Bench and Exchequer in personal actions and ejectment. It has a peculiar or exclusive jurisdiction in the following cases :—

(I.) Formal or plenary.

Real actions.

(II.) Summary.

Under the Railway and Canal Traffic Act, 1854. (17 & 18 Vict. c. 31.)

(III.) Auxiliary.

(1) Registration of judgments, annuities, &c. (1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 3 & 4 Vict. c. 82; 18 Vict. c. 15.)

(2) Under 3 & 4 Wm. IV. c. 74, respecting the fees connected with conveyances executed by virtue of the act, and also with the examination of married women concerning their assurances. See 11 & 12 *Vict.* c. 70; 17 & 18 *Vict.* c. 75; 19 & 20 *Vict.* c. 108, s. 73.

(IV.) Appellate.

Appeals from the Revising Barristers' Courts, under 6 & 7 Vict. c. 18.

Common Prayer [*preces publicæ*, Lat.], the liturgy, or public form of prayer prescribed by the Church of England to be used in all churches and chapels, and which the clergy are enjoined to use under a certain penalty.—1 *Eliz.* c. 2; 13 & 14 *Car. II.* c. 4.

Common scold. See SCOLD.

Common seal, a seal used by a corporation as the symbol of their incorporation.

Common vouchee, the indemnificator general in the Common Pleas, whose services were dispensed with by 3 & 4 Wm. IV. c. 74.

Common weal [*bonum publicum*, Lat.], the common good.

Commonalty [*populus, plebs, communitas*, Lat.], the people of England.—2 *Inst.* 539.

Commonance, the commoners, or tenants and inhabitants, who have the right of common or commoning in open field.—*Cowel.*

Commons, part of the demesne land of a manor (or land the property of which was in the lord), which, being uncultivated, was termed the lord's waste, and served for public roads, and for common of pasture to the lord and his tenants.—2 *Bl. Com.* 90.

Commons' Inclosure Acts. See INCLOSURE ACTS, *post.*

Commons House of Parliament, the lower House, so called, because the Commons of the realm, that is, the knights, citizens, and burgesses returned to Parliament, representing the whole body of the Commons, sit there. See PARLIAMENT.

Commonwealth, the social state of a country, without regarding its form of government; also, a republic, or that form of government in which the administration of public affairs is open to all, with few, if any, exceptions.

Commorancy, or **Commorant,** an abiding, dwelling, continuing, or lying in a certain place.

Commorientes, persons who die by the same accident or upon the same occasion.

Commorth, or **Comorth** [fr. *cymmorth*, Brit.; *subsidium*, Lat.], a contribution which was gathered at marriages, and when young priests said or sung the first masses. Prohibited by 26 Hen. VIII. c. 6.—*Cowel.*

Commote, half a cantred or hundred in Wales, containing fifty villages.—*Stat. Walliæ*, 12 Edw. I. Also a great seignory or lordship, and may include one or divers manors.—*Co. Litt.* 5.

Commune Concilium Regni Angliæ, the common council of the King and people assembled in Parliament.

Communia placita non tenenda in scaccario, an ancient writ directed to the treasurer and barons of the Exchequer, forbidding them to hold pleas between common persons (i. e. not debtors to the king, who alone originally sued and were sued there) in that court, where neither of the parties belonged to the same.—*Reg. Orig.* 187, now superseded by 2 & 3 Wm. IV. c. 39.

Communi custodia, an obsolete writ which anciently lay for the lord, whose tenant, holding by knight's service, died, and left his eldest son under age, against a stranger that entered the land, and obtained the ward of the body.—*Reg. Orig.* 161; 12 *Car. II.* c. 24.

Communis error facit jus.—4 *Inst.* 240.—(Common error makes a right.)

'It has been sometimes said,' observed Lord Ellenborough, in *Isherwood* v. *Oldknow*, 3 *M. & S.* 396, '*communis error facit jus*; but I say, *communis opinio* is evidence of what the law is, not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the groundwork and substratum of practice.'

Lord C. J. Denman, remarked (*O'Connell* v. *Reg.* House of Lords, edited by Leahy), 'when, in the pursuit of truth, we are obliged to investigate the grounds of the law, it is plain, and has often been proved by recent experience, that the mere statement and re-statement of a doctrine—the mere repetition of the *cantilena* of lawyers—cannot make it law, unless it can be traced to some competent authority, and if it be irreconcileable, to some clear legal principle.

Communism. An equality of distribution of the physical means of life and enjoyment as a transition to a still higher standard of justice, that all should work according to their capacity, and receive according to their wants.—1 *Mill's Pol. Eco.* 248.

Communis Rixatrix, a common (female) brawler, a scold.

Community, a society of people living in the same place, under the same laws and regulations, and who have common rights and privileges.

Commutation, conversion; the change of a penalty or punishment from a greater to a less; or giving one thing in satisfaction of another, as commuting tithes into a rent-charge, copyhold services into money-payments, &c.

Commutative Contract, one in which each of the contracting parties gives and receives an equivalent.

Companage, all kinds of food, except bread and drink.—*Spel.*

Companies' Act, 1862. 25 & 26 Vict. c. 89.

Companies' Clauses Consolidation Act, 1845, 8 Vict. c. 16. See WINDING-UP ACTS.

Companion of the Garter, one of the knights of that most noble order.

Company [fr. *con* and *pagus*, Lat., one of the same town, or *con* and *panis*, one that eats of the same mess], a society of persons joined in a common interest, for the purpose of carrying on some commercial or industrious undertaking. *McCull. Comm. Dict.* Companies are governed by statute law.

Compass, the Mariner's, an instrument used by mariners to point out the course of a ship at sea. It consists of a magnetised steel bar, called the needle, attached to the under side of a card, upon which are drawn the points of the compass, and supported by a fine pin, upon which it turns freely in a horizontal plane. A magnetic needle so balanced, subject to a correction for its variation or declination, possesses the property of pointing out the true direction of north and south; and thus the ship's course may at any time be ascertained. The needle and card are enclosed in a cylindrical box covered with glass, which is kept in a horizontal position, notwithstanding the rolling or lurching of the ship, by an ingenious contrivance called gimbles. The declination or variation of the needle is the angle which it makes with the geographical meridian at any given place. It is different at different places, and at the same place varies from time to time. Thus in the year 1581 at London, the declination was 11° 15′ to the east, and in the year 1832 it was 24° 12′ to the west of the meridian.

Compassing [fr. *compasser*, Fr., to encircle; *con*, with, and *passus*, a step, Lat.], imagining or contriving.

Compaternity, spiritual affinity.

Compendia sunt dispendia.—Co. Litt. 305.—(Abbreviations are detriments.)

Compelativum, an adversary or accuser.—*Leg. Athel.*

Compensatio criminum (*compensation of offences*), a term used by the canonists. Where husband and wife had both been guilty of adultery, there was, according to the doctrine of the Canon Law, a *compensatio criminum*, i. e. the guilt of the one was neutralised by that of the other, and both were restored to the position of innocent persons. This doctrine has been held not to be part of the law of England.—*Hope* v. *Hope*, 1 *Swab. & T.* 94; *S. C.* 27; *L. J. P. & M.* 43. But see *Seaver* v. *Seaver*, 2 *Swab. & T.* 665.

Compensation, making things equivalent, satisfying or making amends, a reward for the apprehension of criminals; also a sort of right by set-off or stoppage, whereby a person who has been sued for a debt, demands that the debt may be compensated with what is owing to him by the creditor, which, in that case, is equivalent to payment.

Compertorium, a judicial inquest in the civil law, made by delegates or commissioners to find out and relate the truth of a cause.—*Paroch. Antiq.* 575.

Comperuit ad diem (*he appeared at the day*).

Complainant, one who urges a suit or commences a prosecution against another.

Complice, one who is united with others in an ill design; an associate; a confederate; an accomplice.

Compos mentis (*sound of mind*).

Composition, an amicable arrangement of a law-suit; also an agreement or contract between a parson, patron, or ordinary, and the owner of lands, that such lands shall for the future be discharged from payment of tithes, by reason of some land or other real recompense given to the parson in lieu and satisfaction thereof. No real composition, however, since the 13 Eliz. c. 10, is, in general, good for any longer term than three lives, or twenty-one years, though made by consent of the patron and ordinary. But by 2 & 3 Wm. IV. c. 100, s. 2, every composition for tithes which had then been made or confirmed by the decree of any court of equity in England, in a suit to which the ordinary, patron, and incumbent were parties, and which had not been since set aside or departed from, shall be valid in law. Also an agreement made between an insolvent debtor and his creditors, by which the latter accept a part of their debts in satisfaction of the whole.

Compositio mensurarum, the title of an ancient ordinance for measures not printed.

Compost, several sorts of soil or earth and other matters mixed, in order to make a fine kind of mould for fertilizing lands.

Compound interest, interest upon interest, i. e. when the interest of a sum of money is added to the principal, and then bears interest, which thus becomes a sort of secondary principal.

Compounding, arranging, coming to terms; compounding felony is where the party robbed

not only knows the felon, but also takes his goods again, or other amends, upon an agreement not to prosecute; this offence is denominated *theftbote*, and is punishable by fine and imprisonment. It is no offence to compound a misdemeanor, for the party injured may maintain an action to recover compensation in damages. And compounding offences only cognizable before magistrates on summary jurisdiction is not within 18 Eliz. c. 5. To take any reward for helping a person to stolen goods, without bringing the offender to justice, is felony; and to advertise a reward for the return of things stolen, or printing or publishing such advertisement, incurs a penalty of 50*l.* by 7 & 8 Geo. IV. c. 29, ss. 58, 59. Penal actions by common informers may be compounded by leave of the court; this leave of the court, however, is not necessary in actions by the party grieved. The defendant must have pleaded.

Comprint, a surreptitious printing of another bookseller's copy of a work, to make gain thereby, which was contrary to common law, and is illegal.

Compromise, an adjustment of claims in dispute by mutual concession, without resorting to the law; also a mutual promise of two or more parties at difference to refer the ending of their controversy to arbitrators.

Compromissarii sunt judices.—Jenk. Cent. 128.—(Arbitrators are judges.)

Compromissum, a submission to arbitration. *Can. Law.*

Comptróller, one who observes and examines the accounts of collectors of public money; an officer of the royal household.

Comptrollers of the Hanaper, officers of the Court of Chancery; their offices were abolished by 5 & 6 Vict. c. 103.

Comptroller of the Pipe, an officer of the Exchequer, who writes out summonses twice every year to the sheriffs, to levy the farms and debts of the pipe, and who also keeps a contrarollment of the pipe.—*Scotch Law.*

Compurgator, one who by oath justifies another's innocence.—*Du Cange.*

Computo, a writ to compel a bailiff, receiver, or accountant, to yield up his accounts, founded on the Statute of Westminster II. c. 12. It also lies against guardians.—*Reg. Orig.* 135. Also an order to compute is made, when the master is required to ascertain the debt and interest on a bill of exchange or promissory note, &c., at the same time that he taxes the costs on an interlocutory judgment for want of a plea, in order that final judgment may be signed and execution issued thereon. The rule to compute is abolished by *C. L. P. A.* 1852, s. 92.

Conacre, the payment of wages in land, the rent being worked out in labor at a money valuation.—*Irish Practice.*

Conatus, quid sit, non definitur in jure.—2 *Buls.* 277.—(An endeavour, what it is, is not defined in law.)

Concealers, such as were used to find out concealed lands, i. e. such lands as are privily kept from the king by common persons, having nothing to show for their title or estate therein. 39 *Eliz.* c. 23.

Concealing a birth, a misdemeanor. See 24 & 25 *Vict.* c. 100, s. 57.

Concealing documents of title to lands or testamentary instruments. These offences are felonies, 24 & 25 Vict. c. 96, ss. 28 & 29.

Concealment, i. e. *suppressio veri,* to the injury or prejudice of another. This must amount, in order to be deemed a fraud, to the suppression or non-disclosure of facts, which one under the circumstances is bound, both legally and equitably, to disclose to another, the latter having an undoubted right to be put in possession of such facts.

There is a material distinction between circumstances which are intrinsic, forming the very ingredients of a contract, and circumstances which are extrinsic, forming no part of it, although perhaps offering inducements to enter into it, or affecting the value of the thing contracted for. As to the former, the caution *caveat emptor* should be heeded, for, unless there be some artifice to disguise the subject of the contract, or some warranty as to its quality, a vendee is bound by the sale, although there may exist extrinsic defects in it, known only to the vendor, which greatly affect its worth.

For the leading cases upon this voluminous subject, see Lord St. Leonards' concise and practical treatise on the law of *Vendors and Purchasers of Estates,* Introd. 1–7, 13th edit. 1857.

In treaties for an agreement, a wilful and industrious concealment of a material fact, by one of the parties, in order to keep the other in ignorance, so as to profit by that ignorance, is a fraud, which will nullify the agreement.

Concessi (*I have granted*), a word of frequent use in conveyances. By 8 & 9 Vict. c. 106, s 4, the word 'grant' in a deed executed after 1st October 1845, shall not imply any covenant in law, in respect of any tenements or hereditaments, except so far as it may, by force of any act of Parliament, imply a covenant.

Concessimus (*we have granted*).

Concessio per regem fieri debet de certitudine. 9 *Co.* 46.—(A grant by the King ought to be made from certainty.)

Concessio versus concedentem latam interpretationem habere debeat.—Jenk. Cent. 279.—(A grant ought to have a liberal interpretation against the grantor.)

Concessit solvere (*he granted and agreed to pay*), an action of debt upon a simple contract. It lies by custom in the London and Bristol city courts.—1 *Saund.* 68.

Concessor, a grantor.

Concilium, a court; a time and place of meeting. No motion or rule for a *concilium* is now required.—*R.* 15, *Trin. T.* 1853.—(Common Law.)

Concionatores, common-council men, freemen.

Conclusion, a binding act; also the end of a pleading, conveyance.

Concord, an agreement between parties, who intend to levy a fine of lands one to the other, how and in what manner the lands shall pass; it was the foundation and substance of the fine taken and acknowledged by the party before one of the Judges of the Court of Common Pleas, or before commissioners in the country; also an agreement made between two persons, one of whom has a right of action against the other. It is of two kinds, concord executory, and concord executed.—*Plowd.* 5, 6, 8.

Concordat, a treaty or public act of agreement between the Pope and any prince, relative to some collation of benefices.

Concordiâ parvæ res crescunt et opulentiâ lites.—4 *Inst.* 74.—(Small means increase by concord, and litigations by opulence.)

Concubaria, a fold, pen, or place where cattle lie.—*Cowel.*

Concubeant, lying together.

Concubinage, an exception against a woman suing for dower, on the ground that she was the concubine and not the wife of the man of whose land she seeks to be endowed.—*Brit.* c. 107. As to the right of concubinage allowed to the patriarchs, Jahn (*Bib. Antiq.* c. x., s. 155) thus observes:—'Concubines (some of whom had previously acted in the humble capacity of maid-servants, and others were females who possessed their freedom) were sometimes permanently associated by mutual consent with individuals of the other sex; but, although this connection was in fact a *marriage*, and a *legitimate* one, it was not, nevertheless, confirmed by the ceremonies performed in the case of a wife. The concubine thus associated had a right to claim the privileges of a wife; and it was no longer in the power of her husband to dispose of her by public sale, even if she had previously been his slave.'—*Deut.* xx. 10–14; *Exodus* xxi. 9–12.

Concurrent, acting in conjunction; agreeing in the same act; contributing to the same event; contemporaneous; having a similar jurisdiction. As to concurrent writs of summons, see *C. L. P. A.* 1852, s. 9.

Concussion, the unlawful forcing of another by threats of violence to yield up something of value.

Condiction, a repetition.

Condition, a restraint annexed to a thing, so that by the non-performance, the party to it shall receive prejudice and loss; and by the performance, commodity or advantage; or it is that which is referred to an uncertain chance, which may or may not happen.

There are many kinds of conditions, but the following are the most important.

A *condition in a deed*, or *express*, which is joined by express words to a feoffment, lease, or other grant, as if a person make a lease of lands to another, reserving a rent to be paid at a certain day, upon condition that if the lessee fail in payment at the day, then it shall be lawful for the lessor to enter.

A *condition in law*, or *implied*, as when a person grants another an office, as that of keeper of a park, steward, bailiff, &c., for term of life; here, though there be no condition expressed in the grant, yet the law implies one, viz. that if the grantee do not justly execute all things belonging to the office, it shall be lawful for the grantor to discharge him from his office.

A *condition precedent* is when an estate is granted to one for life, upon condition that if the grantee pay to the grantor a certain sum of money at such a day, then he shall have the fee-simple, in this case the condition precedes the estate in fee, and on performance thereof gains the fee-simple.

A *condition subsequent* is when a man grants to another his estate, &c., in fee, upon condition that the grantee shall pay to him at such a day a certain sum, or that his estate shall cease: here the condition is subsequent, and following the estate, and upon the performance thereof, continues and preserves the same; so that a condition precedent gets and gains the thing or estate made upon condition, by the performance of it, whereas a condition subsequent keeps and continues the estate by the performance of the condition.—*Termes de la Ley.*

Condition inherent is that which descends to the heir, with the land granted, &c.

Condition collateral is that which is annexed to any collateral act.

Conditions are likewise *affirmative*, which consist of doing an act; *negative*, which consist of not doing an act; *restrictive*, for not doing a thing; *compulsory*, as that the lessee shall pay rent, &c.; *single*, to do one thing only; *copulative*, to do divers things; and *disjunctive*, where one thing of several is required to be done.—*Shep. Touch.* 117; 2 *Com. Dig.* tit. '*Condition;*' *Bac. Ab.* tit. '*Condition.*'

Conditio beneficialis, quæ statum construit, benignè secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, strictè secundum verborum proprietatem accipienda.—8 *Co.* 90.—(A beneficial condition, which creates an estate, ought to be construed

favourably, according to the intention of the words; but a condition which destroys an estate is odious, and ought to be construed strictly according to the letter of the words.)

Conditio dicitur, cum quid in casum incertum, qui potest tendere ad esse aut non esse, confertur. Co. Litt. 201.—(It is called a condition, when something is given on an uncertain event, which may or may not come into existence.)

Conditio illicita habetur pro non adjecta.—(An unlawful condition is deemed as not annexed.)

Conditio præcedens adimpleri debet priusquam sequatur effectus.—Co. Litt. 201.—(A condition precedent must be fulfilled before the effect can follow.)

Conditional fee, an estate restrained to some particular heirs, exclusive of others, as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral; or to the heirs male of his body, in exclusion of heirs female whether lineal or collateral. It was called a conditional fee, by reason of the condition expressed or implied in the donation of it, that if the donee died without such particular heirs, the land should revert to the donor. But on the passing of the Statute of Westminster II. commonly called the Statute *de donis*, the Judges determined that the donee had no longer a conditional fee-simple, which became absolute the instant issue was born; but they divided the estate into two parts, leaving in the donee a new kind of particular estate, which they denominated a fee-tail, and vesting in the donor the ultimate fee-simple of the land expectant on the failure of issue, which expectant estate is what we now call a reversion. And hence it is that tenant in fee-tail is by virtue of the Statute *de donis*.—2 *Bl. Com.* 112.

Conditional legacy, a bequest whose existence depends upon the happening or not happening of some uncertain event, by which it is either to take place or to be defeated.—1 *Rop. Leg.* 645, 3rd edit.

Conditional limitation partakes of the nature both of a condition and a remainder. At the common law, whenever either the whole fee or a particular estate, as an estate for life or in tail was first limited, no condition or other quality could be annexed to this prior estate, which would have the double effect of defeating the estate, and passing the lands to a stranger, for as a remainder it was void, being an abridgment or defeasance of the estate first granted, and as a condition it was void, as no one but the donor or his heirs could take advantage of a condition broken; and the entry of the donor or his heirs unavoidably defeated the livery upon which the remainder depended. On these principles it was impossible by the old law to limit by deed, if not by will, an estate to a stranger upon any event which might abridge or determine an estate previously limited. But the expediency of such limitations, assisted by the revolution effected by the Statute of Uses, at length established them, in spite of the maxim of law that a stranger cannot take advantage of a condition. These limitations are now become frequent, and their mixed nature has given them the name of conditional limitations; they so far partake of the nature of conditions, as they abridge or defeat the estates previously limited, and they are so far limitations, as upon the contingency taking effect, the estate passes to a stranger. Such is the limitation to A. for life, in tail or in fee, provided that when C. returns from Rome, it shall henceforth remain to the use of B. in fee.—2 *Bl. Com.* 156.

Conditions of sale, the terms set forth in writing, upon which an estate or interest is to be sold by public auction. Conditions of sale will be construed, so as to collect the meaning of the parties, without encumbering them with the technical meaning of words; for as Lord Hardwicke declared, 'there is no magic in words.' But the conditions should be accurate, for they cannot be contradicted by parol at the sale; 'the babble of the auction room,' as Lord Eldon termed it, being inadmissible as evidence, and this, although the purchaser, by the written agreement, bind himself to agree by the conditions and declarations made at the sale. If the conditions require alteration, they should be so altered in writing before the sale.—*St. Leon. V. & P.* 11; *Dart's Comp.* c. iv.

Condonation, a pardoning or remission. In cases of adultery it is forgiveness, legally releasing the injury. *Beeby* v. *Beeby*, 1 *Hagg. Supp.* 793. It has been recently explained to be a blotting out of the offence imputed, so as to restore the offending party to the same position which he or she formerly held before the offence was committed. *Keats* v. *Keats*, 1 *Swab. & T.* 334; *S. C.* 28; *L. J. P. & M.* 57. See *Campbell* v. *Campbell*, *Deane's Eccl. R.* 288.

Conduct-money, money paid to a witness for his travelling expenses.

Conductio, a hiring.

Coney, a beast of warren.

Confederacy, a combination of two or more persons to do some damage or injury to another, or to commit some unlawful act.

Confederation, a league or compact for mutual support, particularly of princes, nations, or states.

Conference, a species of negotiation between the two Houses of Parliament, conducted by managers appointed on both sides, for the purpose of producing concurrence, in cases where mutual consent is necessary; or for the purpose of reconciling differences which may have arisen. If the conference be upon the

subject of a bill depending between the two Houses, it must be demanded by that House which, at the time of asking the conference, is in possession of the bill. It is the sole privilege of the Lords to name the time and place for holding a conference, no matter by which House it may have been demanded. Reasons in writing for the course resolved to be taken, are usually furnished to the managers on both sides, in which case it is simply called 'a conference.' Should this proceeding fail, a 'free conference' must be held, which gives an opportunity for the managers individually, and unrestrained by any precise form of argument, to urge such reasons as in their judgment may best tend to influence the House to which they are addressed. A free conference is usually demanded after two conferences have been holden without effect. After one free conference, none other but free conferences can be held touching the same subject. In May 1851, it was agreed, both by Lords and Commons, that reasons respecting differences of opinion on any bill or other proceeding might be communicated to either House by message from the other, and that no conference need take place, unless specially requested. At all conferences the managers, on the part of the Upper House, are seated, and wear their hats; those for the Commons stand uncovered. The Speaker quits the chair of the House during the absence of managers attending a conference.—*Dod's Parl. Comp.*

Confession and avoidance, *plea of*, a plea in bar, admitting the facts alleged in the declaration to be true, but showing some new facts, tending to obviate their legal effect. These pleas are distinguished (in reference to their subject-matter) as pleas in justification or excuse, or as pleas in discharge. The former class of pleas show some justification of or excuse for the matter charged in the declaration: those of the latter some discharge or release. The effect of the former, therefore, is to show that the plaintiff never had any right of action, because the act charged was lawful, the plea of *son assault demesne* is an example; the effect of the latter is to show, that though he had once a right of action, it is discharged or released by some matter subsequent, as a release, &c. This division applies to pleas only, for replications, or other subsequent pleadings in confession and avoidance, are not subject to any such classification.—*Step. Plead.* 229; 1 *Chit. Arch. Prac. by Pren.* 234.

Confession by culprit, the acknowledgment by a criminal of the offence charged against him when called upon to plead to the indictment. The criminal may confess the offence openly in court, and submit himself to the judgment of the law, so that the confession be of his own accord, without any threats or extremity used; and sometimes he confesses the indictment to be true, and then becomes an approver or accuser of others, who are guilty of the same offence for which he is indicted, or of other offences with him. There was a third sort of confession, formerly made by an offender in felony, not in court before the Judge, but before the coroner in a church or other privileged place, upon which the offender, by the ancient law of the land, was to abjure the land.—3 *Inst.* 129.

Confession, *judgment by.* See COGNOVIT.

Confessio, facta in judicio, omni probatione major est.—Jenk. Cent. 102.—(A confession made in judgment is greater than all proof.)

Confesso, *bill taken pro*, an order which the Court of Chancery makes when the defendant does not file an answer that the plaintiff may take such a decree as the case made by his bill warrants. For the practice as to taking bills *pro confesso*, see *Consol. Ord.* 1860, *Ord.* xxii.; *Smi. Ch. Pr.* 266.

Confessus in judicio pro judicato habetur, et quodammodo suâ sententiâ damnatur.—11. *Co.* 30.—(A person confessing his guilt when arraigned is deemed to have been found guilty, and is, as it were, condemned by his own sentence.)

Confidential communication, a privileged communication, *which see.*

Confirmatio Chartarum, the 25 Edw. I A.D. 1297. This statute being in the form of a charter, was sealed with the King's Great Seal, at Ghent in Flanders, on Nov. 5th, as appears by a memorandum upon the roll. It gave that security to personal property which Magna Charta gave to personal liberty.—*Barr on Statutes*, 173.

Confirmation, a species of conveyance by which a voidable estate is made valid and unavoidable, or by which a particular estate is increased. The operative words are, 'ratified and confirmed;' though, for safety, it is usual and prudent to insert the words, 'given and granted.' Estates which are void cannot be confirmed, but only those which are voidable.—*Watkins's Conv.* 321. A confirmation does not strengthen a void estate; for a confirmation may make a voidable or defeasible estate good, but it cannot work upon an estate that is void at law.—*Co. Litt.* 295 b.

Confirmation and Probate Act, 21 & 22 Vict. c. 56, amended by 22 Vict. c. 30.

Confirmare est id firmum facere quod prius infirmum fuit.—Co. Litt. 295.—(To confirm is to make firm that which was before infirm.)

Confirmare nemo potest priusquam jus ei acciderit.—10 *Co.* 48.—(No person can confirm before that the right shall fall to him.)

Confirmat usum qui tollit abusum.—Moor, 764.—(He confirms a use who removes an abuse.)

Confirmatio est nulla ubi donum præcedens est invalidum.—Moor, 764.—(There is no confirmation where the preceding gift is invalid.)

Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit.—Co. Litt. 295 b.—(Confirmation supplies all defects, though that which has been done was not valid at the beginning.)

Confiscation [fr. *confiscor*, from *fiscus*, Lat., which signifies, metonymically, the emperor's treasure], the condemnation and adjudication of goods or effects to the public treasury, as the bodies and effects of criminals, traitors, &c.

Conflict, opposition; also the difference between two judicial jurisdictions when they both claim the right to decide a cause, or where they both declare their incompetency. The first is called a *positive*, and the latter a *negative* conflict.

Conformity, *bill of.* When an executor or administrator finds the affairs of his testator or intestate so much involved that he cannot safely administer the estate, except under the direction of the Court of Chancery, he files this bill against the creditors generally, for the purpose of having all their claims adjusted, and a final decree settling the order and payment of the assets. This bill is so called, probably because the executor or administrator in such case undertakes to conform to the decree, or the creditors are compelled by the decree to conform thereto.—1 *Story's Eq. Jurisp.* 440.

Confrairie, a fraternity, brotherhood, or society.

Confreres, brethren in a religious house, fellows of one and the same society.

Confusion, a mode of extinguishing a debt, in the French law, by the concurrence in the same person of two qualities which mutually destroy one another. This may occur in several ways, as where the creditor becomes the heir of the debtor, or the debtor the heir of the creditor, or either accedes to the title of the other by any other mode of transfer.—*Pothier on Oblig.* by *Evans*, n. 606–609.

Also unnatural intimacy with beasts, or of a man with his daughter-in-law.—*Lev.* xviii. 25; xx. 12.

Confusion of boundaries, a jurisdiction of equity, concurrent with the common law. The civil law was far more provident than ours upon the subject of boundaries. It considered that there was a tacit agreement or duty between adjacent proprietors to keep up and preserve the boundaries between their respective estates: and it enabled all persons having an interest to bring a suit to have the boundaries between them settled; and this, whether they were tenants for years, usufructaries, mortgagees, or proprietors. The action was called *actio finium regundorum*; and if the possession were also in dispute, that might be ascertained and fixed in the same suit, and indeed was incident to it. Equity adopts this general rule, not to entertain jurisdiction in cases of confusion of boundaries, upon the ground that the boundaries are in controversy; but to require that there should be some equity superinduced by the act of the parties; such as some particular circumstances of fraud, or some confusion, where one person has ploughed too near another, or some gross negligence, omission, or misconduct on the part of persons whose special duty it is to preserve or perpetuate the boundaries. Where there is an ordinary legal remedy there is certainly no ground for the interference of equity, unless some peculiar equity supervenes which a court of law cannot take notice of or protect.—1 *Story's Eq. Jurisp.* 495.

Confusion, *property by.* Where goods of two persons are so intermixed, that the several portions can no longer be distinguished, if the intermixture be by consent, it is supposed that the proprietors have an interest in common, in proportion to their respective shares; but if one wilfully intermix his money, corn, or hay, with that of another man, without his approbation or knowledge, or cast gold in like manner into another's melting-pot or crucible, our law allows no remedy in such a case, but gives the entire property without any account to him whose original dominion or property is invaded, and endeavoured to be rendered uncertain without his consent.—2 *Bl. Com.* 405. See also *Vin. Abr. Justification* (*B*) *and Instit. of Justin.* l. ii. tit. 1, ss. 27-34.

The general rule, that, as against an agent, who has mixed the property of his employer with his own, so as to render it undistinguishable, the whole may, both at law and in equity, be taken to be the property of the employer, is well settled; but the same rule does not, in all cases, hold against the creditors of such agent; for instance, if an agent pay money belonging to his employer, into his own banking-house, and to his general account, this money may not be distinguishable; but should the agent become bankrupt, the whole sum which appears to be due to him from the bankers will go to his assignees, and his employer can only come in as a general creditor under the bankruptcy. So, if the bankers had an account with the agent by way of set-off, that set-off would equally affect the money of his employer paid into the agent's account, as it would the agent's own money, supposing the bankers to have no notice, displacing their equity.—*Ex parte Townsend*, 15 *Ves.* 470; *Massey* v. *Banner*, 1 *Jac. & Walk.* 248.

Congeable [fr. *congé*, Fr., leave], lawful, done with permission.

Congé d'Accorder, leave to accord or agree. 8 *Edw. I.*

Congé d'Eslire, or d'Elire (*leave to choose*). The Queen's license or permission sent to a dean and chapter to proceed to the election of a bishop, when a see becomes vacant.

Congress, an assembly of envoys, commissioners, deputies, &c. from different courts, who meet to concert measures for their common good, or to adjust their mutual concerns.

Congress of the United States of America, the assembly of senators and representatives of the several states of North America, forming the legislature of the United States. It consists of a Senate and a House of Representatives, each constituting a distinct and independent branch. The House of Representatives is chosen every second year by the people of the several states, and electors are required to have the same qualifications as are requisite for choosing the members of the most numerous branch of the state-legislature of the state in which they vote. Each state, however small its population, is entitled to at least one representative; but upon the whole population there cannot be more than one for every 30,000 persons. No person can be a representative who shall not have attained the age of twenty-five years, and have been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen. No other qualifications are required. The senate is composed of two senators from each state, who are chosen by the legislature of the state for six years. They are divided into three classes, so that one-third thereof is or may be changed by a new election every second year. No person can be a senator who is not thirty years of age and has not been nine years a citizen of the United States, and is not, when elected, an inhabitant of the state for which he is chosen.

The time, place, and manner of holding elections for senators and representatives are appointed by the state legislatures. Each house determines the rules of its own proceedings, and has power to punish its members for disorderly conduct. Neither house, during the session of Congress, can, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. The senators and representatives are entitled to receive a compensation provided by law for their services, from the treasury. They are also privileged from arrest for civil causes during the session.

Conjoints, persons married to each other.

Conjugal rights, the right which husband and wife have to each other's society, comfort, and affection. The suit for restitution of conjugal rights is a matrimonial suit, cognizable in the Divorce Court, which is brought whenever either the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason; in which case the court will compel them to come together again, if either party be weak enough to desire it, contrary to the inclination of the other. 3 *Bl.* 2 *Com.* 94. See 20 & 21 *Vict.* c. 85, s. 17.

Conjuratio [fr. *conjuro*, Lat.], an oath.

Conjuration, a plot or compact made by persons combining by oath to do any public harm; but was more especially used for the having (as was supposed) personal conference with the devil or some evil spirit to know any secret or effect any purpose. The difference between *conjuration* and *witchcraft* was said to be, that a person using the one endeavoured, by prayers and invocations, to compel the devil to say or do what he commanded him; the other dealt rather by friendly and voluntary conference or agreement with the devil or familiar, to have his desires served, in lieu of blood or other gift offered. Both differed from *enchantment* or *sorcery*, because the latter were supposed to be personal conferences with the devil, and the former were but medicines and ceremonial foam of words, usually called charms, without apparition.—*Cowel.*

Conquest [fr. *conquerir*, Fr., to acquire; *conquiro*, Lat., to seek for], the feodal term for purchase.

Consanguineo. See COSENAGE.

Consanguineus est quasi eodem sanguine natus. Co. Litt. 157.—(Consanguinity is, as it were, sprung from the same blood.)

Consanguineus frater, a brother by the father's side.

Consanguinity, or kindred, the connection or relation of persons descended from the same stock or common ancestor. It is either lineal or collateral. Lineal is that which subsists between persons, of whom one is descended in a direct line from the other as between son, father, grandfather, great grandfather, and so upwards in the direct ascending line; or between son, grandson, great grandson, and so downwards in the direct descending line. Collateral, agree with the lineal in this, that they descend from the same stock or ancestor, but differing in this, that they do not descend one from the other.—2 *Bl. Com.* 202.

Conscience, *courts of*, tribunals for the recovery of small debts, constituted by acts of Parliament in the city of London, and other towns. See 5 & 6 *Wm. IV.* c. 94. The ordinary constitution of these courts, which are generally for causes of debt to the amount of 40*s.* only, but often to the amount of 5*l.*, is to examine in a summary way, and without jury, by the oath of the parties, or other witnesses, and make such order therein as is consonant to equity and good conscience.—7 & 8 *Vict.* c. 96. The County Courts have generally superseded them.

Conscientia dicitur a con *et* scio, *quasi scire cum Deo.*—1 *Co.* 100.—(Conscience is called from *con* and *scio*, to know, as it were, with God.)

Consecratio est periodus electionis; electio est præambula consecrationis.—2 *Rol. R.* 102.—(Consecration is the termination of election; election is the preamble of consecration.)

Consensual contract, marriage.

Consensus est voluntas multorum, ad quos res pertinet, simul juncta.—*Dav.* 48.—(Consent is the conjoint will of many persons, to whom the thing belongs.)

Consensus facit matrimonium.—(Consent constitutes marriage.)

Consent is absolutely necessary to matrimony, and therefore persons *non compotes mentis*, cannot enter into this, or indeed any other contract.

Consensus, non concubitus, facit nuptias vel matrimonium, et consentire non possunt ante annos nubiles.—6 *Co.* 22.—(Consent, and not cohabitation, constitutes nuptials or marriage, and persons cannot consent before marriageable years.)

Consensus tollit errorem.—*Co. Litt.* 126.—(Consent removes mistake.)

Consent, an act of reason accompanied with deliberation, the mind weighing, as in a balance, the good or evil on either side. Consent supposes three things: a physical power, a mental power, and a free and serious use of them. Hence it is that if consent be obtained by meditated imposition, circumvention, surprise, or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind. For although the law will not generally examine into the wisdom or prudence of men in disposing of their property; or in binding themselves by contracts, or by other acts; yet it will not suffer them to be entrapped by the fraudulent contrivances, cunning, or deceitful management of those who purposely mislead them.—1 *Story's Eq. Jurisp.* 186.

Consentientes et agentes pari pœnâ plectentur. 5 *Co.* 80.)—Those consenting and those perpetrating are embraced in the same punishment.)

Consent-rule, a superseded instrument in writing, which a defendant in an action of ejectment entered into, before the fiction was abolished, at the time he entered an appearance, in which he specified for what purposes he intended to defend, and also undertook to confess upon the trial, not only the fictitious lease, entry, and ouster, but that he (if he defended as tenant; or if he defended as landlord, then that his tenant) was at the time of the service of the declaration in the possession of such premises, and that if upon the trial the defendant should not confess such possession, as well as lease, entry, and ouster, whereby the plaintiff should not be able further to prosecute his suit against the defendant, then no costs should be allowed for not further prosecuting the same, but the defendant should pay the taxed costs to the plaintiff. The consent-rule was signed by the defendant's attorney, and marked by the master at the time of entering appearance, a copy of it was then delivered with the plea, to the plaintiff's attorney, who signed it, and drew up the rule at the Master's office, a copy of which was annexed to the issue, and served upon defendant's attorney.

Consequentiæ non est consequentia.—*Bac.*—(The consequence of a consequence exists not.)

Consequential damages, those losses or injuries which follow an act, but are not direct and immediate upon it.

Conservancy courts, held by the Lord Mayor of London for the preservation of the fishery on the river Thames.

Conservative, the name of a political party, first assumed in 1830.—xliii. *Quart. Rev.* 276.

Conservator, a protector, preserver, or maintainer; or a standing arbitrator chosen and appointed as a guarantee, to compose and adjust differences that should arise between two parties, &c.

Conservators of the Peace, officers appointed by the common law for the maintenance of the public peace. Of these, some had and still have this power annexed to other offices which they hold, others had it merely by itself, and were thence called *custodes*, or *conservatores pacis*. Those that were so, *virtute officii*, still continue; but the latter sort are superseded by the modern justices.

The Queen's Majesty is, by her office and dignity royal, the principal conservator of the peace within all her dominions, and may give authority to any other to see the peace kept and to punish such as break it; hence it is called the Queen's peace. The Lord Chancellor, or keeper, the Lord Treasurer, the Lord High Steward of England, the Lord Mareschal, the Lord High Constable of England (when any such officers are in being), and all the justices of the Court of Queen's Bench (by virtue of their offices), and the Master of the Rolls (by prescription), are general conservators of the peace throughout the whole kingdom, and may commit all breakers of it, or bind them in recognizances to keep it; the other judges are only so in their own courts The coroner is also a conservator of the peace within his own county, as is also the sheriff; so are the constables, tything men, and the like.—2 *Step. Com.* 648.

Conservators of truce and safe conducts, officers appointed at ports to hear and determine questions relating to the breaking of truce and safe conducts, and the abetting and receiving truce breakers, which offence was, in affirmance

and support of the law of nations, declared to be treason. It was enacted by 31 Hen. VI. c. 4, that if any of the King's subjects attempt or offend upon the sea, or in any port within the King's obeisance, against any stranger in amity, league, or truce, or under safe conduct, and especially by attacking his person, or spoiling him, or robbing him of his goods, the Lord Chancellor, with any of the justices of either the King's Bench or Common Pleas, should cause full restitution and amends to be made to the party injured. This statute is in force.

Consideratio curiæ, the judgment of the court.

Consideration, the price, motive, or matter of inducement of a contract, which must be lawful in itself.

The consideration is the very life of a simple contract or parol agreement, while a specialty does not require a consideration to make it obligatory at law, the law always presuming a sufficient consideration, which the parties, except in special cases, are estopped from denying. The law, then, not only requires a consideration in the case of a simple contract (under which term is included all contracts not under seal, whether oral or written), but that it should be valuable, i. e. a legal consideration emanating from some injury or inconvenience to the one party, or from some benefit to the other party. A good consideration, i. e. an equitable consideration, founded upon mere love, affection, or gratitude, will not support a contract.

Considerations divide themselves into (1) valuable; and (2) insufficient. *Valuable* may be thus classed:—

(α) *Benefit and injury.* The principal requisite, and that which is the essence of every consideration, is, that it should create some benefit to the party promising, or some trouble, prejudice, or inconvenience to the party to whom the promise is made. It is not necessary that the consideration and promise should be equivalent in actual value, for it would be impossible precisely to determine whether in a given case the consideration were adequate, without a psychological investigation into the motive of the parties. If the consideration, however, be so insufficient as to 'shock the conscience,' equity would quash the contract, upon the ground that such great inequality betokens fraud or undue advantage on the one side, or mental incompetency on the other.

(β) *Forbearance*, for a certain or reasonable time to institute a suit upon a well-founded claim, or even upon one which is doubtful, but not upon one utterly unfounded, is sufficient, since it is a benefit to the one party, and a prejudice to the other. If the time of forbearance be stated, it must be a reasonable time, and an agreement to forbear *per breve aut paululum tempus*, or *pro aliquo tempore* will not be sufficient, inasmuch as the party promising may, in such case, sue immediately after the promise is made.

(γ) *Assignment of a chose in action*, unless it be void on account of maintenance. Assignments of choses in action are void at common law, unless the original debtor expressly promise to pay the assignee, or unless the assignment be made with his assent, in which case the law implies a promise from him to the assignee, the consideration of which is the discharge of liability to the assignor, in respect of the claim. See Choses in Action.

(δ) *Mutual promises* are concurrent considerations, and will support each other if they be made simultaneously, unless one or the other be void.

(ε) *Considerations moving from third persons.* It is a general rule that in cases of simple contract, if one party make a promise to another for the benefit of a third, although no consideration move from such third person, it is binding, and either the party to whom it is made, or the party for whose benefit it is made, may maintain an action upon it.

Insufficient considerations may be divided into:—

(α) *Gratuitous*, which are void for want of consideration; for, however obligatory they may be in morals or in honor, inasmuch as they are not founded upon an injury or deprivation to the promisee, or a benefit to the promisor, they are not regarded by the law as legal and valuable considerations.

(β) *Illegal and impossible consideration.* A contract may be illegal, because it contravenes the principles of the common law, or the special requisitions of a statute. The former illegality exists whenever the consideration is founded upon a transaction which violates public policy or morality:—as a contract to commit, conceal, or compound a crime; a contract for illicit cohabitation; or a contract in fraud of the rights and interests of third parties. The illegality created by statute exists when the act is either expressly prohibited, or when the prohibition is implied from the nature and object of the statute. A contract founded upon an impossible contract is void; for the law will not compel a man to attempt to do that which is not within the limits of human capacity. *Lex neminem cogit ad vana aut impossibilia.*

(γ) *Moral consideration* is not alone a sufficient legal consideration to support either an express or implied promise; for the law, although it will not suffer any immorality, cannot undertake to enforce every promise which a man of strict honor and integrity would feel himself bound to fulfil. The performance, therefore, of many purely moral obligations must be left to the good faith of the individual; and it is neither within the province nor the

policy of the law to apply a metaphysical standard of morality to the conduct of men in their common relations of life.

(δ) *Executed consideration.* A consideration, in regard to the time when it operates, is either —1st, *executed*, i. e. already performed before the making of the defendant's promise, which must be at the request of the promisor, otherwise it will not support a promise; 2nd, *executory*, or something to be done after the promise; 3rd, *concurrent*, as in the case of mutual promises; and 4th, *continuing*, i. e. executed in part only. The three last classes are sufficient to support a contract not void for other reasons. *Story on Contracts*, 71.

Since deliberation necessarily accompanies the making and completion of deeds, they are adjudged to bind the party, without examining upon what consideration they were made; for in the deed is a sufficient consideration, viz. the will of the party who made it. A deed therefore must be founded upon good and sufficient consideration, not upon fraud or collusion, either to deceive purchasers *bonâ fide*, or just and lawful creditors. The consideration may be either good or valuable; *good*, is such as that of blood, or natural love and affection; *valuable*, is such as marriage, money, and the like.—2 *Bl. Com.* 296. See also *Smith on Contracts.*

Consideratum est per curiam (*it is considered by the court*).—3 *Step. Com.* 665.

Consignation [fr. *consigno*, Lat., to write down], the deposit of a thing owed with a third person, under the authority of a court.—*Civil Law.*

Consignment, the delivery of goods to another for sale or purchase. He who consigns the goods is called the *consignor*, and the person to whom they are sent is called the *consignee.*

Consilia multorum quæruntur in magnis.—4 *Inst.* 1.—(The counsels of many are required in great things.)

Consistory Court, the *prætorium* or tribunal of every diocesan bishop, held in their several cathedrals for the trial of all ecclesiastical causes arising within their jurisdiction. The bishop's chancellor, or his commissary, is the judge, and from his sentence an appeal lies, by virtue of 24 Hen. VIII. c. 12, to the archbishop of each province respectively.

The ecclesiastical jurisdiction of the Consistory Court of Edinburgh is restricted, and a large portion of its business is transferred to the courts of the sheriffs.—11 *Geo. IV.* and 1 *Wm. IV.* c. 69.

Consolato del mare, il, a code of sea-laws compiled by order of the ancient kings of Arragon.

Consolidated Fund of the United Kingdom, a repository of public money, which now comprises the produce of customs, excise, stamps, and several other taxes, and some small receipts from the royal hereditary revenue, surrendered to the public use; and constitutes almost the whole of the public income of the United Kingdom of Great Britain and Ireland. This fund is pledged for the payment of the whole of the interest of the national debt of Great Britain and Ireland; and besides this is liable to several other specific charges imposed upon it at various periods by act of Parliament, such as the civil list, and the salaries of the judges and ambassadors, and other high official persons; after payment of which, the surplus is to be indiscriminately applied to the service of the United Kingdom, under the direction of Parliament.—2 *Step. Com.* 587. See 56 *Geo. III.* c. 98; 14 & 15 *Vict.* c. 3, s. 101; and 19 & 20 *Vict.* c. 59.

Consolidating Actions. If two or more actions be brought by the same plaintiff, at the same time, against the same defendant, for causes of action which might have been joined in the same action, the court or a judge at chambers, if they deem the proceedings oppressive, will, in general, compel the plaintiff, by rule or order, to join (i.e. consolidate) them, and to pay the costs of the application, which may be made at any time after appearance, though before declaration. The rule will seldom be granted in penal actions. If the plaintiff is defeated in one of the actions he may try another, consolidated in the rule, without applying to the court. Where several actions are brought on the same policy of insurance, the court, or a Judge, upon the application of the defendants, will grant a rule or order, to stay the proceedings in all the actions but one, the defendants undertaking to be bound by the verdict in such action, and to pay the amount of their several subscriptions and costs, if the plaintiff should recover, together with such other terms as the court or a Judge may think proper to impose upon them.—2 *Chit. Arch. Prac. by Pren.* 1297; *Arnould on Marine Insurance.*

Consolidation, in the civil law, the uniting the possession, occupancy, or profits, &c., of land with the property, and *vice versâ*; in the ecclesiastical law, the uniting two benefices by assent of the ordinary, patron, and incumbent.

Consols, funds formed by the consolidation (of which word it is an abbreviation) of different annuities, which had been severally formed into a capital.

Consortio malorum me quoque malum facit.—*Moor*, 817.—(The company of wicked men makes me also wicked.)

Conspiracy, a combination or agreement between several persons to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large; though this is subject to exceptions in the case where the offence is a felonious one

and actually accomplished, the offence of conspiracy, which is a misdemeanour only, being then merged in the felony. Conspiracy has been frequently defined to be, an agreement for an unlawful purpose, or to effect a lawful purpose by unlawful means; but this antithetical definition was questioned in *Reg.* v. *Peck*, 9 *A. & E.* 686.

The law has given a very adequate remedy in damages, for preferring malicious indictments or prosecutions against a person, either by an action of conspiracy, which cannot be brought but against two at the least, and is confined to the particular case where the plaintiff has been acquitted by verdict, upon an accusation of treason or felony, or, which is the only way now known in practice, by an action on the case for a false and malicious prosecution, which may be brought either against a single person or against several, with an allegation that they conspired together for the purpose.—2 *Selw. N. P.* 1071.

Conspiratione, the writ that lay against conspirators.—*Reg. Orig.* 134; *F. N. B.* 114.

Conspirators, those who bind themselves by oath, covenant, or other alliance, that each of them shall aid the other falsely and maliciously to indict persons; or falsely to move and maintain pleas, &c.—33 *Edw. I.* st. 2. Besides these, there are conspirators in treasonable purposes: as for plotting against the government.

Constable [fr. *comes stabuli*, Lat., in the eastern empire a superintendent of the imperial stables, or the emperor's master of the horse, who at length obtained the command of the army], an officer to whom our law commits the duty of maintaining the peace, and bringing to justice those by whom it is infringed.

Constables are of two sorts, high and petty. The former, called also chief constables, were first ordained by the Statute of Winchester, 13 Edw. I. st. 2, c. 6, are appointed at the courts-leet of the franchise or hundred over which they preside, or in default of that, then by the justices at their special sessions, as directed by 7 & 8 Vict. c. 33, s. 8. The petty constables are inferior officers in every town and parish; subordinate to the high constable of the hundred, and first instituted about the reign of Edward III. These petty constables have two offices united in them; the one ancient, the other modern. Their ancient office is that of head-borough, tithing-man and borsholder; their more modern office is that of constable merely. The proper duty of the high constable seems to be to keep the Queen's peace within the hundred, as the petty constable does within the parish or township. He is also, by various statutes, charged with other duties; such as that of serving precepts and warrants on certain occasions, and the returning of lists of jurors. An action cannot be brought against a constable for what he does as constable, after the expiration of six months from the commission of the act, and without making a written demand of a perusal and copy of his warrant, six days at least before the action is commenced.—24 *Geo. II.* c. 24, s. 6.

Petty constables, head-boroughs, tithing-men, and borsholders, were formerly all chosen by the jury at the court-leet; or if no court-leet were held, then by two justices of the peace. But it is now provided by 5 & 6 Vict. c. 109, intituled 'An Act for the Appointment and Payment of Parish Constables,' that for the future no petty constable, head-borough, borsholder, tithing-man, or peace officer of the like description, shall be appointed for any parish, township, or vill, within the limits of that act at any court-leet or tourn, except for the performance of duties unconnected with the preservation of the peace and with the execution of that act. This act does not apply to the city of London, or the metropolitan police district, or any borough within the Municipal Act, or any parish which levies rates for the payment of constables under 3 & 4 Wm. IV. c. 90, or under any local act, or to the county of Chester.—10 *Geo. IV.* c. 44, and 2 & 3 Vict. c. 47. *Special* constables are appointed on particular occasions, 41 Geo. III. c. 78; 1 & 2 Wm. IV. c. 41; 5 & 6 Wm. IV. c. 43; and 1 & 2 Vict. c. 80. *County* and *district* constables were established by 2 & 3 Vict. c. 93; 3 & 4 Vict. c. 88; and 10 & 11 Vict. c. 89.—*Burns' Justice*, tit. '*Constable.*' See 7 & 8 *Vict.* c. 52; 13 & 14 *Vict.* c. 20; and 19 & 20 *Vict.* c. 69.

Constablewick, the jurisdiction of a constable.

Constat, a certificate which the clerk of the pipe and auditors of the Exchequer make, at the request of any person who intends to plead or move in that court, for the discharge of anything. The effect of it is, the certifying what appears (*constat*) upon record, touching the matter in question. It is held to be superior to an ordinary certificate, because it does not contain anything but what appears on record. An exemplification of the enrolment of letters-patent under the Great Seal is called a *constat.*—*Co. Litt.* 225; *Page's case*, 5 *Rep.* 52.

Constituent, one who, by his vote, constitutes or elects a member of parliament.

Constituimus (*we constitute* or *appoint*).

Constitution, any regular form or system of government. It is either (1) *Democratic*, when the fundamental law guarantees to every citizen equal rights, protection, and participation, direct or indirect, in the government; such is the constitution of the United States of America, and of some Cantons of Switzerland. (2) *Aristocratic*, when the constitution establishes privileged classes, as the nobility, and entrusts the government entirely to them or allows them a very disproportionate share of it, such as was

that of Venice. (3) *Mixed*, to which belong some monarchical constitutions which require the existence of a sovereign, whose power is modified by other branches of government, of a more or less popular cast. Of this kind is the British constitution, consisting of the Sovereign, the House of Lords, and the House of Commons. 1 *Bl. Com.*; *De Lolme on the Constitution*; *Hall. Middle Ages* and *Constit. Hist.* Also a particular law, ordinance, or regulation made by the authority of any superior; as the novel constitutions of Justinian and his successors; the constitutions of Clarendon; the ecclesiastical constitutions, &c. As to the character of the English constitution, see 3 *Hall. M. A.* p. 153.

Constitutor, a person who has promised to pay the debt of another.

Constraint, duress.

Constructio legis non facit injuriam.—*Co. Litt.* 183.—(The construction of law does not work an injury.)

Constructive notice. See NOTICE.

Constructive total loss, a term used in the law of marine insurance to denote a loss which entitles the assured to claim the whole amount of his insurance, on giving to the assurers notice of abandonment. Generally there is a constructive total loss when the subject matter insured has not actually perished or lost its form or species, but has, by one of the perils insured against, been reduced to such a state or placed in such a position as to make its total destruction, though not inevitable, yet highly imminent, or its ultimate arrival under the terms of the policy, though not utterly hopeless, yet exceedingly doubtful. In such a case the assured, by giving notice within a reasonable time to the assurers of *abandonment*, i. e. the relinquishment of all his right to whatever may be saved, is entitled to recover against them as for a total loss. See *Arnould on Marine Insurance.*

Constructive treason, an attempt to establish treason by circumstantiality, and not by the simple genuine letter of the law, and therefore highly dangerous to public freedom.—*Erskine's Defence of Lord George Gordon*; 3 *Hall. Cons. Hist.* c. xv. p. 151. See TREASON.

Constructive trust, which arises from equitable operation; thus, when an estate is subject to a trust or equitable interest or lien, and a person purchases it for value, with either actual or constructive notice of it, the estate will still be subject to the trust, or equitable interest in the hands of such a purchaser. To this general rule, however, there is an exception in the case of a disseisor, abator, or intruder, who cannot hold in trust, although he have notice of it, for he is not *in* in privity of the estate, to which it is annexed, but in the *post*, which is inconsistent with the trust. And notice of an unenrolled bargain and sale, or of an unregistered deed, will bind a purchaser; but notice of a fraud will not convert the person receiving it into a trustee. So a person acquiring an estate as a voluntary grantee, even without notice, or as a devisee, will take it subject to every equitable interest, for equity will presume notice where no consideration has been paid.

Of course, if a person purchase of a trustee, or from a purchaser affected with notice, for a valuable consideration without notice, he will hold the estate discharged of the trust.

It is not clear how far a purchaser may be affected by notice of a constructive trust; notice of an equitable title, it is to be observed, is very different from notice of a legal title; the result of the authorities appears to be, that where the construction to be put on the words of the instrument on which the equitable title arises may admit of serious doubt, the purchaser will not be bound, though the Court may consider that the words do give an equitable title; on a similar principle the Court will not, at least in a doubtful case, rectify a settlement as against a purchaser, though the case might be clear as against a volunteer.—2 *Sp. Eq. Jurisd.* 195.

The doctrine of constructive trusts also arises upon the renewal of a lease by a trustee, or executor, or executor *de son tort*, or person having a limited interest in his own name, even in the absence of a fraud, and upon the refusal of the lessor to grant a new lease to the *cestui que* trust, or expectant; for such renewed lease is held upon trust for the person beneficially entitled to the old lease or the expectant in order to prevent persons in fiduciary situations from acting so as to take a benefit for themselves. This doctrine is extended to the renewal of leases by one of several persons, or partners, jointly interested, by an agent, mortgagor, mortgagee, or person jointly interested with an infant, but, if the renewed lease turn out not to be beneficial, the person renewing must sustain the loss; if beneficial, the infant can claim his share of the benefit to be derived from it.

A renewing trustee, and a volunteer claiming under him, as well as a purchaser from him with notice will be directed to assign the lease free from incumbrances, except a *bonâ fide* lease made by him at the best rent, and to account for the mesne rents and profits; but he will be entitled to be indemnified against his covenants with the lessor, and will have a lien upon the estate, for the costs of renewal, and the expenses of lasting improvements with interest.—See the leading authority on this subject, *Keech* v. *Sandford*, otherwise called the *Romford Market Case* (1726), 1 *White & Tudor, L. C.* 32–39.

Constructive use. See USE.

Consuetudinarius, a ritual or book, contain-

ing the rights and forms of divine offices, or the customs of abbeys and monasteries.

Consuetudinibus et serviciis, a writ of right close, which lay against a tenant who deforced his lord of the rent or service due to him.—*Reg. Orig.* 159; *F. N. B.* 151.

Consuetudo, contra rationem introducta, potiùs usurpatio quam consuetudo appellari debet. Co. Litt. 113.—(A custom introduced against reason ought to be called rather an usurpation than a custom.)

Consuetudo debet esse certa; nam incerta pro nullâ habetur.—Dav. 33—(A custom should be certain; for an uncertain custom is considered null.)

Consuetudo est altera lex.—4 *Co.* 21.—(Custom is another law.)

Consuetudo est optimus interpres legum.—2 *Inst.* 18.—(Custom is the best expounder of the laws.)

Consuetudo et communis assuetudo vincit legem non scriptam, si sit specialis; et interpretatur legem scriptam, si lex sit generalis.—Jenk. Cent. 273.—(Custom and common usage overcomes the unwritten law, if it be special; and interprets the written law, if the law be general.)

Consuetudo ex certâ causâ rationabili usitata privat communem legem.—Litt. s. 169.—(A custom grounded on a certain reasonable cause supersedes the common law.)

Consuetudo loci observanda est.—Litt. s. 169. (The custom of a place is to be observed.)

Consuetudo præscripta et legitima vincit legem. Co. Litt. 113.—(A prescriptive and legitimate custom overcomes the law.)

Consuetudo, licet sit magnæ auctoritatis, nunquam tamen præjudicat manifestæ veritati.—4 *Co.* 18.—(A custom, though it be of great authority, should never, however, be prejudicial to manifest truth.)

Consuetudo manerii et loci observanda est.—6 *Co.* 67.—(A custom of a manor and place is to be observed.)

Consuetudo regni Angliæ est lex Angliæ.—Jenk. Cent. 119.—(The custom of the kingdom of England is the law of England.)

Consuetudo semel reprobata, non potest ampliùs induci.—Dav. 33.—(Custom once disallowed cannot be again produced.)

Consuetudo volentes ducit, lex nolentes trahit. Jenk. Cent. 274.— (Custom leads the willing, law compels the unwilling.)

Consuetudo non trahitur in consequentiam.—3 *Keb.* 499.—(Custom is not drawn into consequence.)

Consul, an officer appointed by competent authority to reside in foreign countries, to facilitate and extend the commerce carried on between the subjects of the country which appoints him and those of the country or place in which he is to reside. The office appears to have originated in Italy, about the middle of the twelfth century, and was generally established all over Europe in the sixteenth century. British consuls were formerly appointed by the Crown, upon the recommendation of great trading companies, or of merchants engaged in trade with a particular country and place; but they are now directly appointed by government, without requiring any such recommendation, though it, of course, is always attended to when made. The right of sending consuls to reside in foreign countries depends either upon a tacit or express convention.

The duties of a consul, even in the confined sense in which they are commonly understood, are important and multifarious. It is his business to be always on the spot, to watch over the commercial interests of the subjects of the state whose servant he is; to be ready to assist them with advice on all doubtful occasions; to see that the conditions in commercial treaties are properly observed; that those he is appointed to protect are subjected to no unnecessary or unjustifiable demands in conducting their business; to represent their grievances to the authorities at the place where they reside, or to the ambassador of the sovereign appointing him, at the court on which the consulship depends, or to the government at home; in a word, to exert himself to render the condition of the subjects of the country employing him, within the limits of his consulship, as comfortable, and their transactions as advantageous and secure as possible.

The following more detailed exposition of the general duties of a British consul is taken from Mr. Chitty's work on *Commercial Law*:—

A British consul, in order to be properly qualified for his employment, should take care to make himself master of the language used by the court and the magistracy of the country where he resides, so as to converse with ease upon subjects relating to his duties. If the common people of the port use another, he must acquire that also, that he may be able to settle little differences without troubling the magistracy of the place for the interposition of their authority; such as accidents happening in the harbour, by the ships of his nation running foul of and doing damage to each other.

He is to make himself acquainted, if he be not already, with the law of nations and treaties, with the tariff or specification of duties on articles imported or exported, and with all the municipal ordinances and laws.

He must take especial notice of all prohibitions to prevent the export or import of any articles, as well on the part of the state wherein he resides, as of the government employing him; so that he may admonish all British subjects against carrying on an illicit commerce, to the

detriment of the revenues, and in violation of the laws, of either. And it is his duty to attend diligently to this part of his office, in order to prevent smuggling; and consequent hazard of confiscation, or detention, of ships, and imprisonment of the masters and mariners.

It is also his duty to protect from insult or imposition British subjects of every description within his jurisdiction. If redress for injury suffered is not obtained, he is to carry his complaint by memorial to the British minister residing at the court on which the consulship depends. If there be none, he is to address himself to the court; and if, in an important case, his complaint be not answered, he is to transmit the memorial to her Majesty's Secretary of State.

When insult or outrage is offered by a British subject to a native of the place, and the magistrate thereof complains to the consul, he should summon, and in case of disobedience, may, by armed force, bring before him the offender, and order him to give immediate satisfaction; and if he refuse, he resigns him to the civil jurisdiction of the magistrate, or to the military law of the garrison; nevertheless always acting as counsellor or advocate at his trial, when there is question of life or property.

But if a British subject be accused of an offence alleged to have been committed at sea, within the dominion or jurisdiction of his sovereign, it is then the duty of the consul to claim cognizance of the cause for his sovereign, and to require the release of the party, if detained in prison by the magistracy of the place on any such accusation brought before them, and that all judicial proceedings against him do instantly cease; and he may demand the aid of the power of the country, civil and military, to enable him to secure and put the accused party on board such British ship as he shall think fit, that he may be conveyed to Great Britain, to be tried by the proper judges. If contrary to this requisition, the magistrates of the country persist in proceeding to try the offence, the consul should then draw up and transmit a memorial to the British minister at the court of that country; and if that court give an evasive answer, the consul should, if it be a sea offence, apply to the Board of Admiralty in London, stating the case; and upon their representation, the secretary for the proper department will lay the matter before the Sovereign, who will cause the ambassador of the foreign state, resident in England, to write to his court abroad, desiring that orders may immediately be given by that government that all judicial proceedings against the prisoner be stayed, and that he be released.

It is the duty of a British consul to relieve all distressed British mariners, to allow them 6*d*. daily for their support, to send them home in the first British vessels that sail for England, and to keep a regular account of his disbursements, which he is to transmit yearly, or oftener if required, to the Navy Office, attested by two British merchants of the place; this is provided for by positive enactment, 1 Geo. II. s 2, c. 14, s. 12. He is also to give free passes to all poor British subjects wishing to return home, directed to the captains of the Queen's packet boats, or ships of war, requiring them to take them on board.

The consul is not to permit a British merchant ship to leave the port where he resides without her passport, which he is not to grant until the master and crew thereof have satisfied all just demands upon them; and for this purpose, he ought to see the governor's pass of a garrisoned town, or the burgomaster's; unless the merchant or factor to whom the ship was consigned will make himself responsible.

It is also his duty to claim and recover all wrecks, cables, and anchors, belonging to British ships, found at sea by fishermen or other persons, to pay the usual salvage, and to communicate a report thereof to the Navy Board.

The consuls and vice-consuls are, by express enactment (46 Geo. III. c. 98, s. 9), empowered to administer oaths in all cases respecting quarantine, in like manner as if they were magistrates of the several towns or places where they respectively reside, and see 6 Geo. IV. c. 87, s. 20. It is also laid down that a consul is to attend, if requested, all arbitrations where property is concerned, between masters of British ships and the freighters, being inhabitants of the place where he resides.—*Chitty's Comm. Law*, vol. i. 58-61.

Any person, whether he be a subject of the state by which he is appointed, or of another, may be selected to fill the office of consul, provided he be approved and admitted by the government in whose territory he is to reside. In most instances, however, but not always, consuls are the subjects of the state appointing them.—*McCull. Comm. Dict.*

Consulta ecclesia, a church full or provided for.—*Cowel.*

Consultary response, the opinion of a court of law on a special case.

Consultation, a writ in the nature of a *procedendo*, whereby a cause, having been removed by prohibition from the ecclesiastical court to the king's court, is returned thither again; for if the judges of the king's court, upon comparing the libel with the suggestion of the party, find the suggestion false or not proved, and therefore the cause to be wrongfully removed from the ecclesiastical court, then upon this consultation or deliberation they decree it to be returned, whereupon the writ in this case obtained is called a consultation.—24 *Edw. I.*; *Reg. Orig.* 44. Also a

meeting for deliberating or advising with counsel.

Consummate, *tenant by courtesy*, is when a husband, upon his wife's death, becomes entitled to hold her lands in fee simple or fee tail, of which she was seized during the marriage, for his own life, provided he has had issue by her, capable of inheriting.

Consummation, the completion of a thing.

Contango. Contracts for shares on the Stock Exchange, London, are made for ready money, or for payment on 'settling' days; if for ready money, the money is paid immediately; if for time, it is paid on the settling day. The price at which stock or shares is sold, to be transferred on the next settling day, is called the 'price for account.' In the London share market, the 'account day' is generally twice a month. The 'settling day' is always the day before the account day. On the settling day takes place the business of giving the names of the persons for whom brokers have bought, and that of carrying over transactions to another day, which are called 'continuances,' the commission for which is called 'contango.' Foreign railway shares are subject to the same rules as English shares. And in foreign stocks, the account and settling days are one and the same. See *Wilkinson's Law of Public Funds*, 155, *et seq.*

Contemporanea expositio est optima et fortissima in lege.—2 *Inst.* 11.—(A contemporaneous exposition is the best and most powerful in law.)

'Great regard,' says Sir Edward Coke, 'ought, in construing a statute, to be paid to the construction which the sages of the law who lived about the time, or soon after it was made, put upon it, because they were best able to judge of the intention of the makers at the time when the law was made.'

These four points are to be considered in the interpretation of all statutes, be they penal or beneficial, restrictive of, or enlarging, the common law:—1st, what was the common law before the making of the act; 2ndly, what was the mischief and defect for which the common law did not provide; 3rdly, what remedy the Parliament has resolved and appointed to cure the disease of the commonwealth; and, 4thly, the true reason of the remedy; and then the office of the judges is always to make such construction as shall suppress the mischief and advance the remedy.—3 *Rep.* 7.

Contempt, a disobedience to the rules, orders, or process of a court, which has power to punish for such offence by attachment. Contempts are either *direct*, which only insult or resist the powers of the court, or the persons of the judges who preside there; or *consequential*, which, without such gross insolence or direct opposition, plainly tend to create a universal disregard of their authority. The principal instances of either sort are:—(1) Those committed by inferior judges and magistrates by acting unjustly, oppressively, and irregularly in administering those portions of justice which are entrusted to their distribution, or by disobeying any writs issued out from the superior courts, by proceeding in a cause after it is put a stop to or removed by writ of prohibition, certiorari, error, supersedeas, and the like. (2) Those committed by sheriffs, bailiffs, gaolers, and other officers of the court, by abusing the process of the law, or deceiving persons, or by any acts of oppression, extortion, collusive behaviour, or culpable neglect of duty. (3) Those committed by attornies or solicitors, who are officers of their respective courts, by gross instances of fraud or corruption, injustice to their clients, or other dishonest practices. (4) Those committed by jurymen in collateral matters, relating to the discharge of their office, such as making default when summoned, refusing to be sworn or to give any verdict, eating or drinking without the leave of the court, and especially at the cost of either litigant. (5) Those committed by witnesses, by making default when summoned, refusing to be sworn or examined, or prevaricating in their evidence. (6) Those committed by parties to any suit or proceeding in a court; as by disobedience to any rule or order made in the progress of a cause, by non-payment of costs, or by non-observance of awards made rules of court. (7) Those committed by any other persons under the degree of a peer, and even by peers themselves, when enormous and accompanied by violence. —4 *Bl. Com.* 233.

Contenement, a man's countenance or credit, which he has together with, and by reason of, his freehold; or, that which is necessary for the support and maintenance of men, agreeably to their several qualities or states of life.

Contentious business, a term used in the Court of Probate, meaning generally the business of obtaining probate or administration when there is a contest, as opposed to *non-contentious business* when there is no such contest.

Contentious jurisdiction, jurisdiction to hear and determine any matter between party and party in an action or other judicial proceeding.

Contestation, an issue or controversy.

Contestatio litis eget terminos contradictarios. Jenk. Cent. 117.—(The joinder of issue in a suit needs contradictory terms.)

Contingency with a double aspect, when *one event only* is expressed by the party, and two events are clearly in his contemplation. This is a construction in favour of the intention, that the intention may not be frustrated. The general rule is, that an interest to commence on a contingency shall not take place

unless that contingency shall arise. It is in a few cases only that this favour is extended by construction. The exception seems to have been borrowed from the mode in which remainders are limited, and the construction which the limitations of remainders receive; and under which every estate will take place after the preceding estate, without regard to the particular time at which, by the words of the remainder, the estate is to take place. In these cases the court proceeds on the intention that the determination of every prior or intermediate estate shall accelerate the commencement of the more remote estate. It is on similar grounds of intention that the contingency with double aspect is allowed; for it is allowed on the idea that, by the intent of the testator, the estate limited on a contingency referible to one estate, shall also take place in case the contingency should not arise on which the prior gift is to vest an interest; and then, in point of law, the contingency has a double aspect: providing, by expression, for a contingency annexed to the interest previously limited, and also, by inference and construction of law, for the event that the contingency on which the prior interest is to vest, shall never arise.

Mr. Fearne (*Cont. Rem.* 373) has the following passage on this sort of contingency:—'However, we are to remember, that although a fee cannot, in conveyances at common law, be mounted on a fee; yet two or more several contingent fees may be limited merely as substitutes or alternatives one for the other, and not to interfere; but so that one only take effect, and every subsequent limitation be a disposition substituted in the room of the former, if the former should fail of effect. Thus in the case of *Loddington* v. *Kime* (1 *Ld. Raym.* 208), which was a devise to A. for life, without impeachment of waste, and if he have issue male, then to such issue male and his heirs for ever; and if he die without issue male, then to B. and his heirs for ever; it was held, that the first remainder was a contingent remainder in fee to the issue of A., and the remainder to B. was also a contingent fee, not contrary to, or in any degree derogatory from, the effect of the former, but by way of substitution for it. And this sort of alternative limitation was termed a contingency with a double aspect. For if A. had issue male, the remainder was to vest in that issue in fee; but if A. had no issue male, then it was to vest in B. in fee; and these were limitations of which the one was not expectant upon, and to take effect after the other, but were cotemporary; to commence from the same period, not indeed together, but the one to take effect in lieu of the other, if that failed.'

Contingent legacy, one that is bequeathed to a legatee, at twenty-one, or if, when, or provided he shall attain twenty-one; if the legatee die before that age, the legacy lapses. The 33rd section of 7 Wm. IV. and 1 Vict. c. 26, enacts:—'That where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.'

Contingent remainder, an executory remainder limited so as to depend on an event or condition, which may never happen or be performed, or which may not happen or be performed till after the determination of the preceding estate.

Four sorts of contingent remainders are distinguished under this definition, by Mr. Fearne (*Cont. Rem.*), viz.:—

1. When the remainder depends entirely on a *contingent determination of the preceding estate itself*; as, if A. convey by grant to the use of B. till C. do such a thing, and after such a thing done by the said C. then to the use of D. in fee. The contingency must be such as makes it uncertain, not only whether the event, on which the remainder depends for becoming vested, determines the preceding estate, but whether that event will ever happen. If, therefore, the particular estate is to determine by death, such a contingency is excluded from this class, because death is an event which must certainly happen at some time or other.

The distinction between contingent remainders and conditional or contingent limitations should be kept in view. Now it is essential to an estate in remainder, that it should wait the regular expiration of the particular estate, and should not take effect in possession till that expiration; but a conditional limitation takes effect on the happening of an event during the continuance of the particular estate.

Let us illustrate this:—A limitation to A. for his life if he shall so long continue single, and then to B. in fee; B.'s limitation is a remainder, for whether A.'s life estate expire by his death or marriage, the estate is considered in law to expire equally at the period fixed for its term by the original limitation, since the determining event—marriage—is considered to be incorporated into, and to make a part of, the original limitation, and to form, with it, the original measure.

But if the limitation were to A. for life, with a proviso that if he married his life estate should cease, the case would be different, the

event upon which A.'s estate was to cease being extrinsic, separate, distinct, and collateral to the original limitation, and therefore making no part of it. The limitation over will then be a conditional limitation.

Butler observes (*F. C. R.* n., p. 19) :—Perhaps the difference is artificial, and such as common sense alone would not teach; but, in legal construction, and in several legal consequences of great importance to the interests of the parties claiming under such limitations, the distinction is established.

2. Where the contingency, on which the remainder is to take effect, is *independent of, and unconnected with, the determination of the preceding estate*; as, if a lease be made to A. for life, remainder to B. for life, and if B. die before A. remainder to C. for life; here the event of B.'s dying before A. does not in the least affect the determination of the particular estate, nevertheless it must precede and give effect to C.'s remainder; but such event is dubious; it may or may not happen, and the remainder depending on it is, therefore, contingent.

3. Where a remainder is limited to take effect upon an event, which, though it certainly must happen some time or other, yet *may not happen till after the determination of the particular estate*; as, if a lease be granted to A. B. for life, and after the death of C. D. the lands to remain to another in fee. It is certain that C. D must die some time or other, but his death may not happen till after the determination of the particular estate by the death of A. B., and, therefore, such remainder is contingent.

The following is an exception to the third class of remainders:—

A limitation to A. for eighty years, if B. so long live, with remainder over, after the death of B. to C. in fee. In such a case as this it has been held, that, notwithstanding the remainder over is limited to take effect on an event (B.'s death) which possibly may not happen till after the expiration of the preceding estate for eighty years, yet as the chance against such event happening before the expiration of the preceding term is exceedingly small, such remainder shall be considered as vested; and that the mere possibility that a life in being may endure for eighty years to come, does not amount to a degree of uncertainty sufficient to constitute a contingent remainder.

4. Where a remainder is limited to a person *not ascertained*, or *not in being at the time when such limitation is made*; as, if a lease be granted to A. for life, remainder to the right heirs of B. Now, there can be no such person as the right heir of B. until B.'s death (since *nemo est hæres viventis*), which may not happen till after the determination of the particular estate by the death of A. the tenant for life; therefore such remainder is contingent. So, if an estate be limited to two for life, remainder to the survivor of them in fee, the remainder is contingent, for it is uncertain which of them will be the survivor.

A remainder (*Butler's note* (*g*) *to Fearne*, p. 9) over may be so limited as to depend for its vesting on the happening of every kind of event, constituting the four sorts of remainders mentioned by Mr. Fearne:—

As a limitation to A., until B. return from Rome, and after the return of B. and C. from Rome and the death of D., to the son of A. in tail-male, who shall first or alone attain the age of twenty-one years. In this case, the remainder to the son of A., so far as it depends on B.'s return from Rome, partakes of the nature of the first sort of contingent remainders; so far as it depends on C.'s return from Rome, partakes of the nature of the second class of contingent remainders; so far as it depends on the decease of D. partakes of the third class of contingent remainders; and so far as it depends on A.'s having a son who first or alone shall attain the age of twenty-one years, partakes of the nature of the fourth class of contingent remainders.

To the fourth class of remainders the rule in Shelley's case presents an exception, for the remainder being executed in the ancestor, cannot be contingent; exceptions to it also occur where a limitation in a devise to the heir special of a person living has been adjudged a *descriptio personæ*, or sufficient designation of the person, for the remainder to vest, notwithstanding the general rule that *nemo est hæres viventis*. But the testator's intention, that the estate should vest, must be manifested in the will.

As where A. devised land to I. S. and his heirs, during the life only of B., upon trust to permit and suffer B. during his life to receive the profits, he committing no waste, and after the decease of B. then to the heirs male of the body of B. *now living*, and to such other heirs male or female as he thereafter should happen to have of his body. B. had issue C., a son, then living. It was decided that B. took a trust estate for life, and that the remainder in tail vested in C. immediately, and was not contingent, for that the words 'now living' made the limitation a sufficient designation of the person.—*Burchett* v. *Durdant*, 2 *Ventr.* 311; *Fearne's Cont. Rem.* 210.

Again, where there was a devise to trustees for the term of twenty-one years for the payment of debts and legacies, remainder to testator's first son in tail male, remainder to the heirs male of the testator's body, and for default of such issue to I. S. for ninety-nine years, if he should so long live, remainder to his first and other sons successively in tail male,

remainder to the heirs male of the body of the testator's aunt, E. L., lawfully *begotten*, and for default of such issue, the reversion and remainder to the testator's right heirs. The testator gave a legacy to his said aunt, E. L., thereby taking notice that she was then living; he also took notice of her having three sons, to whom he gave a legacy; he also gave his heir-at-law an annuity out of the lands, and legacies to her children. The testator died childless, and so did I. S.; the question then was, whether the eldest son of E. L. (the said E. L. being living at the testator's death) or the testator's heir-at-law, was entitled to the land? It was held that though in the strictest legal sense of the word heir, the eldest son of E. L. would not be the heir-male of her body during her life; yet the word heir had another more general sense, in which it was used for heir apparent, in which sense it was applicable to him at the time of the testator's decease, and that he took the land; for the word 'begotten' is tantamount to the phrase 'then living.'—*Darbison* d. *Long* v. *Beaumont*, 1 *P. Wms.* 229; *Fearne's Cont. Rem.* 210.

Another class of exceptional cases arises thus:—Suppose A. die leaving issue two sons, the elder of whom has issue, an only daughter, and dies in his brother's life-time; it is obvious that, under a limitation to A. and the heirs male of his body, A.'s younger son would be entitled *per formam doni*. But A.'s grand-daughter is A.'s general heir, and the point is whether, in the case proposed, A.'s younger son be sufficiently the heir-male of his body to take under the devise, or, whether, to entitle himself to take under it, he should unite in him the double character of heir-general and heir-male of A. It has been adjudged that he need not.—*Goodtitle* d. *Weston* v. *Burtenshaw*, *Fearne's Cont. Rem. App. I.*

It is to be particularly borne in mind, that it is not the uncertainty of ever taking effect in possession that makes a remainder contingent. Upon this point we cannot do better than quote Fearne, whose mastery of this difficult subject was pre-eminent.

He says (*Cont. Rem.* p. 215), 'wherever there is a particular estate, the determination of which does not depend on any uncertain event, and a remainder is thereon absolutely limited to a person *in esse* and ascertained; in that case, notwithstanding the nature and duration of the estate limited in the remainder may be such, as that it may not endure beyond the particular estate, and may therefore never take effect or vest in possession, yet is it not a contingent but a vested remainder. As if a lease be to A. for life, remainder to B. for life or in tail; here, notwithstanding B. may possibly die, or die without issue in the life-time of A., and consequently never come into possession, yet is his remainder vested in interest, and by no means comprised in the legal notion of a contingent estate.'

In short, upon a careful attention to this subject, we shall find, that wherever the preceding estate is limited, so as to determine on an event which certainly must happen; and the remainder is so limited to a person *in esse*, and ascertained, that the preceding estate may, by any means, determine before the expiration of the estate limited in remainder; such remainder is vested. On the contrary, wherever the preceding estate (except in the instances before noticed, as exceptions to the descriptions of a contingent remainder) is limited, so as to determine only on an event which is uncertain, and may never happen; or wherever the remainder is limited to a person not *in esse* or not ascertained; or wherever it is limited so as to require the concurrence of some dubious uncertain event, independent of the determination of the preceding estate and duration of the estate limited in remainder, to give it a capacity of taking effect; then the remainder is contingent.

The common limitation to trustees to preserve contingent remainders is a vested remainder. In cases of this description, the estate is conveyed to the use of A. for life; and after the determination of that estate by forfeiture or otherwise, in his lifetime, to the use of B. and his heirs during the life of A., in trust for A., and to preserve the contingent remainders; and, after the decease of A. to the use of the first and other sons of A. successively in tail male. Here the preceding estate may determine by one of two modes, A.'s forfeiture of his life estate, or A.'s decease; the estate of the trustees is to take effect in the first event, and is not to take effect in the second. The remainder to the trustees may therefore appear to be of that sort which is contingent, from its depending on the preceding estate's determining in a particular manner.

The judges held (*Smith* d. *Dormer* v. *Parkhurst*, 18 *Vin.* 413; 4 *Bro. Cas. Par.* 353) that, in every case, where an estate is given to A. for life, the grantor has an interest remaining in him to enter upon the estate, if it should determine by any act of the tenant amounting to a forfeiture; that this right is inherent in the grantor, from the nature of the estate itself, and may be conveyed to the trustees; and that, when it is conveyed to them, it becomes a legal estate in remainder, and vests in them as such. On this ground, the usual limitation to trustees for preserving contingent remainders is held to confer on them a vested estate.

The interposition of trustees to preserve contingent remainders has been rendered unnecessary in three cases by the 8 & 9 Vict. c. 106, s. 8, which enacts 'that a contingent remainder existing at any time after the 31st day of De-

cember, 1844, shall be, and, if created before the passing of this act, shall be deemed to have been, capable of taking effect, notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold in the same manner, in all respects, as if such determination had not happened.'—*Prest. Conv.* 403.

Contingent remainders are not preserved by this statute in all possible cases of the determination of the particular estate; they are only preserved against those destructive acts by or with the concurrence of the owner of the particular estate which prematurely determine it. A contingent remainder still fails of effect, if the particular estate regularly and naturally expire before the contingency happens, upon which the remainder vests; to obviate which trustees to preserve the contingent remainder should in such a case be interposed.

In those cases where contingent remainders are interposed between a particular estate and other limitations over, if the contingent remainder be *not* in fee, but for life or in tail, the subsequent remainder may be vested, provided it be made to a person *in esse*. So a subsequent contingent remainder may become vested in interest before a preceding one, which will be no obstruction to its so vesting. But where there is a contingent limitation in fee absolute, no estate limited afterwards can be vested (*Fearne's Cont. Rem.* c. i. s. 8). But a contingent determinable fee, devised in trust for some special purpose only, will not prevent a subsequent limitation to one *in esse* from being vested. Where estates are subjected to a general power of appointment in the first taker with remainders over in default of such appointment, the power does not suspend the remainders from vesting.

Contingent uses. These properly take effect as remainders, and in imitation of contingent remainders. Where an estate is limited previously to a future use, and the future use is limited by way of remainder, it is subject to the rules of the common law, which are, that a vested estate of freehold must precede in order to support the remainder, and that a remainder must vest either during the existence of such preceding estate, or *eo instanti* that it determines. And herein these contingent or springing uses (for they have been called by both epithets, and without any great inconsistency, although it creates difficulty in regard to their distinctive classification) differ from executory devises, which latter do not require any particular estate to support them; that by them a fee-simple or other less estate may be limited after a fee-simple, and that a remainder may be limited of a chattel interest, after a particular estate for life created in the same. The following is an example of a contingent use: A use to the first unborn son of A., after a previous limitation to A. for life or for years, determinable on his life: for this does not answer to the notion of either a shifting or a springing use. To create a good springing use, it must be limited at once, independently of any preceding estate, and not by way of remainder, for if so, it is then a contingent and not a springing use, and subject to the laws governing contingent remainders. Thus springing uses are confined within very narrow limits, and future or contingent uses are placed on exactly the same footing with contingent remainders. Although shifting or secondary uses cannot be classed with future or contingent uses, because of the different modes by which they take effect, yet, as a shifting use, when created, may in point of limitation, be like a contingent remainder, it will, in that case, as well as a strict contingent use (which does not take effect in derogation of any other estate), be subject to the same laws.

Continual claim, abolished by 3 & 4 Wm. IV. c. 27, s. 11.

Continuance, *notice of trial by*, when notice of trial in London or Middlesex has been given, and the plaintiff is not ready to proceed, then, instead of countermanding his notice, he may continue it to any sitting (in or after term), by giving notice of trial by continuance four days before the time mentioned in the notice of trial or inquiry, unless short notice of trial or inquiry has been given, in which case two days' previous notice shall be sufficient, unless otherwise ordered by the Court, or a Judge, or by consent (*R.* 36, *H. T.* 1853). It can be given only once in a term. It cannot be given after the plaintiff has countermanded his notice of trial.—1 *Chit. Arch. by Pren.* 316.

Continuances. The entry of them is abolished by rule of all the courts.—*T. T.* 1853, r. 31.

Continuando, a word used in a special declaration of trespass when the plaintiff would recover damages for several trespasses in the same action; and, to avoid multiplicity of actions, a man may in one action of trespass recover damages for many trespasses, laying the first to be done with a continuando to the whole time in which the rest of the trespasses were done; which is in this form, *continuando* (by continuing the trespasses aforesaid, &c., from the day aforesaid, &c.) until such a day, including the last trespass.—*Termes de la Ley.*

Contraband [fr. *contra*, Lat., against, and *bando*, Ital., edict], such goods as are prohibited to be imported or exported, bought or sold, either by the laws of a particular state or by special treaties; also a term applied to designate that class of commodities which neutrals are not allowed to carry during war to a belligerent power.

It is a recognised general principle of the law of nations, that ships may sail to and trade with all kingdoms, countries, and states in peace with

the princes or authorities whose flags they bear; and that they are not to be molested by the ships of any other power at war with the country with which they are trading, unless they engage in the conveyance of contraband goods. But great difficulty has arisen in deciding as to the goods comprised in this term.

In order to obviate all disputes as to what commodities should be deemed contraband, they have sometimes been specified in treaties or conventions. But this classification is not always respected during hostilities; and it is sufficiently evident that an article which might not be contraband at one time, or under certain circumstances, may become contraband at another time, or under different circumstances. It is admitted on all hands, even by Mr. Hubner, the great advocate for the freedom of neutral commerce, that everything that may be made directly available for hostile purposes is contraband, as arms, ammunition, horses, timber for ship-building, and all sorts of naval stores. The greatest difficulty has occurred in deciding as to provisions, which are sometimes held to be contraband, and sometimes not. Lord Stowell has shown that the character of the port to which the provisions are destined is the principal circumstance to be attended to in deciding whether they are to be looked upon as contraband. A cargo of provisions intended for an enemy's port, in which it was known that a warlike armament was in preparation, would be liable to arrest and confiscation; while, if the same cargo were intended for a port where none but merchantmen were fitted out, the most that could be done would be to detain it, paying the neutral the same price for it as he would have got from the enemy.

The right of visitation and search is a right inherent in all belligerents; for it would be absurd to allege that they had a right to prevent the conveyance of contraband goods to an enemy, and to deny them the use of the only means by which they can give effect to such right.—*Vattel*, b. 3. c. vii. s. 114. The object of the search is twofold: first, to ascertain whether the ship is neutral or an enemy, for the circumstance of his hoisting a neutral flag affords no security that it is really such; and, secondly, to ascertain whether it has contraband articles, or enemies' property on board.—*McCull. Comm. Dict.*

Contracausator, a criminal; one prosecuted for a crime.

Contract, an agreement between competent parties, upon a legal consideration to do, or to abstain from doing, some act. In its widest sense it includes contracts of record and specialties, but the term is usually employed to designate only simple or parol obligations, which comprehend not only verbal and unwritten contracts, but all contracts not of record nor under seal.

Contracts are divided into three classes:—1st, contracts of record, such as judgments, recognisances, and statutes staple; 2nd, specialties, which are under seal, such as deeds and bonds; 3rd, simple contracts, or contracts by parol. There is no such fourth class as contracts in writing, distinct from verbal and sealed contracts; both verbal and written contracts are included in the class of simple contracts, and the only distinction between them is in regard to the mode of proof.

Every contract is founded upon the mutual agreement of the parties; when the agreement is formal, and stated either verbally or in writing, it is usually called an express contract; when the agreement is matter of inference and deduction it is called an implied contract.

Contracts are also distinguished into executed and executory; *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made; as where an article is sold and delivered, and payment therefor is made on the spot; *executory*, where some future act is to be done; as where an agreement is made to build a house in six months; or to do an act on or before some future day; or to lend money upon a certain interest, payable at a future time.

There is also one other distinction, namely, that between entire and severable contracts. An *entire* contract is one, the consideration of which is entire on both sides. The entire fulfilment of the promise by either is a condition precedent to the fulfilment of any part of the promise by the other. Whenever, therefore, there is a contract to pay a gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one, the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample.—*Chitty on Contracts; Smith on Contracts; Story on Contracts;* 1–12; *Pothier on Contracts.*

Contract of benevolence, a contract made for the benefit of one of the contracting parties only, as a mandate or deposit.

Contractus est quasi actus contra actum.—2 *Co.* 15. (A contract is, as it were, act against act.)

Contractus ex turpi causâ vel contra bonos mores, nullus.—*Hob.* 167.—(A contract arising out of a base consideration, or against morality, is null.)

Contrafaction, a counterfeiting.—*Blount.*

Contra formam collationis, a writ that

issued where lands given in perpetual alms to lay houses of religion, or to an abbot and convent, or to the warden or master of an hospital and his convent, to find certain poor men with necessaries, and do divine service, &c., were alienated, to the disherison of the house and church. By means of this writ the donor, or his heirs, could recover the lands.—*Reg. Orig.* 238; *F. N. B.* 210.

Contra formam feoffamenti, a writ that lay for the heir of a tenant, enfeoffed of certain lands or tenements, by charter of feoffment from a lord, to make certain services and suits to his court, who was afterwards distrained for more services than were mentioned in the charter.—*Reg. Orig.* 176; *Old. Nat. Br.* 162.

Contra formam statuti (*contrary to the form of the statute in such case made and provided*). The usual conclusion of every indictment, &c. brought for an offence created by statute.—7 *Geo. IV.* c. 64, s. 20; 14 & 15 *Vict.* c. 100, s. 24; 4 *Steph. Com.* 457.

Contra negantem principia non est disputandum.—*Co. Litt.* 43.—(Against one denying principles there is no disputing.)

Contra non valentem agere nulla currit præscriptio.—(No prescription runs against a person unable to act.)

Contra pacem (*against the peace*). It is generally necessary, in all indictments whatsoever, to allege that the offence was committed against the peace of our Lady the Queen. The omission of these words does not render an indictment, information, inquisition, or presentment insufficient.—14 & 15 *Vict.* c. 100, s. 24; 4 *Steph. Cons.* 457.

Contra veritatem lex nunquam aliquid permittit.—2 *Inst.* 252.—(The law never suffers anything contrary to truth.)

Contramandatio placiti, a respiting or giving a defendant further time to answer, or a countermand of what was formerly ordered.—*Leg. H. I.* c. 59.

Contramandatum, a lawful excuse, which a defendant in a suit by attorney alleges for himself, to show that the plaintiff has no cause of complaint.—*Blount.*

Contrapositio, a plea or answer.

Contrarients, those who are opposed to the government, but are neither rebels nor traitors.

Contrariorum contraria est ratio.—*Hob.* 344. (The reason of contrary things is contrary.)

Contratenere, to withhold.

Contravention, the action founded on the breach of law-burrows.—*Scotch Dict.*

Contrectatio rei alienæ, animo furandi, est furtum.—*Jenk. Cent.* 132.—(The touching or removing of another's property, with an intention of stealing, is theft.)

Contribution, the performance by each of two or more persons, jointly liable by contract or otherwise, of his share of the liability. It frequently arises between sureties, who are bound for the same principal, when upon his default, one of them is compelled to pay the money, or to perform any other obligation for which they all became bound; the surety, who has paid the whole, being entitled to receive contribution from all the others for what he has done, in relieving them from a common burthen. Contribution amongst sureties may in general be enforced as well in courts of law as in equity; but in some cases the remedy is more extensive in equity than at law. Thus, suppose there are three sureties in a bond for 3,000*l.*, and one of them has been obliged to pay the whole debt, he could *at law* only sue one of the sureties for his third, viz., 1,000*l.*, although the other surety had become bankrupt; but in *equity* he might compel the solvent surety to contribute 1,500*l.*, the moiety of the entire sum.—*Peter* v. *Rich*, 1 *C. C.* 321. And the remedy is more complete and effectual in equity when an account and discovery are wanted, or where the number of the parties interested would occasion a multiplicity of actions. If one of the sureties die, the remedy at law lies only against the surviving sureties, whereas in equity, it may be enforced against the representative of the deceased surety, who may be compelled to contribute.

The claim of contribution has its foundation in the clearest principles of natural justice; for as all are equally bound, and are equally relieved, it seems but just that, in such a case, all should contribute, in proportion, towards a benefit obtained by all, according to the maxim, *Qui sentit commodum, sentire debet et onus.* The doctrine is founded also upon morals, since no one ought to profit by another man's loss, where he himself has incurred a like responsibility. Any other rule would put it in the power of the creditor to select his own victim; and upon motives of mere caprice or favouritism, to make a common burthen a gross personal oppression.

Legatees are sometimes compelled to refund and contribute for the payment of debts. In like manner, contribution lies between partners for any excess, which has been paid by one partner beyond his share, if, upon the winding-up of the partnership affairs, such a balance appears in his favor; or if, upon a dissolution, he has been compelled to pay any sum for which he ought to be indemnified. It also lies between joint-tenants, tenants-in-common, and part owners of ships and other chattels, for all charges and expenditures incurred for the common benefit.—1 *Story's Equity*, 393–415.

Contributione facienda, a writ that lay where tenants-in-common were bound to do some act, and one of them was put to the whole burthen, to compel the rest to make

their contribution.—*Reg. Orig.* 175; *F. N. B.* 162.

Contributory, a person liable to contribute to the assets of a Joint Stock Company in the event of the same being wound up. See 25 & 26 *Vict.* c. 89, ss. 74–78.

Controller [fr. *contrerolle*, Fr., the copy of a roll of accounts], an overseer or officer appointed to examine and verify the accounts of other officers. See 5 & 6 *Vict.* c. 103.

Contubernium, the union of slaves with their master's consent; the children of such unions were the property of their parents' owners.—*Sand. Just.* 118, 418.

Contumace capiendo. Excommunication in all cases of contempt in the spiritual courts is discontinued by 53 Geo. III. c. 127, s. 2, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the Judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery, whereupon a writ *de contumace capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommunicato capiendo*.—2 & 3 *Wm. IV.* c. 93; 3 & 4 *Vict.* c. 93.

Contumacy, a refusal to appear in court when legally summoned; or disobedience to the rules and orders of a court.

Convent, the fraternity of an abbey or priory, as *societas* is the number of fellows in a college.

Conventicle, a private assembly or meeting for the exercise of religion; the word was at first an appellation of reproach to the religious assemblies of Wickliffe in the reigns of Edward III. and Richard II., and is now usually applied to a meeting of dissenters from the established church. As this word in strict propriety denotes an unlawful assembly, it cannot be justly applied to the assembling of persons in places of worship licensed according to the requisitions of law.

Conventicle Act, 22 Car. II. c. 1, repealed by 52 Geo. III. c. 155; 3 Steph. Com. 56, 60.

Conventio, an agreement or covenant.

Convention, an extraordinary assembly of the Houses of Lords and Commons, without the assent or summons of the Sovereign. It can only be justified *ex necessitate rei*, as the Parliament which restored Charles II. and that which disposed of the crown and kingdom to William and Mary.

Conventio privatorum non potest publico juri derogare.—*Wing.* 746.—(An agreement of private persons cannot affect public right.)

Conventio vincit legem.—*Dig* 2.—(An agreement overcomes law.)

Conventional estates, those freeholds not of inheritance or estates for life, which are created by the express acts of the parties, in contradistinction to those which are legal and arise from the operation and construction of law.

Conventione, a writ for the breach of any covenant in writing, whether real or personal.—*Reg. Orig.* 115; *F. N. B.* 145.

Conventions with America, France and Denmark as to the apprehension and extradition of fugitive offenders. See 6 & 7 *Vict.* cc. 75, 76, amended by 8 & 9 *Vict.* c. 120; and 25 & 26 *Vict.* c. 70.

Conventual church, that which consists of regular clerks, professing some order of religion; or of dean and chapter, or other societies of spiritual men.

Conventuals, religious men united in a convent or religious house.—*Cowel.*

Conversion, the wrongful appropriation of the goods of another. Where a person finding the goods of another, or having them in his possession, applies or converts them to his own use, without the owner's consent, the owner may maintain an action of trover and conversion against him. Refusal to restore the goods is *primâ facie* sufficient evidence of a conversion, though it does not amount to a conversion. 10 *Rep.* 56.

Conversion of property. From trusts, there is derived an equitable principle, relative to the constructive conversion of property, which is this:—That money directed to be employed in the purchase of realty, and realty directed to be sold and turned into money, are considered in equity as that species of property into which they are directed to be converted; and this, in whatever manner the direction is given; whether by will, by contract, marriage articles, settlement, or otherwise; and whether the money is actually deposited, or only covenanted to be paid, or whether the land is actually conveyed, or only agreed to be conveyed (*Fletcher* v. *Ashburner*, 1 *Bro. C. C.* 497). This principle is governed by the doctrine of equity, that that which ought to be done shall be deemed as actually done.

The property thus equitably transmuted by anticipation will possess all the qualities, incidents and peculiarities of that kind of property, into which it is destined to be changed. See 3 & 4 *Wm. IV.* c. 74, s. 71.

But the beneficiary may elect to take the property in the shape it then is, before the actual conversion takes place. Slight evidence of an intention so to elect will be sufficient. When a person entitled to the fee-simple of an estate to be purchased with trust money, without requiring the purchase to be completed, causes the securities for the money to be changed in the name of a trustee, in trust for himself, *his executors and administrators* (*Lingen* v. *Sowray*, 1 *P. W.* 172); and where a person entitled absolutely to the money to

arise by the sale of real estate, makes a lease of the estate itself, reserving rent payable to him, his *heirs and assigns* (*Crabtree* v. *Bramble*, 3 *Atk.* 380); these circumstances have been considered to amount to an election.

The nature of the fund cannot be altered by the election of a trustee or an infant.

Conveyance, an instrument which transfers property from one person to another *inter vivos*, or after the death of the person transferring; the former is accomplished by deed, record, or special custom; the latter by will. See DEED.

Conveyancers, persons who being neither barristers nor solicitors, nor proctors, employ themselves solely in the preparation of deeds or assurances of property. They must take out yearly a certificate upon which a stamp duty of 9*l.* is payable if they reside within ten miles from the General Post Office, or in the city of Dublin, or within three miles thereof, and 6*l.* if they reside elsewhere.—16 & 17 *Vict.* c. 63.

Conveyancing, in its more precise and technical sense may be considered as the science, and also as the art of alienation. If, by an investigation of the laws of property, we elicit and systematize the principles which govern the disposition, we are then compacting the science. The science of alienation, therefore, may be defined a systematic statement of the principles of alienation. To apply these principles to practice, by means of appropriate instruments or conveyances, constitutes the art of alienation.

Conveyancing counsel. The Lord Chancellor may nominate any number of conveyancing counsel in actual practice, not less than six, who have practised as such for ten years at least, to be the conveyancing counsel upon whose opinion the court or any judge thereof may act in any of the cases mentioned in the 40th sect. of 15 & 16 Vict. c. 80, and may supply vacancies in such list from time to time, and distribute the business among such counsel, in such order and manner as to the Lord Chancellor seems fit.—*Smi. Ch. Pr.* 506.

Convicia si irascaris tua divulgas, spreta exolescunt.—3 *Inst.* 198.—(If you be moved to anger by insults you publish them, if despised they are forgotten.)

Convicium, anything which publicly insults another.—*Civil Law.*

Convict, a person found guilty of a crime or offence alleged against him, either by a verdict of a jury or other legal decision.

Conviction, the act of a legal tribunal adjudging a person guilty of a criminal offence.

Convitium convitio tegere est lutum luto porrigere.—1 *Buls.* 86.—(To cover reproach with reproach, is to heap mud upon mud.)

Convivium, the same among the laity as *procuratio* with the clergy, viz. when a tenant, by reason of his tenure, is bound to provide meat and drink for his lord once or oftener in the year.—*Blount.*

Convocation, an assembly of the clergy of England, of which there is one in each province. Its purpose is stated to be the enactment of canon law, subject to the license and authority of the sovereign, and the examination and censure of all heretical and schismatical books and persons. From its judicial proceedings an appeal lies to the Queen in council, by 2 & 3 Wm. IV. c. 92. It is held during the session of Parliament, and is convened by the sovereign. It consists of an upper and a lower house in the province of Canterbury; in the upper sit the bishops, and in the lower the inferior clergy, who are represented by their proctors, and all the deans and archdeacons. In York, the convocation consists of one house only. Convocation, by express license from the sovereign, may legislate by making canons—but, except in one instance in the year 1861, it has long ceased to exercise any legislative power. See 2 *Steph. Com.* 545.

Convoy, ships of war which accompany merchantmen in time of war, to protect them from the attacks of the enemy. There are five things essential to sailing with convoy:—viz. (1) It must be with a regular convoy under an officer appointed by government; (2) it must be from the place of rendezvous appointed by government; (3) it must be a convoy for the voyage; (4) the master of the ship must have sailing instructions from the commanding officer of the convoy; (5) the ship must depart and continue with the convoy till the end of the voyage, unless separated by necessity.—*Abbott on Shipping*, pt. 3, c. iii.; *Marshall on Insurance*, book 1, c. ix. s. 5; 43 *Geo. III.* c. 57. Also a body of troops, which accompanies provisions, ammunition, or other property, for protection.

Conusance of pleas, a privilege that a city or town has to hold pleas. See COGNIZANCE.

Conusant [fr. *connaissant*, Fr.], knowing, or understanding.

Coolies, Cooly, porter, laborer.—*Indian.*

Co-operation, the combined action of numbers. It is of two distinct kinds:—(1) Such co-operation as takes place when several persons help each other in the same employment; (2) such co-operation as takes place when several persons help each other in different employments. These may be termed simple co-operation and complex co-operation.—1 *Mill's Pol. Eco.* 142.

Coopertio, the head or branches of a tree cut down; though *coopertio arborum* is rather the bark of timber trees felled, and the chumps and broken wood.—*Cowel.*

Coopertura, a thicket or covert of wood.

Coparceners, or Parceners, a tenancy which

arises when an inheritable estate descends from the ancestor to several persons possessing an equal title to it. It arises by act of law only, i. e. by descent, which, in relation to this subject, is of two kinds:—(1) Descent by the common law, which takes place where an ancestor dies intestate, leaving two or more females as his co-heiresses; these, according to the canon of real property inheritance, take altogether as coparceners or parceners, the law of primogeniture not obtaining among women in equal relationship to their ancestor; they are, however, deemed to be one heir; and (2) Descent by particular custom, as in the case of gavelkind lands, which descend to all the males in equal degree, as the sons, brothers, or uncles of the deceased intestate ancestor; in default of sons, they descend to all the daughters equally.

Coparcenary relates to the estate — joint tenancy to the person. Hence a man may be coparcener with himself. Suppose two moieties of an estate to descend upon the same individual, one from his father, and the other from his mother, he may fairly be said to possess the estate in coparcenary; for on his death without lineal descendants, one moiety will descend to his heir on the part of his father, and the other to his heir on the part of his mother.

Coparceners have a unity, though not an entirety, or necessarily an equality of interest; if there be two only, each is properly entitled to the whole of a distinct moiety; and being seised in moiety there is no *jus accrescendi* between them, for on the death of one of them intestate, her moiety descends to her heir-at-law, who holds, subject to courtesy (if any), with the surviving parcener in coparcenary, although such heir may be a male, and a collateral. Indeed their estates are held in coparcenary, so long as they claim by descent. As soon as any part is severed, by conveyance from the title of the remaining part, the part so severed will be held in common.

Between the alienee and the other coparceners there will be a tenancy in common. The remaining coparceners will, as between themselves, continue to hold in coparcenary.

They are seised both jointly and severally, and possess a unity of title, but the estate may vest in them at different periods.

Coparcenary is like joint-tenancy so far as the same unity of title and similarity of interest is common to both, but they differ in this, that while coparceners always must claim by descent (for if two sisters purchase an estate to hold to them and their heirs, they are not parceners, but joint-tenants), joint-tenants always claim by act of parties.

Coparcenary is intermediate in its nature between joint-tenancy and tenancy in common. There is a unity of title, but no benefit of survivorship; for the share of a coparcener dying seised descends to her heir, who holds it also as a coparcener. A joint-tenant cannot convey his share to his companion by feoffment, because each is supposed to be equally seised of the whole; but he may convey it by release. Tenants in common, on the contrary, may convey to one another by feoffment, but not by mere release. But coparceners may adopt either mode.

This estate may be dissolved in any of the following modes: —

(1) By a deed of partition, as

(α) Where coparceners agree to divide the estate into equal parts in severalty, each to have a determinate portion.

(β) Where they appoint some third person to divide the estate, and after a division by him, each coparcener, according to seniority of age, or as shall be agreed between them, selects her own portion. The privilege of seniority is in this case personal; for if the eldest sister be dead, her issue shall not choose first, but the next sister. But if an advowson descend in coparcenary, and the sisters cannot agree in the presentation, the eldest and her issue, nay, her husband, or her assigns, shall present alone, before the younger. And the reason given is, that the former privilege, of priority in choice upon a division, arises from an act of her own, the agreement to make partition, and, therefore, is merely personal; the latter, of presenting to the living, arises from the act of the law, and is annexed not only to her person, but to her estate also.

(γ) Where the eldest coparcener divides the estate, in which case she takes the portion remaining after her sisters have made their choice.

(δ) When they agree to cast lots for their shares.

(2) By the alienation of one of the parties, which destroys the unity of title.

(3) By all the estate at last descending to one person, which reduces it to a severalty, and

(4) By a compulsive partition under a decree in Chancery.—*Co. Litt.* 163, *et seq.*; 1 *Steph. Com.* 351.

Copartnership, the having an equal share in any matter or business.

Cope, a custom or tribute due to the crown, or lord of the soil, out of the lead-mines in Derbyshire; also a hill, or the roof and covering of a house.

Copeman, or copesman.

Copesmate [fr. *koopman*, Du., fr. *koop*, chaffer, exchange], a merchant, a partner in merchandise.

Copia libelli deliberanda, a writ that lay

where a man could not get a copy of a libel at the hands of a spiritual judge, to have the same delivered to him.—*Reg. Orig.* 51.

Coppa, a crop or cock of grass, hay, or corn, divided into titheable portions, that it may be more fairly and justly tithed.

Copulatio verborum indicat acceptationem in eodem sensu.—*Bac.* vol. iv. p. 26.—(The coupling of words shows their acceptation in the same sense.)

Coppice, or **Copse** [fr. *couper*, Fr., to cut] a small wood, consisting of underwood, which may be cut at twelve or fifteen years' growth for fuel.

Copy [fr. κόπος, Gk., labor, according to Junius, because to copy another's writing is very painful and laborious], the transcript or double of an original writing, as the copy of a patent, charter, deed, &c.

Copyhold, a base tenure founded upon immemorial custom and usage; its origin is undiscoverable, but it is said to be the ancient villeinage modified and changed by the commutation of base services into specified rents, either in money or money's worth.

A copyhold estate is a parcel of the demesnes of a manor held at the lord's will, and according to the custom of such manor. The tenant may have the same *quantities of interest* in this tenure, as he may enjoy in freeholds, as an estate in fee-simple or (by particular custom) fee-tail, or for life, and he may have only a chattel-interest, as an estate for years in it. By the custom of some manors, the estate devolves upon the heir on the ancestor's death, and is called a copyhold of inheritance. As far as the quantity and modification of interest are concerned, the tenant's estate partakes of the nature of a freehold, but because it is held by a base instead of a free tenure, it is called a copyhold. Viewing his estate, then, through the medium of its holding or tenure, the tenant is merely a tenant-at-will; but it is to be remarked, that this tenancy-at-will must be according to custom, which always regulates the copyholder's interest, upon which interest the lord has no power whatever to encroach. Free copyholds or customary freeholds, however, are held according to the custom of the manor, and altogether independently of the will of the lord, while copyholds of base tenure are held merely at the lord's will. The law certainly considers the freehold to be in the lord (except in the case of strict customary freeholds, when the freehold is in the tenant), and the tenant to possess his customary estate according to the quantity of interest it is intended he should possess, but the law will protect the copyholder, and will not permit him to be at the will or wayward caprice of the lord.

There are four circumstances necessary to the existence of a copyhold estate:—(1) A manor; (2) a court; (3) the land must be parcel of the manor; and (4) it must have been demised or demisable by copy of court roll from time immemorial.

A manor is essentially necessary, for all copyholds must be parcels of manors; and so is a court, for a copyholder has no other evidence of his title than the rolls of the court, which he can inspect and take copies of to use as he may think proper; and the Court of Queen's Bench will order the lord to allow such inspection, and if the lord then refuse, he will be attached. There are two courts incident to every manor, a court baron or freeholders' court, and a customary court, which only relates to the copyholders, who form the homage and transact the necessary business, the lord or his steward presiding as judge. Although these courts are essentially distinct, yet they are usually held at the same time, and the same roll serves to record the proceedings of both. In the court baron the suitors are judges. In the customary court the suitors are assistants to the lord, or his steward, who is the judge. It is obvious that the lands granted must be parcel of a manor, seeing that a copyhold is part of the demesnes of a manor, but it is not absolutely necessary that the lands should continue parcel of the manor. And because this tenure derives its whole force from custom, the lands must have been demisable by copy of court roll from time immemorial, for the two pillars, upon which every custom rests, are common usage and existence time out of mind. No copyhold estate can, therefore, be created at the present day.

Copyhold customs are divided into two species:—(1) *General*, which extend to all manors in which there are copyholders, and are warranted by the common law, and of which the courts of law take judicial notice, without being specially pleaded; and (2) *Particular*, which prevail in some manors only, and which must be specially pleaded. They are construed strictly, and when they are contrary to reason, morality, or justice, or cannot be reduced to a certainty, the courts will not give effect to them.

The following services and incidents are by general custom annexed to copyholds:—

(1) Fealty, but the oath of fealty is now generally respited.

(2) Suit of court, for every copyholder is bound to attend the lord's court and be sworn of the homage.

(3) The copyholder is entitled to estovers, i. e. housebote, hedgebote, and ploughbote, unless restrained by particular custom.

(4) He cannot commit any kind of waste, unless there exists a particular custom to warrant it.

(5) Copyholds of inheritance are descendible

according to the rules of the common law, unless the custom be otherwise, in which case the custom must prevail. The alterations effected by the 3 & 4 Wm. IV. c. 106, are applicable to this species of tenure.

(6) Copyholds are alienated by surrender, according to general custom, and they are deviseable.

(7) A copyholder, by general custom, may make a lease for a year, and with the lord's license he may lease for any number of years.

(8) Copyholds are liable to all sorts of debts, by 3 & 4 Wm. IV. c. 104, and 1 & 2 Vict. c. 110.

(9) The widow of a copyholder, according to particular custom, is entitled to a certain portion of her husband's lands, which varies in quantity, as a half, a third, a fifth, or the whole. It is called her free-bench. It is generally an estate for life, but is forfeited by a second marriage or incontinency. If the widow is detected in incontinency, she loses her free-bench, but, nevertheless, in certain manors, if she come into the Manor Court riding backwards upon a black ram, with his tail in her hand, and repeating certain words, the steward is bound, by particular custom, to re-admit her to her free-bench. The words to be repeated are the following:

Here I am,
Riding upon a black ram,
Like a whore, as I am;
And for my crincum crancum,
Have lost my bincum bancum,
And for my tail's game,
Have done this worldly shame:
Therefore, I pray, Mr. Steward, let me have my lands again.

The widow's free-bench is barred by a jointure, whether legal or equitable; or by the alienation of the copyhold lands by the husband, or even by an agreement to convey, or by forfeiture, or by a grant of the freehold by the lord to the husband, for then the copyhold is destroyed, or by a devise expressed to be in satisfaction of it.

(10) Copyholds, by special custom, are subject to courtesy, and, by the custom of some manors, the husband is entitled to courtesy, though he have no issue by his wife, but it is forfeitable on a second marriage.

(11) Upon every descent of a copyhold estate, a sum of money or fine is due to the lord from the heir upon his admission, as a consideration for the renewal of a grant. If the heir refuse to be admitted, the lord may seize the estate to his own use. The lord is also entitled to fines upon all voluntary grants, upon the admission of tenants by the courtesy, the free-bench, and indeed upon alienation generally, the only exception being in cases of bankruptcy or insolvency, which are provided for by the 12 & 13 Vict. c. 106, and the Insolvent Act of the 1 & 2 Vict. c. 110. No fine is due upon the admission of a remainder-man, unless by special custom, because the admission of the tenant for life is generally deemed the admission of the remainder-man, nor are fines due upon a mere change of the tenant's interest, nor upon a covenant or agreement to surrender, because it is only due upon an actual admittance. Tenants in common pay this fine apportionably, each according to his share. Joint-tenants and coparceners pay a single fine for all. The practice as to the payment of the fine on the admittance of joint-tenants is this: two years' value is paid for the first life, half of that on the second, and a half of that half on the third, and so on, according to the number of the tenants. Joint-tenants succeed each other, by right of survivorship and without a new admittance, and fines are not due but upon admittance; the application, therefore, of the general rule to the case of joint-tenants would be unfair to the lord. By the custom of many manors, fines are due from copyholders on every change of the lord, which happens by the act of God. The *quantum* of all these fines is not to exceed two years' value of the lands, which is recoverable by action of debt.

(12) Besides a fine, a heriot is due to the lord on his tenant's death, though he be only a tenant for life, provided he be a *legal* and not an *equitable* tenant. It is usually the best beast or *averium*, it is sometimes the best chattel, as a jewel or a piece of plate, but it must be a personal chattel. But no heriot is due upon the death of a married woman, because she can have no chattels. Heriots are in some manors commuted to a customary composition in money, but it must be an indisputably ancient custom.

Copyholds are forfeited to the lord of the manor, and not to the Crown, unless by the express words of an act of parliament, by the tenant being attainted of treason or felony; also by his attempting to alienate his estate by any mode which is contrary to custom, or by committing any kind of waste, by disclaiming the tenure, by refusing to perform the services.

Copyholds may be destroyed, suspended, or enfranchised, i. e. converted into free tenure, in several ways.

(1) If the copyholder surrender his estate to the rightful lord, to the use of the lord.

(2) If a copyholder release all his right and interest to the lord.

(3) If the lord convey the freehold of the copyhold to a stranger, and the copyholder release to the stranger.

(4) If the lord convey to the copyholder the land for an estate of freehold, or even for a term of years.

(5) There are several cases in which copyholds are suspended only for a certain time, and not absolutely extinguished; thus, where a copyholder marries the lady of the manor, this suspends the copyhold during the marriage, but does not extinguish it. So where a copyholder becomes king, the copyhold is suspended, for the king could not perform the services, being inconsistent with his royalty; but after his death, the next person entitled to the copyhold, shall, if a subject, hold by copy.

(6) The efforts of the legislature have been, of late years, directed to these customary estates, which are, in fact, the remains of feudal slavery; they are embarrassing and unnecessary blots upon the juridical system of property. Their chief inconveniences, as set forth by the Real Property Commissioners, in their third report, are the multiplicity and uncertainty of the different manorial customs on which the tenure depends — the check to agricultural improvements occasioned by the state of the law with respect to timber and minerals — the liability to arbitrary fines — the numerous payments due to stewards on account of fees, and the vexatious and oppressive character of heriots. It is manifest, then, that where complexity which must always belong to the legal institutions of a civilised country is wantonly aggravated by the admission of several conflicting systems, serious mischiefs are likely to arise from the ignorance or forgetfulness of practitioners, and even of judges, however carefully selected.

In order to diminish these grievances, and to facilitate enfranchisement, the 21 & 22 Vict. c. 94, has been passed, which came into operation on the 1st October, 1858 (s. 1).

It repeals (s. 2) the 16 & 17 Vict. c. 57; the 4 & 5 Vict. c. 35, s. 11, after the words 'substituted in the place of such lord, tenant, or other person;' the 15 & 16 Vict. c. 51, ss. 2, 11, 27; and 'all the provisions of the copyhold acts which authorise commutations by schedule of apportionment, and commutations by a schedule to be prepared by the steward, and also enfranchisement by schedule of apportionment, and the charging of enfranchisement or compensation moneys or the expenses of commutations or enfranchisements upon land.' But this repeal is not to affect accomplished acts or vested rights (s. 3).

The copyhold acts are not to extend to ecclesiastical manors, where the tenant has not a right of renewal (s. 4).

There is a copyhold commission, composed of three commissioners, who act as a board, in order to carry the provisions of this act into execution.

By commutation, the most burdensome incidents affecting customary tenure, as rents, fines, and heriots, and the lord's right in timber, and also (if so expressed) in mines and minerals, may be commuted by agreement, for corn rents or fixed fines, or for pieces of land, part of the copyholds commuted.

The effect of enfranchisement is that the lands become freeholds, but with the saving of all commonable rights and beneficial limitations. Consult *Bac. Abr.* (*Copyhold*) and *Watkins* or *Scriven on Copyholds*, besides the acts quoted, and 23 & 24 *Vict.* c. 59, s. 4.

Copyhold Commissioners, the tithe commissioners for England and Wales (the number of whom is never to exceed three) are appointed the commissioners for carrying the provisions of the copyhold acts into execution. They are styled 'The Copyhold Commissioners' when acting in these cases, and any two of them form a board to transact business. They have an official seal with which all documents must be stamped, when they are receivable in evidence without any further proof. Their office must be in London or Westminster. It is at No. 9, Somerset Place, Somerset House, at present. The commissioners make an annual report to the Home Secretary of State, which is then laid by him before parliament. They are empowered to appoint and remove assistant commissioners, or secretary, and other servants and officers, as shall be deemed necessary. They cannot sit in parliament, and their salaries and allowances are paid out of the consolidated fund. They make a solemn declaration to act honestly in the discharge of their duties, which however they may delegate to their assistant commissioners, who pledge their impartiality by a like solemnity.—4 & 5 *Vict.* c. 35, ss. 1–10, 14 & 15 *Vict.* c. 53, and 25 & 26 *Vict.* c. 72.

Copyhold Inclosure Commissioners, a board constituted under 8 & 9 Vict. c. 118. The powers of these commissioners, of the copyhold commissioners, and of the tithe commissioners, are now vested in one board. See 14 & 15 *Vict.* c. 53; 21 & 22 *Vict.* c. 31; 23 & 24 *Vict.* c. 81; and 25 & 26 *Vict.* c. 73.

Copyright, an incorporeal right, being the exclusive privilege of printing, reprinting, selling, and publishing, his own original work, which the law allows an author. The 5 & 6 Vict. c. 45, provides, that the copyright of every book (which includes every volume, part, or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan, separately published), which shall be published in the lifetime of its author, shall endure for his natural life, and for seven years longer; or if the seven years shall expire before the end of forty-two years from the first publication, it shall endure for such period of forty-two years; and that when the work is posthumous, the copyright shall endure for forty-two years from the first publication, and

shall belong to the proprietor of the author's manuscript. The remedy given for a book unlawfully printed within the British dominions is an action on the case, to be commenced within twelve calendar months. Equity will also afford relief by special injunction, to restrain the progress of the injury, and to compel an account of the profits arising from the invasion. The title of the work must be entered at Stationers' Hall. As to those unlawfully re-printed in any place out of the British dominions, and imported into the United Kingdom, they may be seized, as forfeited, by any officer of the custom or excise, and the offenders are liable to penalties.—8 & 9 *Vict.* c. 93. A copyright is assignable by an instrument in writing, which does not require to be under seal.

The sole liberty of printing and publishing lectures is secured to lecturers by 5 & 6 Wm. IV. c. 65; dramatic pieces and musical performances are protected by 3 & 4 Wm. IV. c. 15, and 5 & 6 Vict. c. 45, ss. 20, 21; engravings and prints by 8 Geo. II. c. 13; 7 Geo. III. c. 38; 17 Geo. III. c. 57; 6 & 7 Wm. IV. c. 59; and 10 & 11 Vict. c. 95; sculptures, models, copies, and casts by 38 Geo. III. c. 71; and 54 Geo. III. c. 56; and designs for articles, whether of ornament or utility, by 5 & 6 Vict. c. 100; amended by 21 & 22 Vict. c. 70; 6 & 7 Vict c. 65; 13 & 14 Vict. c. 104; 14 & 15 Vict. c. 8; 15 & 16 Vict. c. 6; and 25 & 26 Vict. c. 68.

Coraage, an extraordinary imposition, upon some unusual occasion, and seems to be of certain measures of corn.—*Blount.*

Coram non judice (*in presence of a person not a judge*). When a suit is brought and determined in a court which has no jurisdiction in the matter, then it is said to be *coram non judice*, and the judgment is void.

Coram paribus (*before his peers*).

Cord of wood, a quantity of wood eight feet long, four feet broad, and four feet high.

Cordiner, or **Cordwainer** [fr. *cordonnier*, Fr.; fr. *cordouan*, Old Fr., originally leather from Cordova], a shoe-maker.

Coretes [fr. *cored*, Brit.], pools, ponds, &c.

Corium forisfacere, to forfeit one's skin, applied to a person condemned to be whipped; anciently the punishment of a servant. *Corium perdere*, the same. *Corium redimere*, to compound for a whipping.

Corn-rent [the word *corn* is found in all the Teutonic dialects]. It was created by 18 Eliz. c. 6, by which it was directed that one-third of the whole rent then paid on college leases should for the future be reserved in wheat or malt, reserving a quarter of wheat for each 6*s.* 8*d.*, or a quarter of malt for every 5*s.*; or that the lessees should pay the same according to the price that wheat or malt should be sold for in the market next adjoining to the respective colleges, on the market day before the rent becomes due.—2 *Bl. Com.* 609.

Cornage [fr. *cornu*, Lat., a horn], a kind of tenure in grand serjeanty, the service of which was to blow a horn when any invasion of the Scots was perceived; and by this tenure many persons held their lands northward about the place commonly called Picts' Wall. This old service of horn-blowing was afterwards paid in money, and the sheriffs accounted for it under the title of *Cornagium.*—*Camd. Brit.* 609.

Cornare, to blow in the horn.

Corn Tax Abolition Act, 10 & 11 Vict. c. 46.

Cornwall, Duke of, one of the titles of the eldest son of the reigning sovereign of the United Kingdom. He is Duke of Cornwall by inheritance, and is usually made Prince of Wales and Earl of Chester by special creation and investiture.—1 *Bl. Com.* 225.

Cornwall Submarine Mines Act, 1858, 21 & 22 Vict. c. 109, explained by 23 & 24 Vict. c. 53.

Corodio habendo, a writ to exact a corody of an abbey or religious house.—*Reg. Orig.* 264.

Corody, or **Corrody** [fr. *conredium*, *corredium*, *conradium*, *corrodium*, Monk. Lat.; *corredare*, Ital., to fit out], a sum of money or allowance of meat, drink, and clothing due to the Crown from an abbey or other religious house, whereof it was founder, towards the sustentation of such one of its servants as is thought fit to receive it. It differs from a pension, in that it was allowed towards the maintenance of any of the king's servants in an abbey; a pension being given to one of the king's chaplains, for his better maintenance, till he may be provided with a benefice.—*F. N. B.* 250.

Corona mala, the clergy who abused their character.

Coronare filium, to make one's son a priest. *Homo coronatus* was one who had received the first tonsure, as preparatory to superior orders, and the tonsure was in form of a corona, or crown of thorns.—*Cowel.*

Coronation oath. At the public and solemn ceremony of crowning or investing a sovereign with the insignia of royalty, in acknowledgment of his right to govern the kingdom, the prince swears to observe the laws, customs, and privileges of the kingdom, and to act and do all things conformably thereto. The oath is as follows:—'The archbishop or bishop shall say—Will you solemnly promise and swear to govern the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in parliament agreed on, and the laws and customs of the same?' The king or queen shall say—'I solemnly promise so to do.'

Archbishop or bishop—'Will you, to the utmost of your power, cause law and justice, in mercy, to be executed in all your judgments?' King or queen—'I will.' Archbishop or bishop—'Will you, to the utmost of your power, maintain the laws of God, the true profession of the Gospel, and the Protestant reformed religion established by the law? And will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them, or any of them?' King or queen—'All this I promise to do.' After this the king or queen laying his or her hand upon the holy Gospels, shall say—'The things which I have here before promised I will perform and keep, so help me God;' and then shall kiss the book.

Coronatore eligendo, the writ issued to the sheriff, commanding him to proceed to the election of a coroner.

Coronatore exonerando, a writ for the removal of a coroner, for a cause which is to be therein assigned, as that he is engaged in other business, or incapacitated by years or sickness, or has not a sufficient estate in the county, or lives in an inconvenient part of it. The 25 Geo. II. c. 29, makes extortion, neglect, or misbehaviour, causes of removal.

Coroner, a very ancient officer at the common law, so called because he has principally to do with pleas of the Crown, or such wherein the sovereign is more immediately concerned. There are usually four or six appointed for every county of England. They are chosen for life by all the freeholders in the county court. By 7 & 8 Vict. c. 92, coroners may be appointed for districts within counties, instead of the county at large, and by that Act and by 23 & 24 Vict. c. 116 provision is made for the election and remuneration of coroners and their removal for inability or misbehaviour. The Crown and certain lords of franchises, having a charter from the Crown for that purpose, may appoint coroners for certain precincts or liberties by their own mere grant, and without election. In every borough having a separate quarter sessions, a coroner is to be appointed, with exclusive jurisdiction within the borough.—5 & 6 *Wm. IV.* c. 76, ss. 62, 63. County coroners may appoint deputies by 6 & 7 Vict. c. 83. As to their fees see 7 Wm. IV. and 1 Vict. c. 68.

The office and power of a coroner are either (1) *Judicial*, and consist principally in enquiring when any person is slain or dies suddenly or in prison, concerning the manner of his death. A jury is empanelled and inquisition must be found with the concurrence of at least twelve of them. Provisions have been recently made to prevent it from being quashed on account of certain technical defects (6 & 7 Vict. c. 12; 6 & 7 Vict. c. 83). The inquisition must be had *super visum corporis*, for if the body be not found, the coroner cannot sit, except by virtue of a special commission issued for that purpose. If any be found guilty ot murder or other homicide by such inquisition, the coroner is to commit them to prison for further trial, and is also to enquire concerning their lands, goods, and chattels, which are forfeited thereby; and must certify the whole inquisition under the seals of himself and jurors, together with the evidence thereon, to the Court of Queen's Bench or the next assizes. The 22 Vict. c. 33, enables coroners to admit to bail persons charged with manslaughter. Another branch of the coroner's office is to enquire concerning shipwrecks and treasure trove. (2) *Ministerial.* He is the sheriff's substitute in executing process, when the sheriff is interested in the suit, or of kindred to either plaintiff or defendant.—*Jervis on Coroners; Com. Dig. Officer*, 9. This officer is first mentioned in King Athelstan's charter to Beverly, in 925.

Coroner's court, a tribunal of record, where a coroner holds his enquiries.

Corporal, an epithet for anything that belongs to the body, as corporal punishment. A corporal oath is so called, because the party taking it is obliged to lay his hand on the Testament.

Corporate name. When a corporation is erected, a name is always given to it, or supposing none to be actually given, will attach to it by implication, and by that name alone it must sue and be sued, and do all legal acts, though a very minute variation therein is not material, and the name is capable of being changed (by competent authority) without affecting the identity or capacity of the corporation. But some name is the very being of its constitution; and though it is the will of the sovereign that erects the corporation, yet the name is the knot of its combination, without which it could not perform its corporate functions. The name of incorporation, says Coke (10 *Rep.* 28), is as a proper name, or name of baptism, and, therefore, when a private founder gives his college or hospital a name, he does it only as a godfather, and by the same name the king baptizes the incorporation.

Corporation, or **Body Politic,** artificial persons established for preserving in perpetual succession certain rights, which, being conferred on natural persons only, would fail in process of time. It is either *aggregate*, consisting of many members, or *sole*, consisting of one person only. It is also either *spiritual*, erected to perpetuate the rights of the church, or *lay*, subdivided into *civil*, erected for many temporal purposes, and *eleemosynary*, to perpetuate founders' charities. It is, by virtue of

the sovereign's prerogative, exercised by a charter, or of an act of parliament, or of prescription, that the artificial personage called a corporation, whether sole or aggregate, civil or ecclesiastical, is created. The royal charter gives it a legal immortality and a name by which it acts and becomes known. It has power to make bye laws for its own government, and transacts its business under the authority of a common seal—its hand and mouthpiece; it has neither soul nor tangible form, so it can neither be outlawed nor arrested; it only enjoys a legal entity, sues, and is sued by its corporate name, and holds and enjoys property by such name. The several members of a corporation and their successors constitute but one person in law. The duty of a corporation is to answer the ends of its institution. To enforce which it may be visited: if spiritual, by the ordinary; if lay, by the founder or his representatives; viz. the *civil* by the queen (who is the *fundator incipiens* of all), represented in the Queen's Bench: the *eleemosynary*, by the endower (who is the *fundator perficiens* of such), or by his heirs or assigns. The distinction between corporations and trading partnerships is, that in the first the law sees only the body corporate and knows not the individuals, who are not liable for the contracts of the corporation in their private capacity, their share in the capital only being at stake: but in the latter the law looks not to the partnership but to the individual members of it, who are therefore answerable for the debts of the firm, even to their last shilling and acre.

It is a general rule that a corporation must contract under its common seal, but whenever the observance of this rule would occasion great inconvenience, or tend to defeat the very purpose of the business, it is not observed, e. g. the retainer of an inferior servant, the acceptance of bills of exchange, or making of promissory notes by companies incorporated for the purposes of trade, or the doing of acts frequently occurring; in these cases, the affixing of the common seal is not necessary. In all matters, however, of importance, and in respect of acts not coming within the sphere of its daily functions, the common seal must be affixed, which the law takes as conclusively evidencing the sense of the whole body corporate. It is the fixing of the seal, and that only, which evidences the assents of the individuals composing it, and makes one joint assent of the whole.

A corporation may be dissolved by statute, by death of all the members, by surrender of its franchise to the Crown, by forfeiture of its charter, and by bankruptcy or insolvency.—1 *Bl. Com.* c. xviii.; *Grant on Corporations.* See also JOINT STOCK COMPANIES, *post.*

Corporeal hereditament, that subject of property which is comprised under the denomination of things real.

Corps diplomatique [Fr.], the body of ambassadors and diplomatic persons.

Corpse. The superstitious opinion that the dead body of a person murdered bleeds when touched by the murderer, is founded neither in law nor reason. Carpzovius says, he has seen a body bleed in the presence of one not guilty, and not bleed when one guilty was present.—4 *Harg.* 283.

Corpus Christi day, a feast instituted in 1264, in honour of the sacrament.—32 *Hen. VIII.* c. 21.

Corpus cum causa, a writ issuing out of Chancery to remove both the body and record, touching the cause of any man lying in prison. *F. N. B.* 251.

Corpus humanum non recipit æstimationem. Hob. 59.—(A human body is not susceptible of appraisement.)

Corpus juris canonici. See CANON LAW.

Corpus juris civilis. The three great compilations of Justinian, the Institutes, the Pandects, and the Code, together with the Novellæ, form one body of law, and were considered as such by the glossatores, who divided it into five volumina. The Pandects were distributed into three volumina, under the respective names of Digestum Vetus, Infortiatum, and Digestum Novum. The fourth volume contained the first nine books of the Codex Repetitæ Prælectionis. The fifth volume contained the Institutes, the Liber Authenticorum or Novellæ, and the three last books of the Codex. The division into five volumina appears in the oldest editions; but the usual arrangement now is the Institutes, Pandects, the Codex, and Novellæ. The name Corpus Juris Civilis was not given to this collection by Justinian, nor by any of the glossatores. Savigny asserts that the name was used in the twelfth century: at any rate, it became common from the date of the edition of D. Gothofredus of 1604.—*Smith's Dict of Antiq.*

Correction, *House of,* a prison for the reformation of petty offenders.

Corrector of the staple, a clerk belonging to the staple, to write and record the bargains of merchants there made.—27 *Edw. III.* cc. 22, 23.

Corredium, Conredium. See CORODY.

Corregidor, a Spanish magistrate.

Corruptio optimi est pessima.—(Corruption of the best is worst).

Corruption of Blood, one of the immediate consequences of attainder for treason or felony. The blood of the attainted person was said to be corrupted or attainted both upwards and downwards, so that he could neither inherit lands or hereditaments, retain the possession of those in his possession, nor transmit them by descent to any heir, but the same escheated to

the lord of the fee, subject to the king's superior right of forfeiture.—4 *Bl. Com.* 388.

By 54 Geo. III. c. 145, it is provided, that no attainder for felony, except for *treason* or *murder*, shall extend to the disinheriting of any person, nor to the prejudice of the right or title of any person or persons, other than the right or title of the offender, during his natural life only; and that it shall be lawful for every person, to whom the right or interest of any lands, tenements, or hereditaments after the death of such offender, should or might have appertained if no such attainder had been, to enter into the same. By 3 and 4 Wm. IV. c. 106, that when the person from whom the descent of any land is to be traced, shall have had any relation, who having been attainted shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated, in consequence of such attainder, before January 1, 1834. By 13 and 14 Vict. c. 60, s. 46, that no land, chattels, or stock vested in any person upon any *trust*, or by way of *mortgage*, or any profits thereof, shall escheat or be forfeited by reason of the attainder or conviction for *any* offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his co-trustee, or descend or vest in his representative, as if no such attainder or conviction had taken place.

Corrupt Practices Prevention Act, 17 & 18 Vict. c. 102, continued and amended by 19 & 20 Vict. c. 84; 21 and 22 Vict. c. 87; 22 & 23 Vict. c. 48; 23 & 24 Vict. c. 99; and 25 and 26 Vict. c. 109.

Corselet [fr. *corpusculum*, Lat.], a little body; ancient armour which covered the body.

Corsepresent [fr. *corps*, Fr., body], a mortuary, thus termed, because when a mortuary became due on the death of a man, the best or second-best beast was, according to custom, offered or presented to the priest, and carried with the corpse. In Wales a corsepresent was due upon the death of a clergyman to the bishop of the diocese till abolished by 12 Ann st. 2, c. 6.—2 *Bl. Com.* 426.

Corsned Bread [fr. *corsian*, to curse, and *snaed*, a morsel, A. S.; *panis conjuratus*, or *offa execrata*, Lat., the morsel of execration, or ordeal bread]. It was a kind of superstitious trial or ordeal used among the Saxons, to purge themselves of any accusation, by taking a piece of barley bread and eating it with solemn oaths, curses, and execrations, that it might prove poison, or their last morsel, if what they asserted, or denied, were not true.—4 *Bl. Com.* 345, 414.

Probably this ceremony was in imitation of the Jewish custom that a husband who suspected his wife of infidelity might cause her to drink the water of jealousy, at the same time exacting from her in the temple or tabernacle what may be termed the ordeal oath.—*Num.* v. 11–31. To this oath were attached such dreadful penalties, that a person really guilty certainly could not take it without betraying her criminality by some indications, unless she possessed the extremity of hardihood. Moses appears to have substituted this oath, and the ceremonies attending it, instead of an ancient and pernicious custom, of which some traces still remain in Africa. *Oldendorp's Geschichte der Mission*, s. 266. The Talmudists state (Sota, c. ix.) that this law was abrogated as much as forty years before the destruction of Jerusalem. The reason they assign for it is, that the men themselves were at that period generally adulterers, and that God would not fulfil the horrid imprecations of the ordeal oath upon the wife alone, while the husband was guilty of the same crime.—*Jahn's Bib. Antiq.* c. x., s. 168.

Cortes, the assembly of the States of Spain or Portugal, answering in some measure to the Parliament of Great Britain.

Cortis, a court or yard before a house.—*Blount.*

Cortularium, or **Cortarium,** a yard adjoining to a country farm.—*Old Records.*

Corvee [Fr.], a feudal service, as to repair roads, &c.

Cosduna, custom or tribute.

Cosenage, or **Cosinage,** kindred, cousinship. Also a writ that lay for the heir where the *tresail*, i. e. the father of the *besail*, or great grandfather, was seized of lands and tenements in fee at his death, and a stranger entered upon the heir and abated.—*F. N. B.* 221.

Cosening, Cozenage [fr. *cozen*], cheating, defrauding.

Coshering, a feudal custom, whereby the lords may lie and feast themselves and their followers at their tenants' houses, &c.

Cosmus [fr. κόσμος, Gk.], clean.—*Blount.*

Costard, a head.—*Shaksp.* Also a kind of apple.

Costera, sea coast.

Cost Book Mining Companies. They are formed thus:—A number of adventurers who have obtained permission from the landowner to work a lode, assemble; they decide on the number of shares into which their capital is to be divided, and the number to be allotted to each; they appoint an agent, commonly called a purser, for the purpose of managing the affairs of the mine, and enter in a book, called the cost-book, the minutes of their proceedings, which are signed by all present. A license to try for ores, for twelve months, or some short period, is then obtained, followed, if the search be promising, by a sett, that is a lease of the

minerals, or a license to dig, or both, granted by the landowner to the purser, or to one or two of the adventurers, without any declaration of trust on their part for the rest, or for any other person, for a term of years, commonly twenty-one, stipulating for the annual payment to the landowner of some portion of the ore raised.

The 'cost-book' contains the names of all the shareholders, and the number of shares held by each is set opposite to his name. In a 'cost-book' partnership, a shareholder may get rid of his shares, and with them his liabilities, so far as his partners are concerned, without their consent, either by transfer or simple relinquishment, provided the cost-book regulations do not prohibit such a course; in the former case the fact of transfer being entered by the purser in the cost-book, and in the latter notice being given to the purser of his having so relinquished his shares, and all his claims upon the mine.

There being a purser or manager of the mine, all acts are in general done by him, such as ordering the supply of the necessary materials for working the mine, hiring of labour, &c.; and a shareholder has no power to bind his co-shareholders by any contract for materials, &c., not necessary, nor for money lent, nor upon bills of exchange; nor has the purser power to make them liable for money lent, or upon bills of exchange.

The rules are simple, and all the transactions of the partnership are entered in the cost-book. All the shareholders meet and order their general affairs, without the assistance of any directing body, and consider and resolve upon the purser's reports, made to them at their meetings, which are seldom at greater intervals than two months. Sometimes there is a committee of management in a cost-book mine; but they are only appointed from general meeting to general meeting, have no power to make calls or declare dividends, and all their acts are subject to the review of a general meeting.

The mode of transferring shares is simple, and effected with great facility, and in any form, and the mere entry by the purser in the 'cost-book' of the fact of transfer is sufficient to bind all parties, and constitutes the introduction of a new partner into the concern.

Although there are several theories of the 'cost-book principle' of working mines, the meaning of which the courts are not bound to take judicial notice of (*Re Gt. Cambrian, Hawkins's case*, 2 *Kay & J.* 253), yet it appears clear, that whatever may be the rules and regulations between the adventurers themselves, each shareholder is liable to be sued by a creditor who has furnished the mines with necessaries for its due working, ordered according to the customary course in such concerns, and this whether the creditor knew at the time of crediting the mine that he was a shareholder or not.—See *Collier on Mines*, 93, and *Wordsworth's Law of Mining*, 193.

Coss, a term used by Europeans in India to denote a road-measure of about two miles, but differing in different parts.

Co-stipulator, a joint promissee.

Costs [*expensæ litis*, Lat.], expenses incurred in litigation or professional transactions, consisting of money paid for stamps, &c. to the officers of the court, or to the counsel, attorneys, and solicitors, for their fees, &c. Costs in actions or suits are either between *attorney* or *solicitor* and *client*, being what are payable in every case to the attorney or solicitor, by his client, whether he ultimately succeed or not; or between *party and party*, being those only which are allowed in some particular cases to the party succeeding against his adversary, and these are either *interlocutory*, given on various motions and proceedings in the course of the suit or action, or *final*, allowed when the matter is determined.

Neither party was entitled to costs at common law, but the Statute of Gloucester (6 Edw. I. c. 1) gives costs to a successful plaintiff. This enactment is somewhat restrained by subsequent statutes, in order to check trifling or vexatious litigation; and the 2 & 3 Hen. VIII. c. 6, and 4 Jac. I. c. 3, give costs to a victorious defendant. The civil law maxim, *victus victori in expensis condemnatus est*, is now recognised. 1 *Chit. Arch. Prac. by Pren.* p. 470, *et seq.*

There were many cases of vexatious proceedings, in which the legislature formerly provided that the party in fault should be punished by the payment to his adversary of double or treble costs: but all such provisions are now repealed, and the adversary is entitled only to a full and reasonable indemnity, to be taxed by the proper officer, which taxation shall, as in ordinary cases, be subject to review. Bills of costs for conveyancing business are now subject to taxation by the Attorneys and Solicitors' Act.

Although, in equity, the person who fails in the suit must be deemed liable to the costs, yet the costs rest entirely in the discretion of the court, for the *primâ facie* claim to costs may be rebutted by the particular circumstances of the case, and it is for the court to decide whether those circumstances are or are not sufficient to rebut the claim. See *Sm. Ch. Pr.* 810, *et seq.*

As to costs in criminal cases, see 7 Geo. IV. c. 64; 7 Wm. IV. & 1 Vict. c. 44; 11 & 12 Vict. c. 12; 12 & 13 Vict. c. 76; 13 & 14 Vict. c. 101; and 14 & 15 Vict. cc. 11, 19, 55.

In matrimonial suits the wife, whether petitioner or respondent, is generally entitled to her costs from the husband, and they may be taxed *de die in diem* during the progress of the suit. She can compel the husband to deposit, or give security for, a sufficient sum to meet

the costs of the hearing, and her proctor or attorney is entitled to her taxed costs to the amount of the sum so deposited, although she fails in the suit; if successful, she is entitled to all her costs, though the amount exceeds the sum deposited or secured. If she does not get a sum deposited or secured, and fails, the court will not compel the husband to pay the costs after the hearing has taken place.

Costs de incremento, *costs of increase,* i.e. those extra expenses incurred, which do not appear on the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court-fees, &c.

Co-surety, a fellow-surety.

Cotarius, a cottager, who held in free socage, and paid a stated firm or rent in provisions or money with some occasional personal services.

Cote, or **Cot** [fr. *koti,* Fin.], cottage.

Cotellus, or **Coteria,** a small cottage, house, or homestall.

Coterellus, a servile tenant, who held in mere villenage; his person, issue, and goods were disposable at the lord's pleasure.

Coterie, a fashionable association; or a knot of persons forming a particular circle. The origin of the term was purely commercial, signifying an association, in which each member furnished his part, and bore his share in the profit and loss.

Coteswold [fr. *cote* and *wold,* Sax.], a place where there is no wood.

Cotland, and **Cotsethland,** land held by a cottager, whether in socage or villenage.

Cotsethla, Cotsetle, the little seat or mansion belonging to a small farm.

Cotsethus, a cottage-holder, who by servile tenure was bound to work for the lord.—*Cowel.*

Cottage, a small house without lands belonging to it.—15 *Geo. III.* c. 32. As to cottage allotments for the benefit of the poor, see 2 & 3 *Wm. IV.* c. 42; and 8 & 9 *Vict.* c. 118.

Cottier tenure, one where a labourer makes his contract for land without the intervention of a capitalist farmer, and where the conditions of the contract, especially the amount of rent, are determined not by custom, but by competition. Also a class of subtenants, who rent a cottage and an acre or two of land from small farmers.—*Irish.* 1 *Mill's Pol. Eco.* 383.

Cotuca, coat armour.

Cotuchans, boors, husbandmen.

Couchant, lying down; squatting.

Coucher, or **Courcher,** a factor who continues abroad for traffic; also the general book wherein any corporation, &c. register their acts.

Council, an assembly of persons for the purposes of concerting measures of state or municipal policy—hence called *councillors.*

Council of Medical Education, 25 & 26 Vict. c. 91.

Counsel, or **Counsellor,** a person retained by a client to plead his cause in a court of judicature; a barrister; an advocate.

Count [fr. *conte,* Fr., narrative], a particular charge in a declaration or indictment, setting forth the cause of complaint. It is also used, in a real action, as the name for the whole declaration.

Countee, or **Count** [fr. *comte,* Fr.; *comes,* Lat.], the most eminent dignity of a subject before the Conquest. He was *præfectus* or *præpositus comitatûs,* and had the charge and custody of the county; but this authority is now vested in the sheriff.—9 *Rep.* 46.

Countenance [fr. *contenance,* Fr., *contineo,* Lat., to hold together], credit; estimation.

Counter, the name of two prisons in London, the Poultry Counter, and Wood Street Counter, now consolidated into one new-built prison, for the use of the city, to confine debtors, peace-breakers, &c.

Counter-Deed, a secret writing, either before a notary or under a private seal, which destroys, invalidates, or alters a public one.

Counterfeit, an imitation of something made without lawful authority, and with a view to defraud by passing the false for the true.

Counterfesance [Fr.], the act of forging.

Countermand, the revocation of an Act; where a thing done is afterwards, by some act or ceremony, made void by the person who did it, it is either actual, by deed; or implied, by law. A plaintiff who has given notice of trial may countermand it in writing four days before the time mentioned in the notice of trial, unless short notice of trial has been given, and then two days only, unless otherwise ordered.—1 *Chit. Arch. Prac. by Pren.* 316.

Countermark, a sign put upon goods already marked; also the several marks put upon goods belonging to several persons, to show that they must not be opened, but in the presence of all the owners or their agents.

Counterpart, the corresponding part or duplicate; the key of a cipher. When the several parts of an indenture are interchangeably executed by the several parties, that part or copy which is executed by the grantor is usually called the original, and the rest are counterparts. Of late, it is more usual and better for all the parties to execute every part, whereby they are all made originals.

Counterplea, a kind of replication; an incidental pleading; diverging from the main series of the allegations. When the tenant in any real action, tenant by the curtesy or in dower, in his answer and plea vouches any one to warrant his title, or prays in aid of another who has a larger estate, as of him in reversion, &c.: or where one that is a stranger to the action

comes and prays to be received to save his estate; then that which the demandant alleges against it, why he should not be admitted, is called a counterplea: it is a replication to *aid prier*, and is called counterplea to the voucher. But when the voucher is allowed, and the vouchee comes and demands what cause the tenant has to vouch him, and the tenant shows his cause, whereupon the vouchee pleads anything to avoid the warranty, that is termed a counterplea of the warranty.—*Termes de la Ley.*

Counter-rolls, the rolls which sheriffs have with the coroners, containing particulars of their proceedings, as well of appeals as of inquests, &c.—3 *Edw. I.* c. 10.

Counter-security, a security given to one who has entered into a bond or become surety for another; a countervailing bond of indemnity.

Counter-sign, the signature of a secretary or other subordinate officer to any writing signed by a principal or superior, to test the authenticity of it.

Counties Corporate, certain cities and towns to which, out of special grace and favor, the sovereigns of England have granted the privilege to be counties of themselves, and not to be comprised in any other county, but to be governed by their own sheriffs and other magistrates, so that no officers of the county at large have any power to intermeddle therein. The 3 Geo. I. c. 5, for the regulation of the office of sheriffs, enumerates twelve cities and five towns which are counties of themselves, and which have, consequently, their own sheriffs. The cities are London, Chester, Bristol, Coventry, Canterbury, Exeter, Gloucester, Litchfield, Lincoln, Norwich, Worcester, York. The towns are Kingston-upon-Hull, Nottingham, Newcastle-upon-Tyne, Poole, Southampton. As they constitute no part of the counties at large in which they are locally situate, so they had formerly, in general, no share in voting for the members to serve for those counties in Parliament. Twelve of the number are now expressly included within their respective counties as far as regards the right of election for knights of the shire. They are Canterbury, Chester, Coventry, Gloucester, Kingston-upon-Hull, Lincoln, London, Newcastle-upon-Tyne, Poole, Worcester, York and Ainsty, and Southampton; to these is added Carmarthen in South Wales.—*Schedule G.* 2 *Wm. IV.* c. 45, s. 17.

Counting-house, the room appropriated by merchants, traders, and manufacturers to the keeping of their account-book, ledgers, &c.

Counting-house of the Queen's Household, usually called the Board of Green Cloth, where sit the lord-steward and treasurer of the Queen's house, the comptroller, master of the household, cofferer, and two clerks of the Green Cloth, &c., for daily taking the accounts of all expenses of the household, making provisions and ordering payment.—39 *Eliz.* c. 7.

Countors [fr. *contours*, Fr.], serjeants-at-law, whom a man retains to defend his cause and speak for him in court, for their fees.—1 *Inst.* 17.

Count-out. Forty members form a House of Commons; and though there be ever so many at the beginning of a debate, yet, if during the course of it, the House should be deserted by the members, till reduced below the number of forty, any one member may have it adjourned upon its being counted; but a debate may be continued when only one member is left in the House, provided no one choose to move an adjournment.

County [fr. *comté*, Fr.; *comitatus*, Lat.], a shire or portion of country comprehending a great number of hundreds. England is divided into forty counties or shires, Wales into twelve, and Scotland into thirty. It seems probable that the realm was originally divided into counties with a view to the convenient administration of justice, the judicial business of the kingdom having, in former times, been chiefly despatched in local courts held in each different county, before the sheriff as its principal officer. His duties are now more ministerial than judicial. The larger counties are subdivided, for purposes of parliamentary representation, and each portion forms a separate county (so far as this purpose is concerned), and sends its own representative knights to the House of Commons.—2 *Wm. IV.* c. 45. As to the divisions of counties for holding petty and special sessions, see 9 *Geo. IV.* c. 43; 10 *Geo. IV.* c. 46; 6 & 7 *Wm. IV.* c. 12; 22 & 23 *Vict.* c. 65.

County Court, a tribunal incident to the jurisdiction of a sheriff. It is not a court of record. Proceedings are removable into a superior court, by *recordari facias loquelam*, or writ of false judgment. Outlawries of absconding offenders are here proclaimed; and also election of knights of the shire, coroners, &c., takes place, but the judicial business has been for the most part transferred to the

County Courts, sixty inferior tribunals which have been established throughout England. The ancient Teutonic County Courts or Shyremotes, the great seats of Saxon justice, were tribunals of the same kind. They are chiefly regulated by 9 & 10 Vict. c. 95; 12 & 13 Vict. c. 101; 13 & 14 Vict. c. 61; 15 & 16 Vict. c. 54; 19 & 20 Vict. c. 108; 21 & 22 Vict. c. 74; and the rules of practice pursuant thereto dated Dec. 8, 1856. The power of committal by the County Court Judges under 9 & 10 Vict. c. 95, s. 98, is no longer to be exercised unless credit has been obtained by false pretences, fraud, or breach of trust, or the debt, &c., has been contracted without reasonable expectation of being able to pay it, or the debtor has made a transfer &c.

of his property with intent to defraud his creditors, or has had, since the judgment, means to pay the debt, &c. or costs, and has neglected to pay the same.—22 & 23 *Vict.* c. 57. See also 24 & 25 *Vict.* c. 134, s. 105.

County Palatine [fr. *palatium*, Lat., a court]. There were three of these counties—Chester, Durham and Lancaster. The two former were such by immemorial custom, the latter was created by Edward III. The Bishop of Durham and the Duke of Lancaster had royal power within their respective counties. They could pardon treasons, murders, and felonies, they appointed judges and magistrates; all writs and indictments ran in their names, and offences were said to be done against *their* peace and not *contra pacem domini regis*. The 11 Geo. IV. and 1 Wm. IV. c. 70, abolished the Court of Session of the county palatine of Chester, and subjected the county in all things to the jurisdiction of the superior courts at Westminster. The 4 & 5 Wm. IV. c. 62; 13 & 14 Vict. c. 43; 15 & 16 Vict. c. 76, s. 229; 17 & 18 Vict. c. 82, and c. 125, ss. 100–102; 18 & 19 Vict. c. 15, ss. 1–3, c. 45, and c. 67, s. 8; 21 & 22 Vict. c. 27, s. 10, regulated and made conformable the practice and proceedings in the Court of Common Pleas and of Chancery at Lancaster, in most particulars, to those of the superior courts; and the 2 Vict. c. 16; 15 & 16 Vict. c. 76, ss. 229–234; 17 & 18 Vict. c. 125, ss. 100–104; 18 & 19 Vict. c. 15 and c. 67, s. 8, have made similar provisions with regard to the courts at Durham.

The counties palatine are now in the hands of the Crown; the jurisdiction of Durham is vested, as a separate franchise and royalty, in the Crown, by 6 & 7 Wm. IV. c. 19. Lancaster was vested in the Crown by Henry IV., separated indeed from the other possessions of the Crown in order and government, but united in point of inheritance.

County Rate, an imposition levied on the occupiers of lands, and applied to many miscellaneous purposes; among which the most important are those of defraying the expenses connected with prisons, reimbursing to private parties the costs they have incurred in prosecuting public offenders, and defraying the expenses of the county police. See 15 & 16 *Vict.* c. 81.

County Sessions. They are the general quarter sessions of the peace for each county, and are held four times a year, viz. in the first week (on some day fixed by the magistrates) after the 11th of October, the 28th of December, the 31st of March, and the 24th of June, in every year, provision being made to prevent the April sessions clashing with the spring assizes (1 Wm. IV. c. 70; 4 & 5 Wm. IV. c. 47). The general quarter sessions for the county of Middlesex are remodelled by 7 & 8 Vict. c. 71, which requires two sessions to be held monthly—the general quarter sessions being the first of these, held in the months of January, April, July, and October; and the general sessions being the second or adjourned sessions, held in the months of February, May, August, and November; and such other sessions as shall be fixed by the magistrates at the first sessions held in December. Sec. 11 abolishes the sessions for the city of Westminster. See 14 & 15 *Vict.* c. 55. County general quarter sessions have both a criminal and civil jurisdiction. The 5 & 6 Vict. c. 38, has abridged their criminal jurisdiction, prohibiting them from trying any treason, murder, or capital felony; any offence punishable with penal servitude for life; and a long catalogue of offences, specified in the act, such as misprision of treason, political offences, offences against religion, perjury, and subornation of perjury; bribery, forgery, bigamy, abduction; setting fire to growing crops, woods, heaths, &c.; endeavouring to conceal the birth of a child; offences against the insolvent and bankrupt laws; administering unlawful oaths; blasphemous and seditious libels; conspiracies and combinations; stealing, injuring, or destroying legal records and documents, testamentary papers and wills. Their civil business is generally as a court of appeal, extending over penal convictions, orders of justices, matters connected with the administration of the poor laws, vagrant laws, the highways, &c.—3 *Burns' Justice*, 973.

Coupons [fr. *couper*, Fr., to cut], interest and dividend certificates; also those parts of a commercial instrument which are to be *cut*, and which are evidence of something connected with the contract mentioned in the instrument. They are generally attached to certificates of loan, where the interest is payable at particular periods, and, when the interest is paid, they are cut off and delivered to the payer. A coupon does not require a stamp; it is nothing more than an I.O.U.

Courier [fr. *courir*, Fr., to run], an express messenger of haste.

Courtacier, a horse courser—2 *Inst.* 719.

Courtesy, see CURTESY.

Court [fr. *curia*, Lat.; *cour*, Fr.; *koert*, Dut.], the Queen's palace or mansion; also a place where justice is administered. In every court there must be at least three constituent parts, the *actor*, or plaintiff, who complains of an injury done; the *reus*, or defendant, who is called upon to make satisfaction for it; and the *judex*, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that fact, and if any injury appear to have been done, to ascertain, and by its officers to apply, the remedy. It is usual in the superior courts to have attorneys or solicitors, and advocates or counsel, as assistants. Courts are

either of *record*, where their acts and judicial proceedings are enrolled for a perpetual memory and testimony, and they have power to fine and imprison, and error may be brought upon their judgments; or, *not of record*, as those generally of a private man, which the law will not entrust with any discretionary power over the fortune or liberty of the subject; their proceedings are neither enrolled nor recorded; they cannot hold pleas of matters cognisable at the common law, unless under the value of 40*s*., nor of any forcible injury whatsoever, nor have any process to arrest the person of the defendant; a writ of false judgment lies to reverse their decisions. It does not follow, however, that a court which is not of record must be an inferior court. The equity jurisdiction of the High Court of Chancery is said to be in strictness a court not of record; but the dignity of this court precludes a writ of false judgment, when sitting as a court of equity; and as it is not a court of record, no error can be brought to rectify its decrees, and the proceeding for this purpose is by appeal to the House of Lords. The instances in which this court sits as a court of common law are very rare, but whenever this does occur, as it is then a court of record, error lies from its judgments.—3 *Bl. Com.* 23. For a description of the several courts, public or private, general or special, consult the initial letter of the particular title of every court, e. g. Court of Admiralty, see ADMIRALTY.

The several species, however, of courts of justice have been thus classed:—

(I.) General jurisdiction, comprehending the Court Baron, the Hundred Court, the County Courts, the Court of Exchequer, the Court of Common Pleas, the Court of Queen's Bench, the Court of Chancery, the Court of Exchequer-Chamber, the House of Peers, the Courts of Assize and Nisi Prius, the Judicial Committee of the Privy Council, the Probate and Divorce Courts, and the Court of Bankruptcy.

(II.) Ecclesiastical, military, and maritime, comprehending the Archdeacon's Court, the Consistory Court, the Court of Arches, the Court of Peculiars, the Prerogative Court, the Court of Chivalry, and the Court of Admiralty.

(III.) Special jurisdiction, comprehending the Court of *Piepoudre*, the Forest Courts, the Court of Sewers, the Court of Policies of Assurance (the Court of Marshalsea, the Palace Court, both abolished), the Court of the Duchy Chamber of Lancaster, the Courts of the Counties Palatine, the Courts of the Stannaries, the Borough-Courts, the Court of Requests, or Courts of Conscience, the University Courts. By 22 & 23 Vict. c. 63, the courts in one part of Her Majesty's dominions may remit a case for the opinion in law of a court in any other part thereof.

Court-Baron, a court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings.

This court may be held at any place *within* the manor, giving fifteen days' notice, including three Sundays, of the day when the court will be held; but three or four days' notice have been deemed sufficient. It is frequently held together with the court-leet. It generally assembles but once in the year.

The *freehold* tenants alone are suitors to the court-baron; and it is essential to the existence of the court that there should be two suitors at the least; for since freemen can only be tried by their peers or equals, should there be but one freeman, he can then have no peer or judge, and consequently he must appeal to the court of the lord paramount. The suitors of a court-baron constitute its judges. The steward is a constituent essential part of the court, and not a mere ministerial officer, for the court cannot be holden without him.

A court-baron not being a court of record, neither the lord nor his steward can fine or imprison.

The tenants of a manor may make by-laws touching their commons and the like, to bind such tenants as assent thereto, unless they be made by prescription, or under an immemorial custom. These laws can never bind strangers. The penalty for the breach of a by-law is in the nature of a fine, rather than amercement, and is not affeerable, i. e. assissable.

Court-Lands, domains or lands kept in the lord's hands to serve his family.

Court-Leet. [Coke says, *leet* is a Saxon word, and comes from the verb *gelathian*, or *gelethian* (*g* being added *euphoniæ gratiâ*), i. e. *convenire*, to assemble together *unde conventus*. 4 *Inst.* 261. It is also said to be derived from *læt*, signifying *censura*, *arbitrium*, 'because this court redressed wrongs by way of judgment, against any person of the frank-pledge who had done any wrong or injury to another.' *Lex. Man.* 131. Others suppose it to be derived from the Saxon *leod*, *plebs*, and to mean the *populi curiæ*, or folkmote.—*Ritson on Courts Leet.* Scriven derives it from the Saxon, *led*, to assign or grant, being a juridical franchise held by a subject under a grant from the crown.—2 *Scriv. Cop.* 677, note *y*.] It is a court of record. Its jurisdiction and privileges were purchased of the Crown by the possessors of large estates, that the people might have justice rendered to them nearer to their own homes. This court may be appendant to a hundred as well as to a manor; and

it may also be appendant to a vill or to an ancient messuage.

A leet, held by charter, must be held on the days mentioned in the charter; and when held by prescription, it must be kept at the customary time; the court leet may be adjourned, when requisite, by three proclamations. It may be held at any place within the precinct where the lord pleases, except the church, chapel, or churchyard. Usually fifteen days' notice is given. Suit to the leet is due by reason of resiancy or abode, and has no reference to tenure; it is therefore called suit-real, and not suit-service. The attendance is usually essoined on the payment of a nominal sum. Since the leet was originally granted, for the more convenient administration of justice, the lord is compellable to hold a court by *mandamus*, and a leet is forfeited by non-user and by acts of abuser. A long disuser of the franchise will induce a suspicion of defect of title.—1 *Sir W. Bl.* 47. The usurpation of a leet has been adjudged an indictable offence.—6 *Mod.* 183.

The steward of a court-leet is an essential officer, and should be indifferent between the lord and the law (see *Powell on Courts Leet*, p. 43), for he is the judge, and presides in the court wholly in a judicial character; the ministerial acts of the court, such as impanelling the jury, are executed by the bedell or bailiff, sworn to a due performance of his duty. The steward may fine or imprison, and may take a recognizance of the peace: he cannot appoint a deputy, unless he be so empowered in his patent or deed of appointment, or there exist an established custom for it. All fines are recoverable by action of debt or by distress. A fine is imposed by the court, but an amercement is generally the act of the jury; it must always be affeered in open court, by two or more persons appointed by the steward, and duly sworn, and is then recoverable by distress or action.

By-laws, embodied in the presentments and verdicts of the jury, and homage, may be good by custom.

In some manors, the jury of the court-leet choose the mayor, port-reeve, or other chief municipal officer of the borough or town to which the leet jurisdiction is appended, while, in others, the jury present in writing the candidate who may have the majority of votes, but have no control over the poll. The bailiff is sometimes chosen by the jury; but the steward or the lord may have the appointment by custom. The right to elect constables, tithing-men, and third boroughs is vested in the jury. In ancient times, ale-conners and leather-sealers were chosen at the court-leet. An officer, called the hayward, is now appointed; his duty is to keep the lanes clear, by impounding stray cattle that he may find there.

All offences cognizable in the leet are enquired of and presented by the suitors of the court, sworn and charged as a jury for that purpose; and all presentments may be removed, by *certiorari*, into the Queen's Bench, and then traversed. See 2 *Scriv. Cop.* p. 730.

Cousenage, see COSENAGE.

Cousin. [fr. *cousin*, Fr.; *cugino*, It.; *consobrinus*, Lat., whence *cusdrin*, *cusrin*; *sobrino*, Sp.] A cousin is any collateral relation except brothers and sisters and their descendants and the brothers and sisters of any ancestor. The child of A's uncle or aunt is called his cousin German, or first cousin, and the child, grandchild, &c., of such cousin is called his first cousin once, twice, &c., removed. The grandchild of A's great uncle is his second cousin, and the child, grandchild, &c., of such cousin is his second cousin, once, twice, &c., removed, and so on.

Couthutlaugh [fr. *couth*, Sax., knowing, and *utlaugh*, an outlaw], a person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offence he underwent the same punishment as the outlaw himself.—*Bract.*

Covenable, convenient or suitable.

Covenant [fr. *convenant*, Fr.], an agreement, convention, or promise of two or more parties by deed in writing, signed, sealed, and delivered, by which either of the parties pledges himself to the other that something is either done or shall be done, or stipulates for the truth of certain facts. He who thus promises is called the covenantor; and he to whom it is made the covenantee. A covenant being part of a deed is subject to the general rules for the construction of such instruments: as, first, to be always taken most strongly against the covenantor, and most in favour of the covenantee; secondly, to be taken according to the intent of the parties; thirdly, to be construed *ut res magis valeat quam pereat*; fourthly, when no time is limited for its performance that it be performed in a reasonable time. If the covenantor covenant for himself and his heirs, it is then a covenant real, and descends upon the heirs, who are bound to perform it provided they have assets by descent; if he covenant also for his executors and administrators, his personal assets, as well as his real, are likewise pledged for the performance of the covenant, but the executors and administrators are bound by every covenant, without being named, unless it is such a covenant as is to be performed personally by the covenantor, and there has been no breach before his death. Covenants for title are frequently termed real covenants; they are usually, that the vendor is seised in fee, has power to convey, for quiet enjoyment by the purchaser, his heirs and assigns, that the land shall be holden free from incumbrances, and for further assurance. These five covenants are separate and distinct,

but the first and second of them are synonymous, for if a person be seised in fee, he has a power to sell, but the converse of this proposition is not universally true. No particular technical words are requisite, for any words or form of expression which import an agreement or act will suffice. A covenant to do a thing, which upon the face of it appears to be prejudicial to the public interest, or otherwise contrary to law, is absolutely void, as is an impossible covenant, if the impossibility existed at the time of making it.

A covenant is either express or implied—it subsists either in law or in fact. An express covenant, or one in fact, is expressed in words; an implied covenant, or one in law, is that which the law implies, though not expressed in words. Express covenants are taken more strictly than implied. All covenants for the benefit of the estate run with the land, so that he who has the one is subject to the other; they bind those who come in by act of law, as the personal representatives, as well as those who come in by the act of the parties. As to what covenants shall be construed to be precedent or not, it has been laid down that the dependence or independence of covenants must be collected from the sense and meaning of the parties; and that in whatever order covenants may stand in a deed, their precedency must depend on the order of time which the intent of the transaction requires.

Covenants are inherent, that tend to the support of the land or thing granted, or are collateral to it; affirmatives or negative; executed, or that which is already done; executory, or that which is to be done.

There are cases in which equity will relieve against a forfeiture incurred by breach of covenant, when full compensation can be made; but this indulgence is not willingly extended beyond the case of a money payment. See 22 & 23 *Vict.* c. 35, ss. 4 to 9.

The construction of covenants is the same in equity as at law. At law, a covenant must be strictly and literally performed; in equity, it must be substantially performed, according to the true intent of the parties, so far as circumstances will admit; but if by unavoidable accident, by fraud, by surprise, or by ignorance, not wilful, parties have been prevented from executing it literally, a court of equity will interfere, and if compensation can be made, will give relief. Lord Eldon said, in *Iggulden* v. *May*, 9 Ves. 333, 'though it is clear the construction of a covenant must be the same in law and in equity, I can conceive a number of cases in which, admitting the operation to be the same in law and in equity, a court of equity would reform the covenant and introduce another covenant; of which it might be equally predicted, that the construction should be the same in law and in equity.'—*Shep. Touch*, 160; *Bac. Abr.*, *Covenant (G)*; *Com. Dig.*, *Covenant (F)*; *Vin. Abr. Covenant (O)*.

Covenant, *action of*, a species of the *ex contractu* actions. It lies where a party claims damages for breach of a covenant, which is, in fact, a promise under seal.

Covenant to stand seised to uses. A voluntary assurance, operating under the Statute of Uses, and by non-transmutation of possession; i. e. it does not transfer the seisin to another to raise the use in the covenantee, but that seisin remains in the covenantor, he standing seised to the use of the covenantee. It must be by deed, and not by parol, and made by a person seised of lands or tenements, and consequently cannot embrace an equity, right, or contingency, though it may be of a reversion or vested remainder, for the reversioner or remainder-man is in the seisin. It must be in consideration of marriage or blood, for a covenant to stand seised to the use of a stranger would be void. It must not be for a money consideration, for that would be a bargain and sale. But it is not necessary that the consideration of blood be expressed, for if a person covenant to stand seised to the use of his wife, son, and the like, it will be sufficient, as the consideration would be apparent. Love and affection to an illegitimate child are not sufficient considerations to raise a use; *à fortiori*, long acquaintance, and familiar intercourse, are not. It is not settled what degree of relationship is necessary to support this assurance; the kindred between second cousins would perhaps be sufficient, if the fact were noticed in the instrument. The consideration of this conveyance is the foundation of it; a conveyance in the form of, and void as a grant, feoffment, or release, may still take effect as a covenant to stand seised.

The only essential difference between a covenant to stand seised to uses and a bargain and sale, setting aside the external formalities required to the validity of the latter, consists in the nature of the consideration; and hence the same deed may operate for the benefit of different parties, both as one and the other; as, if 'A. covenant that in consideration that B. is his son, he shall have the land for life, and after his death, in consideration that C. has given him 100*l.*, that he shall have it in fee.' The enrolment gives such solemnity to a bargain and sale that it is said to be an estoppel; but this is not to be understood in the same sense in which an operation by estoppel is attributed to a fine or feoffment, so as to affect property afterwards acquired, but merely that the validity of the deed cannot be denied.—2 *Sand. on Uses*, 96; *Wat. Conv.* 331.

Covenant, *writ of*, abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Coventry Act, 22 & 23 Car. II. c. 1.

Covert-Baron, said of a wife who is under the protection of her husband.

Coverture, the condition of a woman during marriage, because she is then under the cover, influence, and protection of her husband. The effect of coverture, as to the wife's person, is that it belongs of right to her husband, though should he abuse this right, the wife may have security of the peace against him. As to her property, all freeholds of which she is seised at the time of marriage, or afterwards, vest in the husband and wife during coverture, in right of the wife, and the husband is entitled to the profits and has the sole control and management, but cannot convey or charge the lands for any longer period than while his own interest continues. She can convey with her husband's concurrence, by any of the ordinary modes of assurance, duly acknowledged, as directed by the Fines and Recoveries' Act. As to her inheritable realty, the husband becomes, under certain circumstances, tenant by the courtesy, if he outlive his wife, and he and his wife may together make leases of her lands of inheritance, so as to bind her or her heirs after his interest in the property has determined. As to the wife's terms of years, and other chattels real, they belong to the husband, and may be taken in execution for his debts, and should he survive her, they are absolutely his; but if he make no disposition of them, and she survive him, they then belong to her. The husband becomes generally the absolute owner of his wife's personal chattels (except her *paraphernalia*), and her choses in action (provided he reduce them into possession). See 20 & 21 Vict c. 57. The wife, when acting in *autre droit*, as executrix, is independent of her husband. Marriage settlements and separate provisions modify, of course, his common law rights, according to the particular agreements of the parties. As a general rule, a married woman is incapable of entering into any contracts, except for necessaries, and of suing and being sued. Coverture protects her from criminal prosecution, except in cases of treason, murder, manslaughter, or cases of mere misdemeanour, or crimes committed in her husband's absence.

Covin [fr. *convenio*, Lat., to agree], a secret conspiracy or agreement between two or more persons to injure or defraud another.

Covinous, fraudulent.

Craspice, and **Craspisce**, i. e. *crassus piscis*, probably the grampus.—*Anc. Inst. Eng.*

Crassa Negligentia, gross neglect.

Crastino, the morrow after.

Cravare, to impeach.

Craven, or **Cravant** [derived by Skinner from *crave*, as one that craves or begs his life: perhaps it comes originally from the noise made by a conquered cock, *cradant*, prov. E.; *craw-don*, Sc., a coward, seems the same word], a word of disgrace and obloquy, pronounced by either champion, in the ancient trial by battle, proving recreant, i. e. yielding. Glanville calls it *infestum et inverecundum verbum*. His condemnation was *amittere liberam legem*, i. e. to become infamous, and not to be accounted *liber et legalis homo*, being supposed by the event to have been proved forsworn, and not fit to be put upon a jury or admitted as a witness.

Creamer, a foreign merchant, but generally taken for one who has a stall in a fair or market.—*Blount.*

Credentials, papers which give a title or claim to confidence, as the letters of commendation and power given to an ambassador, or public minister, by the prince who sends him to a foreign court.

Credit, a transfer of goods on trust in confidence of future payment. The seller believes in the solvency and probity of the buyer, and delivers his goods to him in confidence of it; or he delivers them on the reputation of his customer. In book-keeping, the side of an account in which payments are entered is called the credit side, as contra-distinguished from the debit side.

Creditor [Lat.], one who trusts or gives credit, correlative to debtor.

Creditors' Bill, a bill in equity filed by one or more creditors, by and in behalf of himself or themselves, and all other creditors who shall come in under the decree, for an account of the assets and a due administration of the estate. These bills are allowed upon the principle, that as executors and administrators have great power of preference at law, courts of equity ought, according to the maxim that equality is equity, to interpose upon the application of any creditor, by such a bill to secure a distribution of the assets, without preference to any one or more creditors. The usual decree against the executor or administrator is (as it is commonly phrased) *quod computet*, that is to say, it directs the chief clerk to take the accounts between the deceased and all his creditors; and to cause the creditors, upon due public notice, to come before him to prove their debts, at a certain place, and within a limited period; and it also directs the chief clerk to take an account of all the personal estate of the deceased in the hands of the executor or administrator, and that the same be applied in payment of the debts and other charges in a due course of administration.

As soon as the decree to account is made, the executor or administrator is entitled to an injunction out of Chancery, to prevent any of the creditors from suing him at law, or proceeding in any suits already commenced, except under the direction and control of the court of equity where the decree is made. The object of the court, under such circumstances, is to

compel all the creditors to come in and prove their debts before the chief clerk, they being allowed 4*l.* per cent upon their debts, from the decree to account, and 35*s.* for their costs, and to have the proper payments and discharges made under the authority of the court; so that the executor or administrator may not be harassed by multiplicity of suits, or a race of diligence encouraged between different creditors, each striving for an undue mastery and preference. But in order to prevent any abuse, by connivance between an executor or administrator and a creditor, it is now a common practice not to grant an injunction unless the answer or affidavit of the executor or administrator states the amount of the assets, and then only upon the terms of his bringing the assets into court, or obeying such other order of the court as the circumstances of the case may require. The same remedial justice is applied where the application, instead of being made by creditors, is made by legatees or trustees.—1 *Story's Eq. Jurisp.* 442. As to an administration summons by creditors, see *Smi. Ch. Pr.* 551.

Creditrix, a female creditor.

Crementum comitatus (*the increase of a county*). The sheriffs or counties anciently answered in their accounts for the improvement of the king's rents, above the viscontiel rents, under this title.

Crepare oculum, to put out an eye. An offence punishable among the Saxons by a fine of 50*s.* This was the highest fine.—*Turner's Anglo-Saxons,* v. ii. app. iii. c. ii., p. 515.

Crepusculum, or **Crepusclę** [Lat.], the twilight, i. e. the faint light diffused through the atmosphere by the sun, some time before rising and after setting; it is caused by the reflection of the sun's rays from the aqueous vapours and atmosphere overhead, which produce this effect in our climate to the height of forty-four miles. The morning twilight begins and the evening twilight ends when the sun is about eighteen degrees below the horizon. At the poles, where there are six months day and six months night, the twilight continues for two months, so that during a great part of the half year there is light at night.

Crescente malitiâ crescere debet et pœna.—2 *Inst.* 479.—(Vice increasing, punishment ought also to increase.)

Cretinus, a sudden stream or torrent.

Cretio, the period fixed by a testator within which the heir must have formally declared his intention to accept.—*Civil Law.*

Crier *of the Court of Chancery,* abolished by 15 & 16 Vict. c. 87, s. 27.

Crimen falsi (*the offence of forgery*).

Crimen falsi dicitur, cum quis illicitus, cui non fuerit ad hæc data auctoritas, de sigillo regis rapto vel invento, brevia, cartasve consignáverit.—Fleta, l. 1, c. xxiii.—(The crime of forgery is when any one illicitly, to whom power has not been given for such purposes, has signed writs or charters with the king's seal, either stolen or found).

Crimen furti, the offence of theft.

Crimen incendii, the offence of arson.

Crimen læsæ majestatis, the crime of injured majesty; treason.

Crimen læsæ majestatis omnia alia crimina excedit quoad pœnam.—3 *Inst.* 210.—(The crime of treason exceeds all other crimes in its punishment.)

Crimen raptus, the offence of rape.

Crimen roberiæ, the offence of robbery.

Crimes, violations of rights, which, considered in reference to their evil tendencies, as regards the community at large, are the subjects of indictment. They consist either of misdemeanors or felonies. In our law misdemeanor is generally used in contradistinction to felony, and comprehends all indictable offences which do not amount to felony, as perjury, battery, libels, conspiracies, &c.

It is not very easy in theory, and quite impossible according to the English law, to lay down any single principle by which to distinguish crimes from civil injuries—private from public wrongs. By the English law a distinction exists, but it seems wholly technical; depending sometimes on the situation of the agent; sometimes on the nature or relations of the thing which is the object of the act; sometimes on the manner in which the act is done; sometimes on the consequences of the act, the time of doing it, and other grounds which it would be useless to enumerate, because they can be learned thoroughly only by an acquaintance with the law itself.—4 *Bl. Com.* 7, n. 3, *by Coleridge.* See OFFENCE.

Crimina morte extinguuntur.—(Crimes are extinguished by death.)

Criminal, a person indicted for a public offence and found guilty.

Criminal conversation, adultery. See ADULTERY. The action of crim. con. is abolished by 20 & 21 Vict. c. 85, s. 59; but the 33rd section gives a husband the right to claim damages from an adulterer, either in a petition for dissolution of marriage or for judicial sepation, or in a petition limited to that object, and the damages claimed must be assessed by a jury upon the same principles and subject to the same rules as were formerly applicable to the trial of actions for criminal conversation, and the court has power to direct the mode of their application, and may direct that they be settled for the benefit of the children of the marriage, or as a provision for the wife.

Criminal information, a proceeding at the suit of the Queen, without a previous indictment or presentment by a grand jury. Criminal informations are of two sorts: (1) *ex officio,*

which is a formal written suggestion of an offence committed, filed by the Attorney-General, or in the vacancy of that office by the Solicitor-General, in the Court of Queen's Bench, without the intervention of a grand jury. It lies for misdemeanors only, and not for treasons or felonies. The offences against which they are usually directed are seditious or blasphemous libels or words, seditious riots not amounting to treason, libels upon the Queen's ministers, the judges or other high officers, reflecting upon their conduct in the execution of their official duties; obstructing such officers in the execution of their duties; against officers themselves for bribery, or for other corrupt or oppressive conduct. The information is filed in the Crown office without the previous leave of the Court. (2) Information by the master of the Crown office, which is filed at the instance of an individual, with the leave of the court; and usually confined to gross and notorious misdemeanors, riots, batteries, libels, and other immoralities. The application is for a rule to show cause why a criminal information should not be filed against the party complained of, and must be founded upon an affidavit disclosing all the material facts of the case. If the court grant the rule *nisi*, it is afterwards, upon showing cause, discharged or made absolute. When an information is filed, either thus or *ex officio*, it must be tried by a petit jury of the county where the offence arose, and for that purpose, unless the case be of such importance as to be tried at bar, it is sent down by writ of *nisi prius* into that county, and tried either by a common or special jury, like a civil action, and, if the defendant is found guilty, he must afterwards receive judgment from the Court of Queen's Bench.—4 *Bl. Com.* 308.

Criminal law. This division of our jurisprudence comprises the administration of the Crown law by the Court of Queen's Bench at Westminster, consisting principally of a sort of *quasi* criminal law, as indictments for libels, nuisances, the repair of roads, bridges, &c., informations, quo warranto, mandamus, certiorari, and the judicial decision of questions concerning the poor laws; and the general criminal law of the kingdom as administered either in the Court of Queen's Bench or at the sessions in London and Middlesex, and at sessions and the assizes in the country.

Criminal Lunatic Asylum. See 23 & 24 *Vict.* c. 75.

Crocards, a sort of old base money.

Crocia, the *crosier*, or pastoral staff.

Crociarius, the cross-bearer, who went before the prelate.

Croft [A.S. fr. *creaft*, Old Eng., handy-craft, or *croit*, Gael., a hump], a little close adjoining to a dwelling-house or homestead, and enclosed for pasture or arable, or any particular use.

Croises, and Croisado. See CROYSES.

Croiteir, a crofter, one holding a croft.

Crop, the seeds or products of the harvest in corn.

Crore, ten millions.—*Indian.*

Cross-bill, answering to the *reconventio* of the Canon Law, as a mode of defence by cross-examination, is one filed by a defendant against the plaintiff or other defendants in the same suit, either to obtain (1) a necessary discovery of facts in aid of his defence to the original bill, or (2) full relief to all parties, touching the matters of the original bill, as in a suit for the specific performance of a written contract, which the defendant at the same time insists ought to be delivered up or cancelled, in order to protect him from the plaintiff hereafter bringing an action at law upon such contract, a relief which the defendant must pray for by a cross-bill.—*Mitf. Pl.* 97; *Sto. Eq. Plead.* s. 389, *et seq.*

A cross-bill should state the parties, objects and prayer of the original bill, and the proceedings thereon, also the rights of the party exhibiting the bill, which render the cross-suit necessary, or the ground on which he resists the claim of the plaintiff in the original bill, if that is the object of the new bill. It should not introduce new and distinct matters, not embraced in the original suit; for as to such matters it would be an original bill, and they cannot properly be examined at the hearing of the first suit. Where a cross-bill seeks not only a discovery but relief, care should be taken that the relief prayed by the cross-bill be equitable relief; for, to this extent it may be considered as not purely a cross-bill, but in the nature of an original bill, seeking farther aid from the court; and then the relief ought to be such as in point of jurisdiction it is competent for the court to give.—*Sto. Eq. Pl.* 453.

A cross-bill initiates a mere auxiliary, ancillary suit, depending altogether upon the original suit.

A cross-bill must, as a general rule, be brought before the closing of evidence in the original cause, unless the plaintiff in the cross-bill will go to the hearing upon the depositions and proofs already taken. This rule is established to prevent the danger of perjury, and the subornation of perjury, in case the parties should, after the closing of evidence, be permitted to examine witnesses *de novo* to the same matters to which they or others have been already examined. However, closing of evidence will be enlarged, or postponed, for the purpose of enabling the defendant to file a cross-bill upon a special application showing sufficient grounds to the court for making such an order. And when an original bill and cross-bill are filed, both causes commonly proceed to be heard together, which could not be

done if the cross-bill were filed after closing of evidence in the original cause, unless the cross-bill were heard on the bill and answer. For the purpose of hearing the two causes together the cross-plaintiff is entitled to have his cause advanced upon a motion or petition of course. The two causes must be set down for hearing before the same judge, for they are considered united and parts of one and the same cause.

But although the general rule is, that a cross-bill must be filed before evidence closed, to entitle the party to take testimony in support of the facts asserted in it, independently of the answer; this rule is a restriction upon the rights of the defendant, and not upon the authority of the court; for, where it is necessary for the purposes of justice in a particular cause, the court may direct a cross-bill to be filed at any time.

The cross-bill is filed and served in the same way as an original bill, and appearance and answer are enforced in the same manner.

A cross-bill is now unnecessary in some cases in which it was formerly required. As, for example, if a bill is filed for the specific performance of an agreement, and the defendant should insist upon a different agreement from that stated by the plaintiff in the bill, and should offer to perform the specific agreement which he represents to have been made; the old practice would have required that the defendant should file a cross-bill, to entitle himself to a decree for the performance of the agreement as set up and proved by the defendant. But this would now be unnecessary, because the court will, under such circumstances, at his request, decree a specific performance of the agreement, actually set up and established in the defence.

The original plaintiff is entitled to have an answer to his interrogatories before he can be compelled to answer those of the cross-bill, but he must obtain an order for the purpose, which he may do as of course. This order allows him a certain time to answer the cross-bill after the original defendant has answered. The order can be obtained, although the cross-plaintiff may be in a situation to enforce an answer first, but it must be applied for before the cross-defendant has incurred a contempt for not answering the cross-bill. At the expiration of the time allowed to answer the cross-bill, after the original bill has been answered, the cross-plaintiff is entitled to an answer, and the cross-defendant is not entitled as of course to any further time.—*Smi. Handb.* 497.

The priority of answer to which the original plaintiff is entitled, may be waived and transferred to the cross-plaintiff by his amending his bill after the filing of the cross-bill, in things material, and requiring an answer; but the cross-plaintiff, upon such material amendment being made, must obtain an order, which is as of course, that the proceedings in the original bill be stayed until a certain time after the plaintiff shall have fully answered the cross-bill. Should he not then amend his bill, then the cross-plaintiff cannot stay the proceedings in the original cause until an answer to his cross-bill be filed, but can only stay or respite closing of the evidence in the original cause.

Where a defendant files a cross-bill for discovery only against the plaintiff, the answer to such cross-bill may be read and used by the party filing such cross-bill, in the same manner, and under the same restrictions as the answer to a bill praying relief may now be read and used.

The costs of a bill of discovery filed by any defendant to a bill for relief are to be costs in the original cause, unless the court otherwise orders.

A cross-bill for discovery alone has been rendered unnecessary, as a defendant can now examine a plaintiff upon interrogatories in the original suit, but a defendant has the option of still adopting the practice by cross-bill.—15 & 16 *Vict.* c. 86, s. 19.

Also if a bill of exchange or promissory note be given in consideration of another bill or note, it is called a cross or counter bill or note.

Cross-examination, a close and rigid questioning of a witness by the counsel of the adverse party, in order to test the truth of his examination-in-chief. A witness cannot be cross-examined as to any fact which, if admitted, would be collateral and wholly irrelevant to the matter in issue, for the purpose of contradicting him by other evidence, in case he should deny the fact, and in this manner to discredit his testimony. When a witness has been once sworn to give evidence, the other party may cross-examine him, though he gave no evidence for the party who called him. Leading questions are admitted in the cross-examination of a witness, when much larger powers are given to counsel than in the examination-in chief.

Cross-remainders, reciprocal contingencies of succession, which may be implied in a will, but must always be expressed in a deed, and should be expressly limited in a will.

The broad rule is that wherever realty is devised to several persons in tail as tenants-in-common, and it appears to be the testator's intention that no part should go over until the failure of the issue of all the tenants-in-common, they take cross-remainders in tail amongst themselves.

The deductions from the authorities have been stated thus (2 *Jarm. Wills.* c. xlii. 471):

(1) That under a devise to several persons in tail, being tenants-in-common, with a limitation over for want, or *in default of such issue,*

cross-remainders are to be implied amongst the devices in tail.

(2) That the above rule applies whether the devise be to two persons, or a larger number, though it may be made to them '*respectively*,' and though in the devise over the testator have not used the words 'the said premises,' or 'all the premises,' or 'the same,' or any other expression denoting that the ulterior devise was to comprise the entire property, and not undivided shares.

(3) That the rule applies, in regard to executory trusts at least, though there be an *express* direction to insert cross-remainders among *another* class of objects, or a limitation over among some of the *same* objects; and even in direct devises an express limitation of cross-remainders among *another* class of objects has been held not to repel the implication.

(4) That the word 'remainder' following a devise to several in tail, will raise cross-remainders among them.

(5) That it is no objection to the implication of cross-remainders that there is an inequality among the devisees whose issue is referred to; some of them being tenants-in-tail, and others tenants for life, with remainder to their issue in tail.

(6) That a devise to the children of A. for life, and *for want and in default of such issue* then over, creates cross-remainders by implication for life among such devisees.

A gift to several in fee-simple as tenants-in-common, with a limitation over in case they all die under age, the share of one of the devisees dying during minority will devolve upon his representatives, unless and until the whole die under age.

Cross-remainders may be implied in wills, marriage articles, and limitations of executory or imperfect trusts, but not in deeds, and for this reason, that although in a deed a remainder may be implied, yet words of inheritance cannot, so as to determine what quantity of an estate is conferred by the remainder; otherwise, if no particular words were necessary to limit the inheritance, cross-remainders could be raised by implication in a deed as well as in a will.—*Watk. Conv.* 189.

Crossing checks. It is very usual for the drawers of bankers' checks to write across them the name of the payee's banker, in which case the banker on whom the check is drawn will only pay to that banker; in other cases, as when the drawer is unaware of the payee's banker, it is usual for him to write merely the words 'and Co.' leaving it to the payee to add the name of his banker. This serves the purpose of some security in case the check is lost, since it can only be paid through a banker, and moreover postpones in some measure the payment until the clearing hours in the afternoon. See BANKERS' CHEQUES.

Crown [fr. *couronne*, Fr.; *kroone*, Dut.; *corona*, Lat.], an ornamental badge of regal power worn on the head by sovereign princes. The word is frequently used when speaking of the sovereign herself, or the rights, duties, and prerogatives belonging to her. Also a silver coin of the value of five shillings. As to costs for and against the Crown, see 18 & 19 *Vict.* c. 90.

Crown cases reserved. Questions of law which arise at criminal trials (except in the case of demurrers) are now usually referred to the Court of Criminal Appeal, which sits under the authority of 11 & 12 Vict. c. 78, which declares that the justices and barons shall have full power and authority to hear and finally determine the said question or questions reserved for their consideration, and thereupon to reverse, affirm, or amend any judgment which shall have been given on the indictment or inquisition, on the trial whereof such question or questions have arisen; or to avoid such judgment, and to order an entry to be made on the record that in the judgment of the said justices and barons the party convicted ought not to have been convicted; or to arrest the judgment thereon, or to order judgment to be delivered thereon.

Crown debts. It is a prerogative of the Crown to claim priority for its debts before all other creditors, and to recover them by a summary process called an extent, because *thesaurus regiæ est pacis vinculum et bellorum nervi.*

Every person having money belonging to the Crown is a crown-debtor. When upon inquisition a person is found to be a crown-debtor by simple contract, the debt immediately becomes a specialty; but a person giving to the Crown a bond on condition is not a bond-debtor before the condition is broken.

The places to be searched to ascertain the existence of any crown debts created or secured before the 4th of June, 1839, are the Exchequer Office and the Tax Office, among the receiver-general's bonds. Since that date, at the Common Pleas Office, pursuant to 2 Vict. c. 11. See 18 *Vict.* c. 15. After 31st Dec. 1859, the provisions as to re-registry contained in 2 & 3 Vict. c. 11, and 18 & 19 Vict. c. 15, apply to crown debts.—22 & 23 *Vict.* c. 35, s. 22, and see 23 & 24 *Vict.* c. 115, s. 1.

Crown office, a department belonging to the Court of Queen's Bench, commonly called the Crown side of the court. The 6 & 7 Vict. c. 20, abolished the clerks in this court, and the monopoly of their practice, throwing it open to all persons admitted or admissible to practice as attorneys of the Court of Queen's Bench; it also abolished several ancient offices, and many burthensome fees, and made the office subject

to the direct control of the Lord Chief Justice. The office of Assistant Master was abolished by 23 & 24 Vict. c. 54. There are now only three officers of the crown side appointed by the Lord Chief Justice, viz. the Queen's coroner and attorney, and one master; their offices are held during good behaviour.

The business of this office may be thus stated:

1st. Original proceedings, which consist of (α) indictments for assaults and batteries; libels, nuisances, perjuries, conspiracies, non-repair of roads, bridges, &c.; (ε) informations.

2nd. Proceedings by way of supervision or appeal, exercised by means of (α) a certiorari; (ε) proceedings in error; (γ) mandamus.

3rd. Collateral proceedings, consisting of (α) articles of the peace; (ε) attachments; (γ) habeas corpus.

Two days in each week during term, viz. Wednesday and Saturday, are appropriated by the Court of Queen's Bench to the Crown business, called 'Crown Paper Days.'—*Arch. Prac. of Crown Off.*

Crown solicitor. The solicitor to the Treasury acts, in state prosecutions, as solicitor for the Crown in preparing the prosecution. In Ireland there are officers called Crown solicitors attached to each circuit, whose duty it is to get up every case for the Crown in criminal prosecutions. They are paid by salaries. There is no such system in England, where prosecutions are conducted by solicitors appointed by the parish, or other persons bound over to prosecute by the magistrates on each committal; but in Scotland the still better plan exists of a Crown prosecutor in every county, who prepares every criminal prosecution.

Croy, marsh land.—*Blount.*

Croyses, pilgrims, because they wore the sign of the cross upon their garments.—*Bract.* l. 5, pt. 2, c. ii.

Crustum, a purple garment mixed with many colours.

Cry de pais, or **Cri de pais,** hue and cry.

Cryer, an officer of a court, whose duty it is to make proclamation.

Crypta [Ital., fr. κρύπτω, Gk., to hide, being first used by the early Christians for the performance of religious services in safety], a chapel or oratory under ground, or under a church or cathedral.—*Du Cange.*

Cshatriya, Kshatriya, Chetterie, Khetery, a man of second or military caste.—*Indian.*

Cucking-stool. A chair on which females for certain offences were fastened and ducked in a pond. 'The chair was sometimes in the form of a close-stool, which contributed to increase the degradation.'—*Halliwell. Cugh,* Manx., excrement in children's language; *Kuka,* Icel. *cacare* Lat. Cukkynge or pysynge vesselle *scaphium,* Pr. Pm. '*Similiter malam cervisiam facitis, aut in cathedrâ ponebatur stercoris, aut iiij. sol. dabat prepositis.*'—*Domesday B. in Way.* It was also called *goging-stool. Gouy-stole,* A. Sax., a close-stool.—*Wedgw.*

Cuckoldom [fr. *cuckoo*; *cuculus,* Lat., a bird which lays her eggs in the nest of another bird], the act of adultery.

Cude, a chrysom or face-cloth for a child baptised.

Cui ante divortium (*to whom before divorce*). A writ for a woman divorced from her husband to recover her lands and tenements which she had in fee-simple or in tail, or for life, from him to whom her husband did alienate them during the marriage, when she could not gainsay it.—*Reg. Orig.* 233.

Cui in vita (*to whom in life*). A writ of entry for a widow against him to whom her husband aliened her lands or tenements in his lifetime; which must contain in it, that during his life she could not withstand it.—*Reg. Orig.* 232.

Cui licet quod majus non debet quod minus est non licere.—4 *Rep.* 23.—(He who has authority to do the more important act shall not be debarred from doing that of less importance.)

Cui pater est populus non habet ille patrem. Co. Litt. 123.—(He to whom the people is father, has not a father.)

Cui plus licet quam par est, plus vult quam licet.—2 *Inst.* 464.—(He to whom more is granted than is just, wants more than is granted.)

Cuicunque aliquis quid concedit concedere videtur et id, sine quo res ipsa esse non potuit.—11 *Co.* 52.—(Whoever grants anything to another is supposed to grant that also without which the thing itself would be of no effect.)

Cuilibet in arte suâ perito est credendum.—*Co. Litt.* 125.—(Every one who is skilled in his own art is to be believed.)

Cujus est commodum ejus debet esse incommodum.—(Whose is the advantage, his also should be the disadvantage.)

Cujus est dare ejus est disponere.—2 *Co.* 71. (Whose is to give, his is to dispose.)

Cujus est divisio alterius est electio.—*Co. Litt.* 166.—(Whose is the division, the other's is the choice.)

Cujus est solum ejus est usque ad cælum et ad inferos.—*Co. Litt.* 4.—(Whose is the soil, his it is even to heaven and to the middle of the earth.)

This maxim is also more succinctly and elegantly expressed, *Cujus est solum ejus est altum.*

Cujus juris (i. e. *jurisdictionis*) *est principale, ejusdem juris erit accessorium.*—2 *Inst.* 493.—(An accessory matter is subject to the same jurisdiction as its principal.)

Cujusque rei potissima pars est principium. 10 *Co.* 49.—(Of everything the chief part is the beginning.)

Culagium, the laying up of a ship in a dock for repair.

Culpa, an act of neglect, causing damage, but not implying an intent to injure, of which the Roman jurists recognised two: (1) *Culpa lata, culpa latior*; *magna culpa*, gross neglect, treated very much like fraud; *culpa magna dolus est, dolo proxima.* (2) *Culpa*, without any epithet, or *omnis culpa, culpa levis, levior*; or *levissima*, slight neglect.—*Cum. Civ. Law* 279; *Sand. Just.* 476.

Culpa est immiscere se rei ad se non pertinenti.—2 *Inst.* 208.—(It is a fault for anyone to meddle in a matter not pertaining to him.)

Culpa lata dolo æquiparatur.—(A gross fault is held equivalent to fraud.)

Culpa tenet suos auctores.—(A fault binds its own authors.)

Culpæ pœna par esto. Pœna ad mensuram delicti statuenda est.—Jur. Civ.—(Let the punishment be proportioned to the crime. Punishment is to be measured by the extent of the offence.)

Culprit [fr. *cull*, abb. of *culpabilis*, and *ponit*, Lat., written by the clerk of arraigns, *pñt*, as a minute that issue was joined, or *ponit se super patriam. Cul* was probably intended to denote the plea, and *prit*, the issue; others derive it from *culpâ*, in a fault, and *prœhensus*, taken, probably a corruption of culpat, from *culpatus*, the term applied in old law Latin to an accused person], one who is indicted for a criminal offence; popularly mistaken for the legal denomination of a criminal.

Culreach, a caution given by a lord of regality to punish a malefactor, when he replevied from the sheriff.—*Scotch Dict.*

Cultura, a parcel of arable land.—*Blount.*

Culvertage [fr. *culum* and *verto*, Lat., to turn tail], base slavery; the confiscation of an estate.—*Mat. Par.* 1212.

Culward, and **Culverd,** a coward.

Cum adsunt testimonia rerum quid opus est verbis.—2 *Buls.* 53.—(Where the testimony of facts is present, what need is there of words.)

Cum confitente sponte mitius est agendum.—4 *Inst.* 66.—(One confessing willingly should be dealt with more leniently.)

Cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est.—Co. Litt. 112.—(Where two things repugnant to each other are found in a will, the last prevails.)

Cum testamento annexo [Lat.] (*with the will annexed*). See ADMINISTRATOR.

Cumulative legacies, legacies so called to distinguish them from legacies which are merely repeated. In the construction of testamentary instruments, the question often arises whether, where a testator has twice bequeathed a legacy to the same person, the legatee is entitled to both, or only to one of them; in other words, whether the second legacy must be considered as a mere repetition of the first, or as cumulative, i. e. additional. In determining this question, the intention of the testator, if it appears on the face of the instruments, prevails; but if it does not so appear the following rules have been laid down:

(I.) If the same specific thing be bequeathed twice to a legatee, whether by the same instrument or not, he is entitled to one legacy only.

(II.) If the legacies be not of a specific thing, but of quantity, e. g. a sum of money:—

(1) If they are bequeathed by the same instrument, and are of equal amount, the second legacy is not cumulative, but the legatee is entitled to one legacy only.

(2) If they are bequeathed by the same instrument, but are of unequal amount, the second legacy is cumulative.

(3) If they are bequeathed by different instruments, whether they are equal or unequal in amount, the second legacy is cumulative. See 2 *Williams on Executors*, 1160, *et seq.*

Cumulative remedy, a second mode of procedure in addition to one already available.

Cuna cervisiæ, a tub of ale.

Cuneus, a mint or place to coin money; from this word coin is derived.

Cuntey-cuntey, a kind of trial by an ordinary jury.

Curagulus, one who takes care of a thing.

Curate [fr. *curator*, Lat.], one who has the cure of souls, the lowest degree in the church, being an officiating temporary minister regularly employed by the spiritual rector or vicar, either to serve in his absence or as his assistant. All curates ought, before they enter on their duties, to be licensed by the bishop of the diocese, and the law on the other hand has made several provisions for their proper maintenance.—28 *Hen. VIII.* c. 11; 1 & 2 *Vict.* c. 106; *Burn's Ecc. Law, by Tyrw.* v. ii., p. 54.

Curator, a protector of property. His duty was to see that the person under his care did not waste his goods.—*Civil Law; Sand. Just.* 156.

Curatores viarum, surveyors of the highways.

Curatus non habet titulum.—3 *Buls.* 310.—(A curate has not a title.)

Curfeu, Curfew [fr. *couvrir*, to cover, and *feu*, Fr., fire], a bell which rang at eight o'clock in the evening, in the time of William the Conqueror, whereupon everyone was obliged by law to put out his fire and light. The law was abolished by Henry I. in 1100. It was called in the law Latin of the middle ages, *ignitegium* or *pyritegium.*

Curia Cancellariæ officina justitiæ.—2 *Inst.* 552.—(The Court of Chancery is the workshop of justice.)

Curia Parliamenti suis propriis legibus sub-

stitit.—4 *Inst.* 50.—(The Court of Parliament is governed by its own peculiar laws.)

Curia domini Regis non debet deficere conquerentibus in justitiâ perquirendâ.—9 *Co.* 83.—(The Court of our Lord the King ought not to be wanting in administering justice to the suitors.)

Curia, a court of justice. Also the class from which in the Roman provincial towns the magistrates were eligible.

Curia advisare vult (*the court desires to consider*), a deliberation which a court of judicature sometimes takes, where there is any point of difficulty, before they give judgment in a cause. Abbreviated in our reports thus, *cur. adv. vult.*

Curia cursus aquæ, a court held by the lord of the manor of Gravesend for the better management of barges and boats plying on the river Thames between Gravesend and Windsor, and also at Gravesend bridge, &c.—2 *Geo. II.* c. 26.

Curia claudenda, an obsolete writ to compel another to make a fence or wall, which he was bound to make between his land and the plaintiff's.—*Reg. Orig.* 155.

Curia domini, the lord's house, hall, or court, where all the tenants meet at the time of keeping courts.

Curia palatii, the Palace-Court. It was abolished by 12 & 13 Vict. c. 101.

Curia penticiarum, a court held by the sheriff of Chester, in a place there called the *Pendice* or *Pentice*; probably it was so called from being originally held under a pent-house, or open shed covered with boards.—*Blount.*

Curia Regis. See AULA REGIS.

Curialitas, a holding of land by curtesy.—*Scotch Term.*

Curiality, the privileges, prerogatives, or, perhaps, retinue of a court.—*Bacon.*

Curiæ Christianitatis, courts of christianity; ecclesiastical courts.

Curiosa et captiosa interpretatio in lege reprobatur.—1 *Buls.* 6.—(A nice and captious construction is reprobated in law.)

Curnock, a measure containing four bushels, or half a quarter.

Currency, coin or bank notes, or other paper money issued by authority, and which are continually passing as and for coin.

Curriculum, the year, or the course of a year; the set of studies for a particular period, appointed by an University.

Currit tempus contra desides et sui juris contemptores.—(Time runs against the slothful, and those who slight their own rights.)

Cursitor Baron of the Exchequer, office of, abolished by 19 & 20 Vict. c. 86.

Cursitors [fr. *clerici de cursu,* Lat.], clerks of the court of Chancery, who made out original writs and were called clerks of course.—18 *Edw. III.* st. 5. The office was abolished by 5 & 6 Wm. IV. c. 82, ss. 10, 11, and 12, and their duties were transferred to the Petty Bag Office.

Cursones terreæ, ridges of land.

Cursus curiæ est lex curiæ.—3 *Buls.* 53.—(The practice of the court is the law of the court.)

Curtesy of England [*jus curialitatis Angliæ,* Lat.], an estate which by favour of the law of England arises by act of law, and is that interest which a husband has for his life in his wife's fee-simple or fee-tail estates, general or special, after her death.

There are four circumstances necessary to the existence of this estate:—

(1) A canonical or legal marriage.

(2) Seisin of the wife; as to corporeal hereditaments, it must be a seisin in deed, either actual or virtual (*Co. Litt.* 29 *a*, n. 3; 8 *Co.* 96 *a*), but as to incorporeal hereditaments, a seisin in law is sufficient, where a seisin in deed is impossible.

(3) Birth of issue, alive and during the mother's existence (*Paine's case,* 8 *Co.* 34). It is immaterial whether the issue live or die, or whether it be born before or after the wife's seisin. If a woman inheritable marries, has issue, her husband dies, and she takes another husband and has issue, which dies, and then the wife dies, the second husband shall be tenant by the curtesy, though the issue by the first husband be living.

(4) Death of the wife. The husband's title to the curtesy is initiated at the birth of issue, and consummated at the death of his wife. No entry is necessary to complete this estate.

It is to be observed that by the custom of gavelkind, a husband may be tenant by the curtesy, without having had any issue by his wife. This curtesy is only of a moiety of the wife's lands, and ceases if the husband marry again.

All persons capable of taking freehold estates may be tenants by the curtesy; but aliens cannot, nor a person attainted of felony, unless he have issue by his wife after pardon (*Co. Litt.* 30 *b*, n. 7). A condition to restrain the husband of a feme-donee in tail from curtesy is repugnant and void.—*Co. Litt.* 224 *a.*

A husband may be tenant by the curtesy in a fee-simple or fee-tail estate, which is held in coparcenary or in common, for in each of these the inheritance is executed in possession; also in trusts and other interests, which, though in law mere rights and titles, are deemed estates in equity, and also in advowsons, rents, and commons. But there cannot be a tenant by the curtesy in the following interests:—

At the common law, if lands had been given to husband and wife, and to the heirs of their

two bodies begotten, and they had issue, and the husband died, and she took another husband, and had issue, the nature of the gift was so far changed by their having issue, that the land then became descendible to all the heirs of the body of the wife by any other husband, and liable to the curtesy of such husband. To prevent this, it was provided by the statute *De Donis*, that where lands were given in this manner, a second husband should not be tenant by the curtesy, nor his issue inheritable.

If lands be given to a woman and to the heirs male of her body, and she marries and has issue a daughter only, and dies, her husband shall not be tenant by the curtesy; because the daughter by no possibility could inherit the mother's estate in the land.

As no estates in land are subject to curtesy but those of inheritance, wherever the inheritance is held to have never vested in the wife, the husband cannot be tenant by the curtesy. For it is the rule in the case of a tenancy by the curtesy, as well as in a tenancy in dower, that the estate shall come out of the inheritance, and not out of the freehold. Estates held in joint-tenancy are not subject to curtesy. Where an estate is given to two sisters, and the heirs of their bodies, and one marries and has issue and dies, her husband shall not be tenant by the curtesy, because the estate of the surviving sister intervenes, and the estate tail was never executed in possession. A man cannot be tenant by the curtesy of lands which are assigned to a woman for her dower. This follows from dower not being an estate of inheritance. For the same reason a woman cannot have dower of lands of which a man is tenant by the curtesy. Lord Coke says, 'A man shall not be tenant by the curtesy of a reversion or remainder expectant upon any estate of freehold, unless the particular estate be determined or ended during the coverture. The reason is, that there was no seisin of the freehold. It would be otherwise of a reversion in remainder expectant upon a lease for years, because there the wife is seised of the freehold. Copyhold estates are not liable to curtesy, unless there be an express custom to warrant it.'

The husband, from the moment of the child's birth, or of the acquisition of the property by his wife (whichever last happens), is enabled to convey an estate for his own life; before the birth of a child, he can convey a good estate for the joint lives only of himself and his wife. If he make a lease for years, reserving rent, and die, the lease is absolutely determined, so that no acceptance of rent by the heir or those in reversion, can make it good, for though his estate is *quodam modo* a continuance of the wife's estate, yet it is a continuance of it only for life, and he has no power to contract for or intermeddle with the inheritance; and, consequently, his lease determines with the estate whence it is derived, and the lessee becomes tenant at sufferance if he continues in possession. An estate by the curtesy, in respect of the estate tail, or of any prior estate created by the settlement, as well as a resulting use or trust to or for the settlor, is to be deemed a prior estate under the settlement within the contemplation of the Fines and Recoveries' Act (3 & 4 Wm. IV. c. 74, s. 22) appointing a protector; the husband would therefore be the protector of the settlement.

Though this estate is styled the curtesy of England, it appears to have been the established law of Scotland, where it was called *curialitas*; it also prevails in Ireland by virtue of an ordinance of Henry III. The doctrine was recognised among the Romans.

It is not very easy to account for the name, 'tenant by the curtesy of England;' Littleton's explanation of it, viz. 'because this is used in no other realm but in England only' (*Litt.* s. 35), being obviously incorrect, since the law that a husband who had issue should retain the lands of his deceased wife during his life, prevailed among many of the northern nations. Sir Thomas Craig calls it *curialitas* (*Crag.* lib. 2, c. xxii., s. 40), from which Blackstone infers, that, 'probably our word *curtesy* was understood to signify rather an attendance upon the lord's *court* or *curtis* (that is, being his vassal or tenant), than to denote any peculiar favour belonging to this island; and therefore it is laid down, that by having issue, the husband shall be entitled to do homage to the lord, for the wife's lands, alone; whereas, before the issue had, they must have both done it together' (2 *Com.* 126). But as ideas or facts exist before they are named, the order of the cause and effect expressed by the 'therefore' at the beginning of the last sentence is probably the reverse of the true one. That is, it was not laid down, that by having issue the husband should be entitled to do or receive homage, alone, *because* the word *curtesy* signified attending or holding a court-baron; but the word *curtesy* was applied to this species of tenure, *because* the distinguishing incident (the *differentia*) of it was that *after issue had the husband should do or receive homage, in right of his wife alone.*—*Bisset on Life Estates*, c. iii.

Some English writers (*Mirror*, c. i. s. 3) ascribe the law of *curtesy* to Henry I.; but Nathaniel Bacon (*Government*, 4to, 1647, p. 105) calls it a law of counter-tenure to that of dower, and yet supposes it as ancient as the time of the Saxons, and that it was therefore rather restored by Henry I. than introduced by him. But there is no trace of this curtesy among the laws of the Saxons, nor among those we

have of Henry I.—1 *Reeve* 298; *Cham. on Est. I.* c. iii. p. 92.

Curteyn, the name of King Edward the Confessor's sword, which is the first sword carried before the English sovereigns at their coronation; and it is said the point of it is broken as an emblem of mercy.—*Mat. Par. in Hen. III.*

Curtilage [fr. *cour*, Fr., court; and *leagh*, Sax., place], a court-yard, backside, or piece of ground lying near and belonging to a dwelling-house.

Curtiles terræ, court lands.—*Spel. on Feuds.*

Cussore, a term used in Hindoostan for the discount or allowance made in the exchange of rupees, in contradistinction to *batta*, which is the sum deducted.—*Encyc. Lond.*

Custantia, costs.

Custode admittendo, Custode amovendo, writs for the admitting and removing of guardians.

Custodes Libertatis Angliæ auctoritate Parliamenti, the style in which writs and all judicial processes were made out during the great revolution from the execution of King Charles I. till Oliver Cromwell was declared Protector.—12 *Car. II.* c. 3.

Custodia legis, in the custody of the law.

Custodiam lease, a grant from the Crown under the Exchequer seal, by which the custody of lands, &c., seised in the king's hands, is demised or committed to some person as custodee or lessee thereof.

Custom [fr. *costume*, It.; *coustume*, *coutume*, Fr.; *costumbre*, Sp.; *consuetudo*, Lat.], an unwritten law established by long usage and the consent of our ancestors. If it be universal, it is common law; if particular, it is then properly custom. The requisites to make a particular custom good are these: (1) It must have been used so long that the memory of man runs not to the contrary; (2) it must have been continued; and (3) peaceable; also (4) reasonable; and (5) certain; (6) compulsory, and not left to the option of every person, whether he will use it or not; and (7) consistent with other customs, for one custom cannot be set up in opposition to another.

Custom-house, the house or office where commodities are entered for importation or exportation; where the duties, bounties, or drawbacks payable or receivable upon such importation or exportation are paid or received; and where ships are cleared out, &c. The principal British custom-house is in London, but there are custom-houses subordinate to it in all the considerable seaports.

Custom-house Brokers, persons authorised by the commissioners of customs to act for parties at their option in the entry or clearance of ships, and the transaction of general business. They give a bond to the commissioners in a sum of 1,000*l.* conditioned for their good conduct, and for the purpose of enabling restitution to be made of any loss accruing by their negligence or misconduct.

Custom of Merchants [*lex mercatoria*, Lat.] See COMMERCE.

Customary Court-Baron, a court which should be kept within the manor for which it is held. It may be held anywhere within the manor, at the pleasure of the person holding it, unless some ancient custom require it to be held in a certain place.

The court-baron was to be held from three weeks to three weeks, or, as some think, as often as the lord chose. And it should seem clear, that the lord may hold a customary court as frequently as he pleases, and compel the attendance of his tenants who hold by villein or base services.—2 *Wat. Cop.* c. i., p. 9.

It is to be observed, that although there should be no freeholders of the manor, by which the court-baron or freeholders' court is lost, yet still there may be a customary court; for as these two courts are distinct (though frequently held at the same time, the same roll serving to record the proceedings of both), the want of freeholders does not preclude the lord from holding a customary court for his copyholders.—1 *Cruise's Dig.* tit. x. c. i., s. 19.

Customary Freeholds, or, as they are also denominated, PRIVILEGED COPYHOLDS, or copyholds of frank tenure, were known in ancient times as estates in privileged villenage or villein socage, and are estates held by custom, but not at the lord's will, in which they differ from copyholds: yet now the will of the lord in copyhold is, as we have seen, reduced to a mere fiction. These lands are of such singular nature that when they are compared with mere copyholds, they may be called freeholds, and when compared with absolute freeholds, they may be denominated copyholds. While the *freehold interest* or *estate* rests with the tenant, the *freehold tenure* is in the lord. (Mr. Serjeant Scriven dissents from this proposition in his work on *Copyholds*, vol. ii., p. 572, *et seq.*) They are usually transferred, by surrender, into the hands of the lord and admittance of the new tenant. Their customs, incidents, and services, are similar to those already noticed as relating to copyholds properly so called.

Mr. Cruise divides customary freeholds into two kinds: (1) Those of which the freehold is in the lord, more properly called *free* copyholds; and (2) those of which the freehold is in the tenant, strictly called *customary* freeholds. The former pass by surrender and admittance, the latter by a conveyance which passes from the grantor-tenant his freehold, followed by an admittance (or as the custom is, in some manors, by surrender and admittance), which marks the change of tenancy.—1 *Cruise's Dig.* tit. x. c. i., s. 9.

Customs, duties charged upon commodities on their importation into, or exportation out of, a country. They seem to have existed in England before the Conquest, but the king's claim to them was first established by 3 Edw. I. These duties were, at first, principally laid on wool, woolfels (sheep skins), and leather when exported. There were also extraordinary duties paid by aliens, which were denominated *parva costuma*, to distinguish them from the former, or *magna costuma*. The duties of tonnage and poundage, of which mention is so frequently made in English history, were custom duties; the first being made on wine by the ton, and the latter being an *ad valorem* duty of so much a pound on all other merchandise. When these duties were granted to the Crown, they were denominated *subsidies*, and as the duty of poundage had continued for a lengthened period at the rate of 1*s.* a pound, or five per cent., a subsidy came, in the language of the customs, to denote an *ad valorem* duty of five per cent. The *new subsidy* granted in the reign of Wm. III. was an addition of five per cent. to the duties on most imported commodities. The various custom duties were collected for the first time, in a book of rates published in the reign of Charles II., a new book of rates being again published in the reign of George I. But exclusive of the duties entered in these two books, many more had been imposed at different times; so that the accumulation of the duties, and the complicated regulations to which they gave rise, were productive of the greatest embarrassment. The Customs' Consolidation Act, 27 Geo. III. c. 13, introduced by Mr. Pitt, in 1787, did much to remedy these, among other inconveniences. The method adopted was, to abolish the existing duties on all articles, and to substitute in their stead one single duty on each article, equivalent to the aggregate of the various duties by which it had previously been loaded. The resolutions on which the act was founded amounted to about 3,000. A more simple and uniform system was, at the same time, introduced into the business of the custom-house. These alterations were productive of the very best effects, and several similar consolidations have since been effected, particularly in 1853, when the 16 & 17 Vict. c. 107, consolidated the several acts then in force for the management and regulation of customs, the prevention of smuggling, the encouragement of British shipping and navigation, the warehousing of goods, the granting of drawbacks and allowances of customs, the regulation of the trade of the British possessions abroad and of the Isle of Man. As to customs, see 8 & 9 *Vict.* c. 85, ss. 2, 3; c. 86, ss. 45, 139, 140; c. 87, ss. 10, 124; c. 91, s. 51; 12 & 13 *Vict.* c. 90, ss. 41, 42, 43; 13 & 14 *Vict.* c. 95, s. 14; 15 & 16 *Vict.* c. 47; 16 & 17 *Vict.* c. 54; 17 & 18 *Vict.* c. 5; 19 & 20 *Vict.* cc. 75, 83, s. 5; 20 *Vict.* c. 15; 20 & 21 *Vict.* cc. 61, 62; 22 & 23 *Vict.* c. 37; 23 & 24 *Vict.* c. 22; 24 & 25 *Vict.* c. 20; 25 & 26 *Vict.* c. 22. As to offences against the customs, see 16 & 17 *Vict.* c. 107, s. 269, &c.—*McCull. Comm. Dict.*

Customs Inland Bonding Act, 1860.—23 & 24 *Vict.* c. 36.

Custos Brevium (*the keeper of the writs*), a principal clerk belonging to the Courts of Queen's Bench and Common Pleas, whose office it was to keep all the writs returnable into those courts. Abolished by 1 Wm. IV. c. 58.

Custos Morum, the guardian of morals. The Court of Queen's Bench is so styled.—4 *St. Com.* 462.

Custos Placitorum Coronæ (*the keeper of the pleas of the Crown*). The *custos rotulorum*.

Custos Rotulorum (*the keeper of the rolls* or *records of the county*). He is the principal justice of the peace within the county, but he is rather an officer or minister than a judge.

Custos Spiritualium, he that exercises the spiritual jurisdiction of a diocese, during the vacancy of any see, which, by the canon law, belongs to the dean and chapter, but, at present, in England, to the archbishop of the province by prescription.—*Encyc. Lond.*

Custos statum hæredis in custodiâ existentis meliorem, non deteriorem, facere potest.—7 *Co.* 7.—(A guardian can make the estate of an existing heir under his guardianship better, not worse.)

Custos Temporalium, the person to whom a vacant see or abbey was given by the king, as supreme lord. His office was, as steward of the goods and profits, to give an account to the escheator, who did the like to the exchequer.—*Encyc. Lond.*

Custuma antiqua sive magna, the old duties on wool, sheepskins or woolfels, and leather exported.

Custuma parva et nova, the alien's duty on imported and exported commodities.

Cutcherry, a court of justice in India, also a public office there where rents are paid and other business respecting the revenue transacted.

Cuthred, a knowing or skilful counsellor.

Cutpurse, one who steals by the method of cutting purses; a common practice when men wore their purses at their girdles, as was once the custom.

Cutter of the Tallies, an officer in the exchequer, to whom it belonged to provide wood for the tallies, and to cut the sum paid upon them, &c.

Cutwal, Katwal, the chief officer of police in a large town or city in India; the superintendent of the markets there.

Cycle [fr. κύκλος, Gk.], a measure of time; a space in which the same revolutions begin again; a periodical space of time.—*Encyc. Lond.*

Cygnets belong equally to the owners of the cock and hen.—7 *Rep.* 17.

Cyne-bot, or **Cyne-gild,** the portion belonging to the nation of the mulct for slaying the king, the other portion or 'wêr' being due to his family.

Cyning [fr. *cyn*, Sax.; *gens*, *natio*, Lat.], a king; a son or child of the people. It is manifestly a patronymic, like *Æscing*, son of Æsc; *Uffing*, son of Uffa; *Œlling*, son of Œlle; *Cerdicing*, son of Cerdic; *Iding*, son of Ida; *Cryding*, son of Cryda; *Ætheling*, son of the Æthel, or noble.—*Anc. Inst. Eng.*

Cyphonism, a punishment used by the ancients, which some suppose to have been the smearing of the body with honey, and exposing the person to flies, wasps, &c. But the author of the notes on Hesychius says, under the word *κύφων*, that it is derived from the word *κύπτω*, to bend or stoop, and signifies that kind of punishment still used by the Chinese, called by Sir George Staunton the wooden collar, by which the neck of the malefactor is bent or weighed downward.—*Encyc. Lond.*

Cy-près. The Court of Chancery frequently obviates a perpetuity by applying the rule of *cy-près* or approximation. The principle of this doctrine is, that where a testator has two objects, one primary or general, and the other secondary or particular, which are incompatible, the particular must be sacrificed in order that effect may be given to the general object as near as may be to the testator's intention, according to law. Thus, if a testator manifest a general intention that a particular unborn devisee and his issue should take certain property, but in consequence of the interests of the issue being limited by purchase, the particular mode adopted by the testator of carrying into effect his primary intent be contrary to law, the courts have, in support of the testator's general intention to provide for the issue of the devisee, sometimes held that the issue shall take derivatively through the ancestor, by vesting an estate tail in him, which is conformable to the rules of law.

There must, however, be a clear indication of an intention that the issue of the unborn person should take estates tail, or should succeed in a mode analogous to the course in which an entail would descend. Therefore a limitation to the issue of an unborn tenant for life as the parent shall appoint, without any express gift cannot be validated by *cy-près*, and the limitation following the life estate fails. Again, the doctrine is not applicable where there is only a single intent to create a perpetuity, and not a general intention of providing for all the line of issue, combined with an inconsistent particular intent in regard to the mode of effecting that object. Nor is it applicable to limitations of personal estate, since that is not transmissible by entail, unless in the case of a conjoint or referential disposition of both realty and personalty, when, *quoad* the realty, an estate-entail vests in the unborn child, and, *quoad* the personalty bequeathed upon the like trusts, an absolute interest vests in such a child. The doctrine is not applicable to limitations in deeds, but is confined to the construction of wills only.

Of course, the persons or class to be made tenants-in-tail by the application of *cy-près*, must be entitled to a *freehold* interest.

The inclination of the courts is not to extend the doctrine.—*Lewis on Perp.* 426–454.

It is also applied to charitable bequests; it matters not how uncertain the persons or the objects may be, or whether the persons who are to take are *in esse* or not, or whether the legatee be a corporation capable in law of taking or not, or whether the bequest can be carried into exact execution or not, for in all these and the like cases the court will sustain the bequest, and give it effect according to its own principles. And where a literal execution becomes inexpedient or impracticable the court will execute it as nearly as it can, according to the original purpose, or, as the technical expression is, *cy-près*.

The doctrine as applied to charities was formerly pushed to a most extravagant length. But this sensible distinction now prevails, that the court will not decree the execution of a charitable trust in a manner different from that intended, except so far as it is seen that the intention cannot be literally executed. In that case another mode will be adopted consistent with the general intention, so as to execute it, though not in mode, yet in substance. If the mode should become by subsequent circumstances impossible, the general rule is not to be defeated, if it can in any other way be obtained. Where there are no objects remaining to take the benefit of a charitable corporation, the court will dispose of its revenues by a new scheme upon the principles of the original charities, *cy-près*.

There is also a modification of the strictness of the common law, as to conditions precedent in regard to personal legacies, which is at once rational and convenient, and tends to carry into effect the intention of the testator. It is, that where a literal compliance with the condition becomes impossible from unavoidable circumstances, and without any default of the party, it is sufficient that it is complied with as nearly as it practically can be, i. e. *cy-près*. This modification is derived from the civil law, and stands upon the presumption that the donor could not have intended to require impossibilities, but only a substantial compliance with his directions, as far as they should admit of being fairly carried into execution. It is

upon this ground that courts of equity constantly hold in cases of personal legacies, that a substantial compliance with the condition satisfies it, although not literally fulfilled. Thus, if a legacy upon a condition precedent shall require the consent of three persons to a marriage, and one or more of them should die, the consent of the survivor or survivors would be deemed a sufficient compliance with the condition. And, *à fortiori*, this doctrine would be applied to conditions subsequent.—*Sugd. Powers*, 549; 1 *Story's Eq. Jur.* 235, and vol. ii. 386, 390.

Cyrce, a church.

Cyricbryce, a breaking into a church.

Cyrographum, an Anglo-Saxon charter, this word being written in capital letters at the top or bottom of the charter and cut through by a knife.—1 *Reeve* 10; *Co. Litt.* 229.

Czar [written more properly *Tzar*, Sclav.], the title of the emperor of Russia, first assumed by Basil, the son of Basilides, under whom the Russian power began to appear, about 1470.

Czarina, the title of the empress of Russia.

Czarowitz, the title of the eldest son of the czar and czarina.

D

Da tua dum tua sunt, post mortem tunc tua non sunt.—3 *Buls.* 18.—(Give the things which are yours whilst they are yours; after death then they are not yours.)

Dæd-bana, the actual perpetrator of a homicide.

Dagus, or **Dais** [fr. *dais* or *daiz*, Fr., a canopy or cloth of state], the raised floor at the upper end of a hall.

Daker, or **Diker**, ten hides.—*Blount.*

Dalus, Dailus, Dailia, a certain measure of land; such narrow slips of pasture as are left between the ploughed furrows in arable land.—*Cowel.*

Dam [fr. *dam*, Dan.; *dammer*, Icel.], a boundary or confinement; a mole.

Damage [fr. *damnum agere*, Lat.; *dommage*, Fr.; *dicatur a demendo cum res diminutione deterior fit*]. A loss or injury by the fault of another, e. g. by an unlawful act, or omission; any hurt or hindrance that a person receives in his estate; also the compensation to be fixed by the jury when they find a verdict for the plaintiff. It is plainly derived from the Anglo-Saxons, and taken in two several significations, the one *properly* and generally, as in cases wherein damages are founded upon the statutes, where costs are included within the word damages, and taken as such; the other *relatively*, when the plaintiff declares for the wrong done to him to the damage of such a sum, and this is to be taken for the wrong done before the action commenced, and cannot extend to the costs, which are future and of another nature. The plaintiff cannot recover greater damages than he has laid in the conclusion of his declaration.

In real actions no damages are recoverable. In the mixed action of ejectment the damages were ordinarily nominal (unless under 1 Geo. IV. c. 87), the actual damages sustained by the detention of the property, &c., being usually recovered in an action of trespass for mesne profits. But they can now be recovered in the ejectment by C. L. P. A. 1852, s. 214. Damages are recoverable in all personal actions, and in assumpsit, covenant, case, trover, and trespass, they are the sole object of the action, whilst in debt and detinue they are nominal; in replevin, if the action be in the *detinet*, the damages are measured by the actual injury sustained; but if in the *detinuit*, the damages are given for the injury the plaintiff has sustained by the taking only, which is usually the expenses of the replevin bond.

By the 3 & 4 Wm. IV. c. 42, s. 28, it is enacted, 'that upon all debts or sums certain, payable at a certain time or otherwise, the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, allow interest to the creditor, at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the time of payment; provided that interest shall be payable in all cases in which it is now payable by law.' By s. 29, 'the jury on the trial of any issue, or on any inquisition of damages, may, if they shall think fit, give damages in the nature of interest, over and above the value of the goods at the time of the conversion or seizure, in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this act.' See *C. L. P. A.* 1852, s. 95; and 19 & 20 *Vict.* c. 97, s. 2.

Double and treble damages are in some cases given by particular statutes, but at common law the damages are always single. Damages may be limited, increased, or reduced, according to circumstances.—1 *Reeve*, 14; 2 *Turner's Anglo-Sax.* v. ii. app. iii. c. ii.; *Sedgwick on Damages*; 1 *Chit. Arch. Prac. by Pren.* 460.

Compensation or damages are usually decreed in equity only as incidental to other relief, or where some peculiar equity intervenes. The

mode by which such compensation or damages has been hitherto ascertained, was either by a reference to chambers, or by directing an issue, *quantum damnificatus*, which was tried by a jury.—2 *Story's Eq. Jurisp.* 93.

Chancery labour[illegible] under the infirmity of not being able to award damages by way of compensation for a fraud, or for the non-performance of a contract relating to the sale and purchase of realty, although a 'floating idea' was once abroad as to its power in the latter case. However, the 21 & 22 Vict. c. 27, has amended this. The act takes effect from 1st November, 1858, and may be cited as 'The Chancery Amendment Act, 1858' (s. 17).

'In all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, *or* against the commission or continuance of any wrongful act, *or* for the specific performance of any covenant, contract, or agreement, it shall be lawful for the same court, if it shall think fit, to award damages to the party injured, *either* in addition to, *or* in substitution for such injunction or specific performance, and such damages may be assessed in such a manner as the court snall direct' (s. 2).

'It shall be lawful for the Court of Chancery, if it shall think fit, to cause the amount of such damages in any case to be assessed, or any question of fact arising in any suit or proceeding to be tried by a special or common jury before the court itself; and the Court of Chancery may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury, for such assessment of damages or the trial of such question of fact, as may be made by any of the superior courts of common law at Westminster, and may also make any other orders which to the Court of Chancery may seem requisite; and every such jury shall consist of persons possessing the qualifications, and shall be struck, summoned, balloted for, and called in like manner, as if such jury were a jury for the trial of any cause in any of the said superior courts; and every juryman so summoned shall be entitled to the same rights and subject to the same duties and liabilities as if he had been duly summoned for the trial of any such cause in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the assessment of damages or the trial of questions of fact by a jury before the court itself, and in respect of new trials, the Court of Chancery shall have the same jurisdiction, powers, and authority in all respects as belong to any superior Court of Common Law, or to any judge thereof for the like purposes, provided that from any order made by the court, on an application made for a new trial, there shall be the same right of appeal as from any other order of the Court,' (s. 3).

'Any question of fact and any question as to the amount of damages which shall be so ordered to be tried by a jury before the court itself shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the Court of Chancery shall have the same powers, jurisdiction, and authority as belong to any judge of any of the said superior courts sitting at *Nisi Prius*' (s. 4).

'It shall also be lawful for the Court of Chancery, if it shall think fit, to cause the amount of such damages in any case to be assessed, or any question of fact arising in any suit or proceeding to be tried before the court itself without a jury, and to cause the evidence on the trial of that question to be taken by the oral examination of witnesses and other proofs in open court; and any question of fact, and any question as to the amount of damages which shall be so ordered to be tried before the court itself, shall be reduced into writing in such form as the court shall direct; and the verdict of the judge shall be of the same effect as the verdict of a jury under this act; and the proceedings upon and after such trial, as to the power of the court, the evidence, and otherwise, shall be the same as in the case of trial by jury under this act; provided, that in the case of a trial under this section, any person may apply for a new trial either to the judge before whom the trial was had, or to the Court of Appeal in Chancery' (s. 5).

'It shall also be lawful for the Court of Chancery, in any case in which it shall think fit so to do, to cause the amount of such damages to be assessed by a jury before any judge of one of the superior Courts of Common Law at *Nisi Prius*, or at the assizes, or before the sheriff of any county or city, and for that purpose to issue a precept to the sheriff of such county or city as the Court of Chancery shall think fit, or where the sheriff is interested, then to the coroner, requiring him to return, summon, and impanel a common or special jury for the purpose aforesaid, in like manner as is done in cases of writs of inquiry at common law, which are to be executed before a judge or before the sheriff; and the Court of Chancery shall have power to set aside the verdict or inquisition on such inquiry, and to direct a new inquiry, in such manner and on such terms as the court shall think fit' (s. 6).

'In any case in which all parties to a suit are competent to make admissions, any party

may call on any other party by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the cost of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, *unless* the court shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, *except* in cases where the omission to give the notice is, in the opinion of the taxing master, a saving of expense' (s. 7).

These seven sections are to extend to the Court of Chancery in Ireland; and the Lord Chancellor of Ireland, with the advice and assistance of the Master of the Rolls and the Lord Justice of Appeal there, or either of them, is to make rules for procedure and for regulating fees' (ss. 8, 9).

These sections are also to extend to the Court of Chancery of the County Palatine of Lancaster; and the Chancellor of the Duchy, with the advice and assistance of the Lords Justices of the Court of Appeal in the High Court of Chancery, or one of them, and of the Vice-Chancellor of the County Palatine, is to make rules for procedure and for regulating fees' (s. 10).

The Lord Chancellor of England, with the advice and assistance of the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice-Chancellors, or any three of them, is to make rules for procedure and for regulating fees (s. 11).

All general rules and orders made in pursuance of this act are to be laid before both Houses of Parliament immediately after their being issued, if then sitting, or within five days after their next sitting; and either house may by resolution passed within thirty-six days afterwards resolve that the whole or any of them shall cease to be binding (s. 12). Orders have been framed under this act. See *Consol. Ord.* 1860, xli. rr. 26–52.

Damage-cleer [fr. *damna clericorum*, Lat.], a fee assessed of the tenth part in the Common Pleas, and the twentieth part in the Queen's Bench and Exchequer, out of all damages exceeding five marks recovered in those courts, in actions upon the case, covenant, trespass, &c. wherein the damages were uncertain; which the plaintiff was obliged to pay to the prothonotary or the officer of the court wherein recovered, before he could have execution for the damages. This was originally a gratuity given to the prothonotaries and their clerks, for drawing special writs and pleadings; but it is now taken away by statute, and if any officer in these courts take any money in the name of damage-cleer, or anything in lieu thereof, he shall forfeit treble the value.—17 *Car. II.* c. 6.

Damage-feasant, or faisant (*doing damage*). If a stranger's beasts are found on another person's land without his leave or license, and without the fault of the possessor of the close (which may happen from his not repairing his fences), and there doing damage by feeding or otherwise, to the grass, corn, wood, &c., the person damaged may distrain and impound them, as well by night as in the day, lest the beasts escape before taken; but they cannot be sold for the damage done. By 6 & 7 Vict. c. 30, if any person shall release, or attempt to release cattle lawfully seized by way of such distress, from the pound or place where they shall be impounded, or on the way to or from such pound or place, or shall destroy such pound or place, or any part thereof, or any lock or bolt thereof, he shall, on conviction, before two justices of the peace, be liable to a penalty not exceeding 5*l.*, and to payment of the reasonable charges and expenses. By 12 & 13 Vict. c. 92, repealing 5 & 6 Vict. c. 59, persons impounding cattle are bound under a penalty of 40*s.* to supply them with food and water.—*Woodf. Land. and T.* 562.

Damageable, susceptible of hurt.

Dame [fr. *dame*, Fr.; *dama*, Sp.], a lady; also, in common use, a farmer's wife or a mistress of a family of the humbler ranks.

Damnification, that which causes damage or loss

Damnify, to endamage, to injure, to cause loss to any person.

Damnosa hæreditas, a disadvantageous or unprofitable inheritance.

Damnum absque injuria (*a loss without injury*). This is not actionable. Thus, if I have a mill, and a neighbour builds another mill upon his own land, *per quod*, the profit of my mill is diminished, yet no action lies against him, for everyone may lawfully erect a mill upon his own ground. But if I have a mill by prescription on my own land, and another erects a new mill, which draws away some portion of the stream from mine, so as to diminish its former power, an action of trespass on the case will lie against him.

Damnum fatale, fatal damage, for which bailees are not liable. Among fatal damages were included by the civilians losses by shipwreck, by lightning, or other casualty, by pirates, and by superior force. Losses by fire, burglary, and robbery, seem also to have been included. But theft was not numbered among such casualties.—*Story on Bailments*, 471.

Damsel [fr. *demoiselle*, Fr.; *damigella*, Ital., dimin; fr. *domina*, Lat.], a young gentlewoman.

Dan [fr. *dominus*, Lat.], the better sort of men in this kingdom; so the Spanish *Don*. The old term of honor for men, as we now say *Master*.

Danegelt, Danegeld, or Danegold [fr. *denegeldum*, *dane*, and *gelt*, tribute], a tribute

of 1*s.* and afterwards of 2*s.* upon every hide of land through the realm, laid upon our ancestors by the Anglo-Saxons, for maintaining such a number of forces as were thought sufficient to clear the British seas of Danish pirates, who greatly annoyed our coasts. It continued a tax till the time of Stephen, and was one of the rights of the Crown.—*Anc. Inst. Eng.*

Dane-lage, the Danish law, which was principally maintained in the midland counties, and also on the eastern coast (the parts most exposed to the visits of that piratical people) while the Danes had sway in this country.

Dangeria, a money payment, made by forest-tenants, that they might have liberty to plough and sow in time of pannage or mast feeding.—*Manw. For. Laws.*

Danism [fr. δανεισμα, Gk., a loan], the act of lending money on usury.

Dans et retinens nihil dat.—(Giving and retaining gives nothing.)

Dapifer (*à dapes ferendo*, Lat.], a steward either of a king or lord.—*Spel.*

Dar, keeper, holder. This word is often joined with another to denote the holder of a particular employment or office, as *Chob-dar*, staff-holder; *Zemin dar*, landholder. This compound word with *i*, *ee*, *y*, added to it, denotes the office of *Zemindar-ee.*—*Indian.*

Dardus, a dart.

Dare, to transfer property. When this transfer is made in order to discharge a debt, it is *datio solvendi animo*; when in order to receive an equivalent, to create an obligation, it is *datio contrahendi animo*; lastly, when made *donandi animo*, from mere liberality, it is a gift *dono datio.*—*Civil Law.*

Dare ad remanentiam, to give away a remainder in fee, or for ever.

Darogah, a superintendent, or overseer, as of the police, mint, &c.—*Indian.*

Darraign [fr. *derationo*, Mid. Lat.; *desrener*, Fr.], to clear a legal account, to answer an accusation, to settle a controversy.

Darrein, a corruption of the Fr. *dernier*, the last.

Darrein presentment, *assize of*, lay only where a man had an advowson by descent from his ancestors; it is abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Date [fr. *datum*, Lat.], that part of a deed, writing, or letter which expresses the day of the month and year in which it was made. Dates began to be inserted in deeds in the reigns of Edward II. & III. A deed, however, is good, although it mentions no date, or has a false or impossible date, provided the real date of its delivery can be proved.

Dative or **Datif,** that which may be given or disposed of at will and pleasure.

Datum, a first principle; a thing given.

Daughter [fr. *tochter*, Germ.; θυγάτηρ, Gk.; *dauhtar*, Goth.; *duhitri*, Sanscr.; *duktere*, Lith.; *dustr*, Armen.; *dear*, Gael.; *daktar*, Lap.], an immediate female descendant.

Daughter-in-law [*nurus*, Lat.], the wife of one's son.

Daum, dam, a copper coin, the 40th part of a rupee.—*Indian.*

Dauphin, the title of the eldest sons of the kings of France. Disused since 1830.

Davata terræ, dawach, a portion of land so called in Scotland.—*Skene.*

Day [fr. *dies*, Lat.; *tag*, Germ.], in its largest sense the time of a whole apparent revolution of the sun round the earth, but, in its popular acceptation, that part of the twenty-four hours when it is light, or the space of time between the rising and the setting of the sun. The English, French, Dutch, Germans, Spaniards, Portuguese, and Egyptians begin their day at midnight; the Jews, Italians, and Chinese, at sun-setting; the ancient Babylonians, Persians, Syrians, and modern Greeks at sun-rising; and the Arabians and modern astronomers at noon.

In the space of a day all the twenty-four hours are usually reckoned. Therefore, in general, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night; after which the following day commences. A court will take notice of the fraction of a day, if it be necessary for the purposes of justice.—*Co. Litt.* 135 *a.*

If anything is to be done within a certain time *of*, *from*, or *after*, the doing or occurrence of something else, the day on which the first act or occurrence takes place is to be excluded from the computation.—*Williams* v. *Burgess*, 12 *A. & E.* 635; 1 *Chit. Arch. by Pren.* 160.

Day in banc, the return day of writs.

Day-book, a tradesman's journal; a book in which all the occurrences of the day are set down.

Day-rule or **Day-writ,** a permission granted to a prisoner to go out of the prison, for the purpose of transacting his business, as to hear a case in which he is concerned at the assizes, &c. Abolished by 5 and 6 Vict. c. 22, s. 12.

Day-were of land [fr. *diurnalis*, *diuturna*, Lat.], as much arable land as would be ploughed up in one day's work, or one journey, as the farmers still call it.

Dayeria, a dairy.

Daysman, an arbitrator, an elected Judge.

Deacon [fr. *diacre*, Fr.; *diacono*, It., Span. and Port.; *diaconus*, Lat.; διάκονος, Gk.], a minister or servant in the church, whose office is to assist the priest in divine service, and the distribution of the sacrament, &c. He may now perform any of the divine offices which a priest may, except only pronouncing the absolution and consecrating the sacrament of the Lord's Supper. By 13 Eliz. c. 12, and

44 Geo. III. c. 43, it is provided (conformably to the canons) that none shall be ordained deacon under twenty-three years, nor priest under twenty-four years of age; though as to deacons the Archbishop of Canterbury has the privilege of admitting them (by faculty or dispensation) at an earlier age. None shall be ordained either priest or deacon, without first subscribing the thirty-nine Articles of Religion; nor by 1 Eliz. c. 1, and 1 W. & M. c. 8, without first taking the oath, in lieu of the oaths of allegiance and supremacy. By 24 Geo. III. c. 35, the Bishop of London, or other bishop by him appointed, may ordain aliens to exercise the office of deacon or priest out of the dominions of the Crown, without the oath of allegiance. A deacon is not capable of any ecclesiastical promotion; yet he may be chaplain to a family, curate to a beneficed clergyman, or lecturer to a parish church.

In Scotland, an overseer of the poor, or the master of an incorporated company.

Dead bodies. Taking them up for the purpose of dissection, or otherwise, is a misdemeanor at common law, punishable by fine and imprisonment. Refusing to bury dead bodies by those whose duty it is to do so, is punishable by the temporal courts, independently of spiritual censures, on indictment or information. As to the interment of dead bodies cast on shore from the sea, see 48 *Geo. III.* c. 75. The Anatomy Act is the 2 & 3 Wm. IV. c. 75.

A gaoler cannot detain the dead body of a person in his custody under a *ca. sa.* until the executors of the deceased person satisfy his pecuniary claims upon the deceased.—*R.* v. *Fox*, 2 *Q. B.*, 246; see also *Jones* v. *Ashburnham*, 4 *East.* 455.

Dead freight, the unsupplied part of a cargo, or the freight payable by a merchant where he has not shipped a full cargo for the part not shipped.

Deadly feud, a profession of irreconcilable hatred till a person is revenged even by the death of his enemy.

Dead man's part, the remainder of an intestate's movables, besides that which of right belongs to his wife and children. This was formerly made use of in masses for the soul of the deceased; subsequently, the administrators applied it to their own use and benefit, until the 1 Jac. II. c. 17, subjected it to distribution amongst the next of kin.

Dead-pledge [*mortuum vadium*], a mortgage of lands or goods.

Dead use, a future use.

Deafforested, or **Disafforested,** discharged from being a forest, or freed and exempted from the forest-laws.—17 *Car. I.* c. 16.

Dealings, business, traffic, trade.

De ambitu, of obtaining a place by bribery.

Dean [fr. δέκα, Gk., ten], an ecclesiastical governor or dignitary, so called, as he is supposed to have originally presided over ten canons or prebendaries at the least. In cathedrals of the *old* foundation in England, the dean is the principal of the four chief dignitaries exercising a general supervision over the other members of the capitular body, with especial reference to the cure of souls. In cathedrals of the *new* foundation, the duties of the deans are defined by the statutes of each chapter.

Considered in respect of the differences of office, deans are of six kinds:—(1) *Deans of Chapters*, who are either of cathedral or collegiate churches. (2) *Deans of Peculiars*, who have sometimes both jurisdiction and cure of souls, and sometimes jurisdiction only. (3) *Rural Deans*, deputies of the bishop, planted all round his diocese, the better to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine the candidates for confirmation; and armed, in minuter matters, with an inferior degree of judicial and coercive authority. (4) *Deans in the Colleges of our Universities*, who are officers appointed to superintend the behaviour of the members, and to enforce discipline. (5) *Honorary Deans*, as the Dean of the Chapel Royal, St. James's. (6) *Deans of Provinces* or *Deans of Bishops*. Thus the Bishop of London is Dean of the province of Canterbury, and to him, as such, the archbishop sends his mandate for summoning the bishops of his province when a convocation is to be assembled.

Another division, arising from the nature of their office, is into deans of *spiritual* promotions, and deans of *lay* promotions. Of the former kind are deans of peculiars, with cure of souls, deans of the royal chapels and of chapters, and rural deans; of the latter kind are deans of peculiars without cure of souls, who therefore may be, and frequently are, persons not in holy orders.

Their appointments are either *elective*, as deans of chapters of the old foundation, though the Crown has, in fact, the real patronage; and *donative*, as those deans of chapters of the new foundation, who are appointed by the royal letters-patent. The 3 & 4 Vict. c. 113, provides that the old deaneries (except in Wales) shall thenceforth be in the direct patronage of her Majesty, who may, on the vacancy thereof, appoint by letters patent a spiritual person to be dean; and that no person shall hereafter be capable of receiving the appointment of dean, archdeacon, or canon, until he shall have been six complete years in priest's orders, and that the dean shall reside for at least eight months in the year.

Dean, *Forest of.* As to the royal mines therein, see 1 & 2 *Vict.* c. 43.

De arbitratione facta, *writ of,* issued when an action was brought for a cause already settled by arbitration.

Death [Sax.], the extinction of life; the departure of the soul from the body; defined by physicians as a total stoppage of the circulation of the blood, and a cessation of the animal and vital functions consequent thereon, such as respiration, pulsation, &c.

In legal contemplation, it is of two kinds; (1) *natural,* i.e. the extinction of life; (2) *civil,* where a person is not actually dead, but is adjudged so by the law, as when a person is banished or abjures the realm, or enters into a monastery. Civil death also occurs where a man, by Act of Parliament, or judgment of law, is attainted of treason or felony; for immediately upon such attainder he loses (subject indeed to some exceptions) his civil rights and capacities, and becomes, as it were, *civiliter mortuus.*

As to the registration of a death, see 6 & 7 *Wm. IV.* c. 86, and 7 *Wm. IV.* and 1 *Vict.* c. 22; and as to an action brought for damages arising from death by accident, neglect, &c., see 9 & 10 *Vict.* c. 93.

Death-bed or **Dying Declarations** are constantly admitted in evidence. The principle of this exception to the general rule is founded partly on the awful situation of the dying person, which is considered to be as powerful over his conscience as the obligation of an oath, and partly on a supposed absence of interest in a person on the verge of the next world, which dispenses with the necessity of cross-examination. But before such declarations can be admitted in evidence against a prisoner, it must be satisfactorily proved that the deceased, at the time of making them, was conscious of his danger, and had given up all hope of recovery, and this may be collected from the nature and circumstances of the case, although the declarant did not express such an apprehension. It is not essential that the party should apprehend *immediate* dissolution; it is sufficient if he apprehend it to be impending.

Much consideration should be given to the state of the mind of the person whose declarations are received. Strongly as his situation is calculated to induce the sense of obligation, it must also be recollected that it has often a tendency to obliterate the distinctness of his memory and perceptions; and therefore, whenever the accounts received from him are introduced, the degree of his observation and recollection is a circumstance which it is of the highest importance to ascertain. Sometimes the declaration is of a matter of judgment, of inference, and conclusion, which, however sincere, may be fatally erroneous. The circumstances of confusion and surprise connected with the object of the declaration are to be considered with the most minute and scrupulous attention; the accordance and consistency of the fact related with the other facts established in evidence should be examined with peculiar circumspection; and the awful consequences of mistake must add their weight to all the other motives for declining to allow an implicit credit to the narrative, on the sole consideration of its being free from the suspicion of wilful misrepresentation.—*Pothier, by Evans,* ii. 293.

As the declarations of a dying man are admitted on a supposition that in his awful situation on the confines of a future world, he had no motive to misrepresent, but, on the contrary, the strongest motive to speak without disguise and without malice, it necessarily follows that the party against whom they are produced in evidence may enter into the particulars of his state of mind, and of his behaviour in his last moments, or may be allowed to show that the deceased was one not likely to be impressed by a religious sense of his approaching dissolution.—*Phil. Evid.; Starkie's Evid.; Taylor on Evidence.*

Deathsman, executioner, hangman; he that executes the extreme penalty of the law.

De bene esse [Lat., *conditionally*], to accept or allow a thing to be well done for the present; but when it comes to be more fully examined or tried, to stand or fall according to the merit of the thing in its own nature.

There is an examination in Chancery, which must not be confounded with a suit to perpetuate testimony, its purpose being to examine witnesses *de bene esse,* i.e. conditionally before issue joined. It is resorted to for the purpose of aiding a plaintiff or a defendant in a suit actually pending, in order to take the testimony of witnesses who are aged, infirm, or about to leave the country, so as to prevent its being lost to the litigant. The evidence of an only witness to a material fact may be thus taken, on the ground of the uncertainty of human life. To prevent this application from being abusively resorted to for mere delay or vexation, it must be supported by an affidavit positively deposing to the circumstances which may produce the loss of the evidence. The testimony when taken cannot be used, unless the parties consent to it, or the court make an order for that purpose.

Mr. Justice Story, in his *Eq. Juris.* vol. ii. p. 970, mentions a bill to examine witnesses *de bene esse.* There may be such a bill in America, but not, it is believed, in our Chancery.

Debenture [fr. *debeo,* Lat., to owe], a deed-poll, charging certain property with the repayment of money lent by a person therein named at a given interest. It is frequently

resorted to by public companies to raise money for the prosecution of their undertakings. It is a kind of I.O.U. It behoves a person who is about to advance money on, or to purchase, a debenture granted by a public company to ascertain that it is issued in a manner authorised by the deed of settlement, so as to bind the shareholders, otherwise they are not liable. And the formalities of transfer should be strictly observed.

Also, a term used at the custom-house for a kind of certificate, signed by the officers of the customs, which entitles a merchant exporting goods to the receipt of a bounty or drawback.

It is enacted by 3 & 4 Wm. IV. c. 52, s. 86, that no drawback or bounty shall be allowed upon the exportation of any goods, unless entered in the name of the real owner thereof, or of the person who had actually purchased and shipped the same, in his own name, and at his own risk, on commission.

Such owner or commission-merchant shall make and subscribe a declaration on the debenture that the goods have been actually exported, and are not to be relanded in any part of the United Kingdom, &c.; and if such owner or commission-merchant shall not have purchased the right to such drawback or bounty, he shall declare, under his hand in the entry, and in his oath upon the debenture, the person who is entitled thereto; and the name of such person shall be inserted in the cocket and in the debenture, and his receipt on the latter shall be the discharge of such drawback or bounty, s. 87. Debentures or certificates for bounty on the exportation of linens or sailcloth are exempted from duty.

Debet esse finis litium.—Jenk. Cent. 61.—(There ought to be an end of law suits.)

Debet et detinet (*he oweth and detaineth*). An action shall be always in the *debet et detinet*, when he who makes a bargain or contract, or lends money to another, or he to whom a bond is made, brings the action against him who is bounden, or party to the contract and bargain, or unto the lending of the money, &c., as by the obligee against the obligor. But if it be brought by or against an executor for a debt due to or from the testator, this, not being his own debt, must be sued for in the *detinet* only. *N. N. B.* 119.

Debet et solet (*he oweth and enjoyeth*). If a person sue to recover any right, whereof his ancestor was disseised by the tenant of his ancestor, then he uses the word *debet* alone in his writ, because his ancestor only was disseised, and the estate discontinued; but if he sue for anything that is now first of all denied him, then he uses *debet et solet*, by reason his ancestor before him, and he himself, usually enjoyed the thing sued for, until the present refusal of the tenant.—*Reg. Orig.* 140; *F. N. B.* 98.

Debet quis juri subjacere, ubi delinquit.—3 Inst. 34.—(Everyone ought to be amenable to the law of the place where he commits an offence.)

Debit, the left-hand page of a ledger, to which all items are carried that are charged to an account.

Debita sequuntur personam debitoris. (Debts follow the person of the debtor.)

Debitum et contractus sunt nullius loci.—7 Co. 3.—(Debt and contract are of no place.)

Debitum in præsenti, solvendum in futuro.—(A debt due at present to be paid at a future time.)

Debitum recuperatum.—(A debt recovered.)

Debitor [Lat.], a debtor. According to the Roman law, when a debtor was ordered to pay, and could not, within thirty days, find security, the judge delivered him to his creditor bound with cords or fetters of not less than fifteen lbs. weight. He was then kept in prison for sixty days, at his own expense if he chose, if not, the creditor was bound to give him not less than a pound weight of meal a day. At the end of that time he might be put to death, or sold for a slave; and when the creditor took him to himself, the treatment of the adjudged debtor was often more cruel and merciless than that of the purchased slave. In the year 325 B.C. a law passed respecting the power of the creditor over the goods of the debtor, and prohibiting him from putting his debtor in chains or fetters.

A creditor at Athens had power not only to sell his debtor into a foreign country, but even his children. Among the Jews the debtor became the slave or bondman of the creditor, who had not power to sell him. His servitude expired in the year of Jubilee.—*Levit.* xxv. 39, 53.

Debitor non præsumitur donare.—Jur. Civ.—(A debtor is not presumed to give.)

Debile fundamentum fallit opus.—3 Co. 231. (A bad foundation ruins the work.)

De bonis non, of the goods of a deceased person not administered.

De bonis propriis, of a person's own goods.

De bonis testatoris, of a testator's goods.

De bono et malo, *Writs of.* It was anciently the course to issue special writs of gaol delivery for each particular prisoner, which were called writs *de bono et malo*; but these being found inconvenient or oppressive, a general commission for all the prisoners has long been established in their stead.—4 *Step. Com.* 395.

Debt [fr. *debitum*, Lat.; *dette*, Fr.], a sum of money due from one person to another. An action of debt lies where a person claims the recovery of a liquidated or certain sum of money affirmed to be due to him; and it is generally founded on some contract alleged to have taken place between the parties, or on some matter of fact from which the law will imply a contract

between them. This is debt in the *debet*, which is the principal and only common form. There is another species mentioned in the books, called debt in the *detinet*, which lies for the specific recovery of goods, under a contract to deliver them.—1 *Chit. Pl.* 109; *Reeves*, 159; 1 *Selw. Nisi Prius.* tit. 'Debt,' p. 569.

The order of the payment of debts and expenses out of legal assets is, in a Chancery administration suit, as follows: —

1st. Funeral expenses, which, in the case of an insolvent estate, must be but strictly reasonable and necessary only—the executor or administrator being personally liable for any excessive expenditure.

What is a strictly reasonable and necessary sum varies with the circumstances of each particular estate, and the price of the requisite articles at the particular place.

2nd. Testamentary expenses about the probate of the will, or the letters of administration in intestacy.

3rd. The costs of the creditor's suit.

4th. Crown-debts by record and specialty.

5th. Debts priorized by statute. They are money due to a parish from an overseer of the poor, by virtue of his office (17 Geo. II. c. 38, s. 3); money due from an officer of a Friendly Society to such society (10 Geo. IV. c. 56, 4 & 5 Wm. IV. c. 20, ss. 12 & 14); money owing for the postage of letters (17 Geo. II. c. 38, s. 3); debts due from a deceased treasurer or collector of paving commissioners, under 57 Geo. III. c. 29, s. 51; debts due by an officer to his regiment (58 Geo. III. c. 73, ss. 1 & 2); army prize money (2 Wm. IV. c. 53).

6th. Judgments in courts of record, and decrees in equity, according to their priority of time.

7th. Recognisances enrolled in a court of record.

8th. Debts by special contract, as on bonds, covenants, and other instruments under seal, for valuable consideration, and arrears for rent.

9th. Debts by simple contract, as on bills or notes, and contracts not under seal, on verbal promises or on promises implied at law. Also a debt secured by a mortgage-deed, the mortgagor not having entered into a bond or covenant to repay the debt or loan.

An equitable mortgage, with or without a written memorandum, a debt recovered by judgment of the court of Jamaica, the balance of an open and unsettled account, all the items being upon simple contract, money recovered by a judgment or sentence in France, a *devastavit* and a breach of trust (except in some cases of special contract), are held to be simple contract debts.

Amongst these creditors the wages of labourers, and perhaps of servants, have the preference.

10th. Judgments voluntarily confessed without any valuable consideration, and voluntary bonds for meritorious or lawful inducements.

11th. A creditor, whose debt does not carry interest, who shall come in and establish the same before the chief clerk, under a decree or order in a suit, is entitled to interest upon his debt at the rate of 4*l. per cent.* from the date of the decree, out of any assets which may remain after satisfying the costs of the suit, the debts established, and the interest of such debts as by law carry interest.—The 46th *Ord.* of the 26th Aug. 1841.

See *Ram. on Assets*, *Silk* v. *Prime*; 1 *Bro. C. C.* 138, n. (1766); 2 *Tudor's Lead. Cases*, 72–88; *and Seton on Decrees*, 44, *et seq.*

Debtee-Executor. If a person indebted to another make his creditor or debtee his executor, or if such creditor obtain letters of administration to his debtor, he may retain sufficient to pay himself before any other creditors whose debts are of equal degree.—*Plowd.* 543.

To secure the general body of creditors when the estate is insufficient, a creditor to whom administration is granted may be compelled to give a bond conditioned to pay *pro ratâ* each creditor according to his degree.

Debtor, he that owes something to another.

Debtor-Executor. At law, if a testator appoints his debtor executor, the debt is released. In equity, however, the executor is accountable for the amount of his debt, as assets of the testator.—*Williams on Executors*, 1180–1185.

Decalogue [fr. δεκάλογος, Gk.], the ten commandments given by God to Moses. The Jews called them the ten words, hence the name.

De cætero, henceforth.

Decanal, pertaining to a deanery.

Decanus, a dean.

Decapitation, the act of beheading.

Deccan, literally the south. A term employed by Mahometan writers to denote the country between the rivers Nerbuddah and Crishna.

Decedent, a deceased person.

Deceit [fr. *deceptio*, Lat.], fraud, cheat, craft, or collusion used to deceive and defraud another.

There was formerly a writ of deceit, which was an action brought in the Common Pleas, to reverse a judgment obtained in any real action, by fraud or collusion between the parties to the prejudice of the right of a third person. It is abolished by 3 & 4 Wm. IV. c. 27, s. 36.

By the civil law every person is bound to warrant a thing that he sells or conveys, although there be no express warranty; but the common law binds him not, unless there be a warranty, either in deed or in law; for *caveat emptor.*—1 *Inst.* 10, n. *a.*

An action on the case, in nature of deceit, may be maintained for the breach of an *implied* warranty, as if a merchant sell cloth to another *knowing* it to be badly fulled; so if an innkeeper sell wine as sound and good, which he *knows* to be corrupt, although there be not any express warranty, yet an action on the case in nature of deceit will lie against him, because it is a warranty in law. In cases of this kind, however, which are grounded merely on the deceit, it is essentially necessary that the knowledge of the party, or, as it is technically termed, the scienter, should be averred in the declaration, and also proved.

An action on the case, in nature of a writ of deceit, may be maintained against any person who deceives by a false assertion, and thereby injures another who has placed a reasonable confidence in him: as where a party in possession of a personal chattel sells it, and at the time of sale affirms it to be his own, when in truth it belongs to another, the vendee may recover a compensation in damages for such injuries as he can prove to have been sustained in consequence of this deceit; for the possession of a personal chattel is a color of title, and it is but a reasonable confidence which the vendee places in the vendor, when he affirms it to be his own. But where the affirmation is (as it is termed in some of the books) a mute assertion; that is, where the party deceived may exercise his own judgment; as where it is mere matter of opinion, or where he may make enquiry into the truth of the assertion, and it becomes his own fault from laches that he is deceived, in this case an action cannot be maintained; as where a person buys a horse, which the seller affirms to have two eyes, and the horse has but one only; in such case the purchaser, unless, as is quaintly observed in one of the year-books, he be blind, is remediless, for *vigilantibus non dormientibus jura subveniunt.*

It is to be observed that actions on the case for the breach of an *express* warranty, bear a strong resemblance to actions on the case in nature of deceit on *implied* warranties: but this distinction between them ought to be attended to, that in actions on the case in the nature of deceit, the *gravamen* is the deceit, and the gist of the action is the scienter; but in the action for breach of warranty, the *gravamen* is the breach of warranty; and where the plaintiff declares in tort for such breach, it is not necessary to allege the scienter, nor, if alleged, to prove it.

Where an article is warranted, and the warranty is not complied with, the vendee has three courses, any one of which he may pursue. (1) He may refuse to accept the article; (2) he may accept it, and bring a cross-action on the warranty; (3) he may, without bringing a cross-action, use the breach of a warranty, in reduction of damages in an action brought for the price.

Where a person, with a design to deceive and defraud another, makes a false representation of a matter inquired of him, in consequence of which the person to whom the representation is made enters into a contract, and thereby sustains an injury, an action on the case, in the nature of deceit, will lie at the suit of the party injured, against the party making the fraudulent representation, although a stranger to the contract, from the entering into which the plaintiff was damnified. It is not necessary that the defendant should have derived any advantage from the deceit, or that he should have colluded with the person who did derive the advantage, and it will be sufficient proof of fraud in these cases to show: 1st, that the fact, as represented, is false; 2ndly, that the person making the representation had knowledge of a fact contrary to it, and it is no excuse for a party to say that he did not recollect at the time the truthful fact. If the representation amount to an assurance only of a person's ability to answer an obligation, it must, to be binding, be in writing.—9 *Geo. IV.* c. 14, s. 6; *St. Leon. Vend. & Pur.* 4; 1 *Selw. N. P.* 640.

Decem tales (*ten such*). If, when a trial at bar is called on, a sufficient number of jurors do not attend, the trial must be adjourned, and a *decem* or *octo tales*, according to the number deficient, awarded, as at common law; for the 6 Geo. IV. c. 50, s. 37, which allows the *tales de circumstantibus*, is expressly confined to trials at *Nisi Prius* and the assizes.—1 *Chit. Arch. Prac. by Pren.* 378.

Decennary, a town or tithing, consisting originally of ten families of freeholders. Ten tithings composed a hundred.—1 *Bl. Com.* 114.

Decet tamen principem servare leges, quibus ipse servatus est.—(It behoves indeed the prince to keep the laws by which he himself is preserved.)

Decies tantum, a writ which lay against a juror, who had taken money of either party for giving his verdict, to recover *ten times as much* as the sum taken.—38 *Edw. III.* c. 12, repealed by 6 Geo. IV. c. 50, s. 62.

Decimation. The punishing every tenth soldier by lot was termed *decimatio legionis* by the Romans. Sometimes only the twentieth man was punished (*vicesimatio*), or the hundredth (*centesimatio*); also tithing or tenth part.

Decimæ, tenths or tithes.

Decimæ debentur parocho.—(Tithes are due to the parish priest.)

Decimæ de decimatis solvi non debent.—(Tithes are not to be paid from that which is given for tithes.)

Decimæ de jure divino et canonicâ institutione pertinent ad personam. — *Dal.* 50. — (Tithes

belong to the parson by divine right and canonical institution.)

Decimæ non debent solvi, ubi non est annua renovatio; et ex annuatis renovantibus simul semel.—*Cro. Jac.* 42.—(Tithes ought not to be paid where there is not an annual renovation, and from annual renovations once only.)

Deciners, Decenniers, or **Doziners,** such as were wont to have the oversight of the Friburgs or views of frankpledge, for the maintenance of the public peace. The limit and compass of their jurisdiction was called *decenna,* because it commonly consisted of ten households; as every person, bound for himself and his neighbours to keep the peace, was styled *decennier.*—*Bract.* l. 3, t. 2, c. xv.

Decision, a judgment.

Decisive oath [*sacramentum decisionis,* Lat.], resorted to in the civil law, where one of the parties to a suit not being able to prove his charge, offers to refer the decision of the cause to the oath of his adversary; which the adversary was bound to accept or tender the same proposal back again; otherwise the whole was taken as confessed by him.—*Cod.* 4, 1, 12.

Declarant, a person who makes a declaration.

Declaration, a proclamation or affirmation, open expression or publication. More properly, in law, a statement, on the plaintiff's part, of his cause of action. In a real action, it is more correctly called the *count*; in a personal, the declaration; but this is now the general term, being that commonly used when referring to real and personal actions without distinction.

The plaintiff must declare, in a personal action, before the end of the term next after the defendant's appearance, otherwise a judgment of *non pros* may be signed by the defendant. But if no such *non pros* be obtained, then he may declare at any time within a year next after the appearance of the defendant, unless otherwise ordered by the court or a judge; but if he do not declare within that period, he will be deemed out of court.

The declaration should correspond with the writ:—1st, in the names of the parties; 2nd, in the number of the parties; and 3rd, in the character in which they sue and are sued. It must be entitled in the proper court, and of the day of the month and year on which it is delivered or filed. It is delivered to the defendant or his attorney, when he or his attorney enters an appearance; it is filed when the defendant does not enter an appearance, and the writ is not specially endorsed.—*Step. Plead.* 30; 1 *Chit. Arch. Prac. by Pren.* 221, *et seq.*

Declarations are allowed in certain cases in lieu of oaths. By 5 & 6 Wm. IV. c. 62, for the abolition of unnecessary oaths, any justice of the peace, notary public, or other officer authorised to administer an oath is empowered to take voluntary declarations in the form specified in the act. And any person wilfully making such declaration false in any material particular shall be guilty of a misdemeanor. See 12 & 13 *Vict.* c. 106, ss. 246, 254.

By 24 & 25 Vict. c. 66, if any person called as a witness in any court of criminal jurisdiction in England or Ireland, or required or desiring to make an affidavit or deposition in the course of any criminal proceeding, shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the court or judge or other presiding officer or person qualified to take affidavits or depositions, upon being satisfied of the sincerity of such objection, to permit such person instead of being sworn to make his or her solemn affirmation or declaration. The act gives a form of affirmation, and attaches the penalties of perjury to false affirmations.

By 24 & 25 Vict. c. 134, s. 211, a bankrupt or his wife, with a view to their examination, may be required to make and sign a declaration that he will make true answer to all such questions as may be proposed to him respecting his property and all dealings and transactions relating thereto, and will make a full disclosure of all that has been done therewith. If, after signing such declaration, they give false evidence, they are punishable as in the case of perjury. Notwithstanding such declaration they may, if the court or a creditor requires, be examined on oath.—12 & 13 *Vict.* c. 106, s. 254.

Declaration of insolvency. By 24 & 25 Vict. c. 134, s. 72, 'If any debtor, whether a trader or not, shall file in the office of the chief registrar, or with the registrar of a district court of bankruptcy, or of a county court having jurisdiction in bankruptcy, a declaration in writing and signed by such debtor and attested by a registrar of the court or by an attorney or solicitor, that he is unable to meet his engagements, every such debtor shall be deemed thereby to have committed an act of bankruptcy at the time of filing such declaration, provided a petition for adjudication of bankruptcy shall be filed by or against him within two months from the filing of such declaration.'

Declaration of right. See BILL OF RIGHTS.

Declaration of title, *an Act for obtaining a,* 25 & 26 Vict. c. 67. This act, after reciting that it is expedient to enable persons having interest in land to obtain a judicial declaration of their title to the same, so as to enable them to make an indefeasible title to persons claiming under them, as purchasers, for a valuable consideration, enacts in substance: That every person claiming to be entitled to, or to have a power of disposing of, for his own benefit, land (not of copyhold or customary tenure) for an

estate of fee-simple in possession absolutely or subject to incumbrances, estates, &c., or entitled to apply for the registration of an indefeasible title, under the Transfer of Land Act (25 & 26 Vict. c. 53), may petition the Court of Chancery for a declaration of title. The petition must state what incumbrances, estates, rights, and interests affect the title. The court may order that the registrar appointed under 25 & 26 Vict. c. 53, shall be served with notice of the petition, whereupon he shall be made a party to and attend the proceedings, his costs being paid by the petitioner. The court, on the hearing of the petition, on being satisfied that the petitioner has proved such a possession, and has stated such a title as if established would entitle him to a declaration, shall make an order for the investigation of the title, in the same way as if the petitioner had obtained, as vendor, a decree for a specific performance of an agreement for sale of the land in question for the estate claimed in the petition. If, upon such investigation, the court is not satisfied that the petitioner has shown such a title as it would have compelled an unwilling purchaser to accept, it may dismiss the petition, subject to an appeal; but if satisfied that the petitioner has shown such a title, it shall, on the conditions mentioned in the act being complied with, make an order that on some day, not less than three months from the date of the order, a declaration shall be made establishing the title, unless in the meantime cause is shown to the contrary. No such order is to be made until the petitioner has given security for the payment of the costs which may be awarded to any person opposing the petitioner's right to the declaration; nor until the petitioner and his solicitor, and any other person whom the court may require, shall have made and filed an affidavit that to the best of their respective knowledge, information, and belief, all settlements, deeds, documents, instruments, maps, plans, and papers relating to the title have been produced, or the cause of their non-production explained, and that all facts material to the title have been disclosed. The court may dispense with such affidavit, if it think it reasonable to do so, or may permit it to be modified. When the order has been obtained, notice of it is to be given by advertisement or otherwise, as the court may direct. Before the proposed declaration of title has been made, any person may petition to be heard against it, and the court shall fix a time for the hearing of such petition, and may enlarge the time for making the declaration until it has been disposed of. On the hearing of such petition, the court may introduce restrictions or qualifications in the title sought to be declared, or may reserve the rights of any person, or may refuse to make any declaration; and if any of the title-deeds have been lost or destroyed the court may reserve the rights of all persons under such deeds. If no petition is presented, or if, when presented, no sufficient ground is shown for refusing the declaration, the court, after the expiration of the time limited for showing cause, upon being satisfied that the required notices have been given, &c., shall make a declaration that the original petitioner has such title as he sought to establish, subject to any restrictions as it may deem proper to introduce. An appeal against such declaration lies to the Court of Appeal in Chancery, and thence to the House of Lords, &c.

Similar appeal lies when the Court of Chancery dismisses the original petition, or on the hearing refuses to make the declaration of title. The declaration of title, when final, is not to be set aside for irregularity or informality in the previous proceedings. The declaration of title may be registered under 25 & 26 Vict. c. 53. Any person who has obtained a final declaration of title, on payment of the proper fees, and on production of his title-deeds, is entitled to a certificate, under the seal of the court, setting forth his title so declared, &c. But before such certificate is sealed, the petitioner must produce to the court such of his deeds and muniments of title as the court may require, and the same shall be stamped or marked by the officer issuing the certificate, for the purpose of showing that a declaration of title has been made as to the land therein comprised, or such part of it as is comprised in the declaration. The effect of the declaration of title is, that as soon as it shall have become final, it shall, in favour of any person thereafter deriving title, as a purchaser for valuable consideration, of the land therein referred to, or of any part thereof, or of any estate, right or interest therein, by, from, through, or under the person whose title has been so declared, be deemed and taken to have correctly declared the same, but save, as aforesaid, such declaration shall have no force or effect whatever as to the title of the land comprised therein.

The act contains provisions for making separate declarations and separate certificates for separate parts of the land referred to in the petition; for cancelling an original certificate, and substituting for it separate certificates; for issuing a fresh certificate when the original has been lost or destroyed. It also provides that this declaration of title shall not affect 'land-tax, succession-duty, and other rent-charge; rights of common, rents payable to the Crown, public right of way, liability to repair highways by reason of tenure, right of way, water-courses and other easements or servitudes, manorial rights and franchises, leases or agreements for lease for any time not exceeding twenty-one years, when there is occupation under the same.'

Land, when registered in the register of estates, with an indefeasible title, is to be subject to the provisions of the act under which it is registered.

After a declaration of title has been made, any person may petition that it be recalled or varied, and the court may annul it, reverse it, and cancel the certificate, subject to the same appeal as before mentioned. Power is given to the Lord-Chancellor, Master of Rolls, and Vice-Chancellor, to make general rules and orders, which must be laid before Parliament. See 'Transfer of Land Act,' *post.*

Declaration of trust. To prevent the inconvenience which arose from parol declarations and secret transfers of uses, the 29 Car. II. c. 3, s. 7, requires that all declarations or creations of trusts, or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing. By the eighth section it is provided, 'that where any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise or result by the implication or construction of the law, or be transferred or extinguished by an act or operation of law, then and in any such case such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made.' And by the ninth section, 'that all grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same, or by such last will or devise.'

It appears that this statute does not extend to the declaration or creation of trusts of mere personalty. But in practice, a parol declaration should never be relied on, for the intention to declare a trust should be irrevocably expressed. There is no form or particular set of words, or mode of expression, prescribed for the purpose of raising a trust. Intention will create a trust, provided the object of the gift, and the gift itself, can be correctly ascertained.—1 *Sand. Uses*, 344.

Declaration of uses must be in writing.—29 *Car. II.* c. 3, s. 7.

The conveyances by bargain and sale and covenant to stand seised are in fact nothing more than declarations of uses; for the use being served out of the seisin of the bargainor and covenantor in those conveyances, they merely serve to declare the use to the bargainee and covenantee. But upon such conveyances as transmute the possession, the use may be declared by a deed or writing distinct from the conveyance by which the possession is transferred. It is now universally the practice to declare the use in the same deed immediately after the habendum.—1 *Sand. Uses*, 219. See APPOINTMENT.

Declarator, an action whereby something is prayed to be declared in one's favor.—*Scotch Law.*

Declarator of property, when the complainer, narrating his right to lands, desires he should be declared sole proprietor, and all others discharged to molest him any way.—*Ibid.*

Declarator of redemption, when, after a process before the Lords against the wadsetter who refuses to renounce after the order of redemption is used, the Lords force him to renounce, and by a decreet declare the lands redeemed.—*Ibid.*

Declaratory actions, those wherein the right of the pursuer is craved to be declared; but nothing claimed to be done by the defender. *Ibid.*

Declaratory decree, a binding declaration of right in equity without consequential relief. See 15 & 16 *Vict.* c. 16, ss. 50, 51; *Smi. Eq. Pr.* 173.

Declaratory part of a law, that which clearly defines rights to be observed and wrongs to be eschewed.

Declaratory statutes, those which declare what the common law is and ever has been.

Declinatory plea, a plea of sanctuary, also pleading of benefit of clergy before trial or conviction. Abolished by 6 & 7 Geo. IV. c. 28, s. 6.

Decoctor, a bankrupt.

Decoits, gang-robbers, **Decoity,** gang-robbery.—*Indian.*

Decollation, the act of beheading.

De consuetudinibus et servitiis, a real writ to recover rent in arrear. Abolished by 3 & 4 Wm. IV. c. 27.

De corpore comitatus (*from the body of the county*).

Decoy [probably from *kooy*, Du., a cage], a place made for catching wild water-fowl.

Decree [fr. *decretum*, Lat.], an edict, a law. Also the judgment of a court of equity.

After the hearing of all parties in a cause, it is either (1) *interlocutory* (usually termed an order), when for the purpose of ascertaining any matter of law or fact previously to a final decree, the court directs that the further consideration of the cause be adjourned; or (2) *final*, where all the facts and circumstances material to be ascertained in order to enable the court to do complete justice between the parties, are so fully established by the pleadings in the cause, that no further elucidation is requisite. In the majority of contested causes the decree is interlocutory, in order to ascertain a variety of important matters.

Speaking of decrees in equity generally, without reference to the subject of the suit, they may be classed thus:—1st, decrees made on the hearing of the cause in the presence of all parties, in which case, if the plaintiff have

any equity, there is a decree embracing the objects of the suit, which varies with the nature of the suit and the relief prayed; 2nd, decrees by default, as against parties who do not appear, in which case the plaintiff takes such decree as he can stand by; 3rd, decrees by consent, in which case the form of the decree depends upon the mutual agreement of the parties; and 4th, decrees taking the bill *pro confesso*, in which case the decree is according to the case made by the bill.—*Seton's Forms of Decrees in Equity.*

Courts of equity may adjust their decrees so as to meet different exigencies, and they may vary, qualify, restrain, and model the relief they give in every case, so as to suit it to mutual and adverse claims, controlling equities, and the real and substantial rights of all the parties. Nay, more, they can bring before them all parties interested in the subject-matter, and adjust their respective rights, however numerous; whereas courts of common law are compelled to limit their enquiry to the parties in the litigation before them, although other persons may have the deepest interest in the event of the suit. So that one of the most striking and distinctive features of courts of equity is, that they can adapt their decrees to all the varieties of circumstances which may arise, and adjust them to all the peculiar rights of all the parties interested; whereas courts of common law are bound down to a fixed and invariable form of judgment in general terms, altogether absolute for the plaintiff or defendant.—1 *Story's Eq. Jurisp.* 22.

Decreet arbitral, the award of an arbitrator. *Scotch phrase.*

Decreet cognitionis causâ, when the apparent heir is called to hear the debt constitute, it not being already clearly constitute by writ; and the appearing heir renounces, being charged to enter heir. It is against executors, when the nearest of kin are pursued by the executor-creditor, who has no writ to instruct his debitor to hear the debt constitute.—*Id.*

Decreet of comprising, when, at the day appointed in the letters, the debitor being called, the messenger offers him his lands for the money, which if he have not ready, the inquest declares the lands to belong to the creditor for his payment.—*Id.*

Decreet of exoneration, a judgment of the commissioners against the creditors or nearest of kin; wherein it is proven, that the executor has executed the whole testament, and that all is exhausted by lawful sentences.—*Id.*

Decreet of locality, modifying a stipend for a minister, dividing and proportioning the same among the heritors.—*Id.*

Decreet of modification, that which modifies a stipend to a minister, but does not divide or apportion it among the heritors.—*Id.*

Decreet of valuation, a sentence of the lords (who are now in the place of the commission), determining the extent and value of teinds.—*Scotch phrase.*

Decreta, judicial sentences given by the emperor as supreme judge.—*Roman Law.*

Decreta conciliorum non ligant reges nostros.—*Mo.* 906.—(The decrees of councils bind not our kings.)

Decretals, a volume of the canon law, forming the second part, so called as containing the decrees of sundry popes; or a digest of the canons of all the councils that pertained to one matter under one head.

Decretal order, a chancery order in the nature of a decree.

Decretum est sententia lata super legem.—(A decree is a sentence made upon the law.)

Decrowning, the act of depriving of a crown.

Decuriare, to bring into order.

Dedbana, an actual homicide or manslaughter.

Dedi et concessi (*I have given and granted*), the operative words in grants, &c. The word 'give' or the word 'grant' in a deed, executed after the 1st day of October, 1845, shall not imply any covenant in law in respect of any tenements or hereditaments, except so far as the word 'give' or the word 'grant' may, by force of any Act of Parliament, imply a covenant.—8 & 9 *Vict.* c. 106, s. 4.

Dedication-day [*festum dedicationis*, Lat.], the feast of dedication of churches, or rather the feast day of the saint and patron of a church, which was celebrated not only by the inhabitants of the place, but by those of all the neighbouring villages who usually came thither; and such assemblies were allowed as lawful; it was usual for the people to feast and to drink on those days; and in many parts of England they still meet every year in villages for this purpose, on certain days which are called feasts, revels, or wakes.—*Cowel.*

De die in diem (*from day to day*).

Dedimus potestatem (*we have given the power*), a writ or commission to one or more private persons for the speeding of some act appertaining to a judge, or a court. It is granted most commonly upon suggestion that the party who is to do something before a judge, or in court, is so weak that he cannot travel.

On renewing the commission of the peace there issues a writ of *dedimus potestatem* out of Chancery, directed to some justice, to take the oath of him who is newly inserted.

Formerly the judges would not suffer litigants to appoint attorneys in any action or suit without this writ; but now, by statute, the plaintiff or defendant may appoint attornies without such process.

Dedition, the act of yielding up anything; surrendry.

Deed [fr. *dæd*, Sax.; *dêd*, *gadêd*, Goth.; *daed*, Dut.], a formal document on paper or parchment duly signed, sealed, and delivered. It is either an indenture (*factum inter partes*) needing no actual indentation (8 & 9 Vict. c. 106, s. 5), made between two or more persons in different interests, or a deed-poll (*charta de unâ parte*) made by a single person, or by two or more persons having similar interests.

The requisites of a deed are these:—

(1) Sufficient parties and a proper subject of assurance.

(2) A legal consideration or matter of inducement.

(3) It must be written, engrossed, printed or lithographed, or partly written or engrossed, and partly printed or lithographed in any character or in any language, on paper, vellum, or parchment, since these materials best unite the two qualities of durability and difficulty of concealing alteration or erasure.

(4) The language employed should be sufficient in point of law, intelligible without punctuation, and clear without the aid of stops or parentheses.

Usage has arranged the text of a deed in a formal and well understood sequence; and although it is not absolutely necessary that a deed should be drawn in accordance with the generally received formulary, provided it exhibit the intention of the parties, yet it is not advisable to deviate from it unless in a matter of urgent necessity. A properly prepared deed then is arranged in the following parts.

(*a*) Commencement or *exordium*, date and particulars.

The commencement sets forth its style or character. The date follows in indentures and contracts, but is generally placed in the last or peroration-clause in a deed-poll. If there be no date, or an impossible date, the deed takes effect from its actual delivery. The date, however, should always be filled in before execution. The parties are described by their several names, their rank, profession, or calling, and their place of abode, except in the case of a peer. The assumption of any additional name should be stated so as to preserve identity on the face of the title. A mistake will not vitiate the instrument, if the party can be identified by extraneous evidence.—*Nihil facit error nominis cum de corpore constat.*

Every person who conveys any estate or interest, or enters into a covenant, or is to be bound by the deed, should be made a party to it.

Parties are classified in parts according to their several interests. Persons having joint-interests except in a deed of partition should be of the same part, but those having distinct though undivided interests should be of several successive parts. Those who are to transfer any interest, or relinquish any right should come first, and amongst them, those having legal estates before those having equitable only, and the larger interests should precede the lesser. Then consenting parties and covenantors. After these, those who take any estate or interest, and amongst these trustees follow real owners. Lastly those who are inserted to fix them with notice of the deed, as creditors, legatees, trustees, and executors.

When a person acts in two or more capacities, he should be named in distinct parts according to such several capacities.

Husband and wife are generally of the same part, except in separation deeds.

The 8 & 9 Vict. c. 106, s. 5, enacts that under an indenture executed after the 1st day of October, 1845, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments may be taken, although the taker thereof be not named a party to the same indenture.

Before this statute, however, a person not named in an indenture could and still can take a remainder, or a use, or the benefit of a trust, or any authority by a letter of attorney.

(*b*) *Recitals.* These are either narratives of past facts, or a statement of the purpose of the deed. They are not a necessary part of an assurance, yet they frequently become material as an aid to collect the intention of the parties to the instrument, and a key to its construction. Thus a recital may restrain the effect of general phraseology in the operative part of a deed, and although it is not evidence as against strangers, yet it is conclusive as to the facts which it sets forth between the parties to it, and those claiming under them.

(*c*) *Testatum*, witnessing, or operative clause, comprehending —

1. The consideration and its receipt. When a deed contains more than one *testatum*, the whole consideration should generally be stated in the first, unless it can be apportioned amongst the different *testata*. Nominal considerations are for the most part useless.

2. The name of the grantor. When he is a trustee, it should be stated at whose request he makes the deed, and if any particular mode of execution or attestation be prescribed, it should be set forth. The omission of the grantor's name may be constructively supplied, when the context shows who is intended to be the grantor.

3. The operative verbs of transfer.

4. The name of the grantee, with appropriate words of limitation.

(*d*) *The Parcels*, i.e. the description of the property affected, with any savings or exceptions.

There are three points to be attended to in describing the parcels:—(1) That the descrip-

tion be clear and comprehensive; (2) that it be sufficient to identify the property; and (3) that it be so connected with the description in the former deeds as to exhibit an identification of the property throughout the title.

(*e*) *General words* with the sweeping clauses.

Although the reversion and estate clauses are usually inserted in deeds, except appointments, and leases by termors, yet they do not serve any essential purpose, since by the transfer of the property, the reversion and rent and other incidents will clearly pass. The deed-clause is now obsolete, for title-muniments descend with the inheritance, to which they relate, and pass by a transfer of it without being named.

All the parts which have been enumerated are as a whole technically denominated the premises (*præmissa*) or the matters which precede. The premises should name all the parties, as well active as passive, i. e. both grantors and grantees, and set forth with certainty the thing granted, with any exceptions reserved. This word has also a popular sense, meaning the thing granted by the deed.

(*f*) *Habendum*, limiting and defining the interest.

This part is a non-essential formality, expressing the extent of the grantee's interest in the thing granted. The grantee should be named, and he would take although not mentioned in the former part of the deed. While nothing can be limited in the *habendum* which has not been given in the premises, yet it may abridge, qualify, or enlarge the premises, but where they are repugnant, the premises will operate, in preference to the *habendum*.

There is not any *habendum* in an appointment under a power, a covenant to stand seised, or a simple declaration of uses, because such deeds themselves fulfil its office by limiting the estate to be created.

(*g*) *Tenendum*. This is usually joined with the *habendum*, but it is unnecessary, since the tenure is never expressed, except upon a subgrant or lease reserving rent.

Where there is a declaration of uses, the words 'and assigns for ever' are omitted. In annuity-deeds, and money-assignments, the phrase, 'To have, hold, receive, and take,' is the common form of *habendum*.

(*h*) *Declaration of uses* in deeds operating by virtue of the Statute of Uses (27 Hen. VIII. c. 10). A person may take an estate under this declaration, although not a party to the deed.

(*i*) *Declaration of trusts*, when necessary, is usually combined with the declaration of uses.

(*j*) *Declaration against dower* in purchase-deeds succeeds the limitation of the estate.

A purchaser has lately contended that a conveyance in fee must be executed by the grantee, in order that the declaration against dower be effectual, and also that such declaration must follow the language of the Dower Act, 3 & 4 Wm. IV. c. 105, s. 6, which is, 'shall not be entitled to dower;' but the court overruled both points, the first, because purchasers rarely executed conveyances to themselves unless they contained any covenants on their part; the second, because the word 'dowable' which was used, meant substantially the same as 'entitled to dower.'—*Fairley* v. *Tuck* (*V. C. K.*), 6 *W. R.* 9 (1857). See *Collard* v. *Roe* (*V. C. S.*) *Ib.* 348 (1858), as to purchaser's right to the estate of a dower trustee, when the tenant for life has not any power of appointment.

(*k*) *Reddendum* in leases, which reserves something to the grantor out of the estate transferred, such as rent.

The phrase 'yielding and paying' in a lease by indenture executed by the lessee will imply after entry a covenant to pay rent, in the absence of one expressed. (*Platt on Covenants*, 50, *et seq.*) It is generally advisable, except in leases pursuant to statute, to reserve the rent at large, not specifying to whom made, since the rent will be annexed to the reversion and belong to the person for the time being entitled to the latter.

(*l*) *Conditions*, conditional limitations, provisoes for cesser of interests, clauses of restraint, and for redemption, and special agreements, are generally here inserted, when stipulated for between the parties.

(*m*) *Powers*. For example, a power to lease.

(*n*) *Covenants*. The *Touchstone* (vol. i., p. 160, c. vii.) describes a covenant to be 'the agreement or consent by two or more by deed in writing, sealed and delivered, whereby either or one of the parties doth promise to the other that something is done already, or shall be done afterwards. And he that makes the covenant is called the covenantor; and he to whom it is made, the covenantee.' See the third Report of the Real Prop. Commissioners for a compendium of the Law relating to Covenants.

(*o*) The conclusion, peroration, or *testimonium*, connecting the contents of the deed with its signatures and seals.

All these several parts then, thus arranged, make up a formally prepared deed.

(5) The deed being engrossed, the next step is its *execution*, which consists of three acts, viz.—

(*a*) *Signing*.

(*b*) *Sealing*, which is a Norman usage, and makes the assurance a specialty. It is, however, but a simple formality. There should be a distinct seal for every signature.

(*c*) *Delivery*, which completes the efficacy of the deed, and whence it takes effect, if, as we have already seen, there be a false, or impossible, or no date. See DATE AND DELIVERY OF A DEED.

(6) Let it be observed, that a deed must be read before execution, if any of the parties request it, otherwise it will be void, so far as the requestor is concerned; and a false reading will avoid it so far as was misread (1 *Touch.* p. 56). Seeing that the draft of a deed is usually submitted to the legal advisers of the several parties to be approved of by them on their client's behalf, the request of reading seldom occurs. In strict practice, the engrossment is examined with the draft by the solicitors of the parties before an appointment for its execution is fixed.

(7) The *attestation* is not positively essential, unless it be required by a particular statute, or by the express terms of a power. See POWER. In practice, however, every deed is attested, in order to render it more easy of proof. One witness is enough (unless more are expressly required), since it renders the proof less difficult after death (read 17 & 18 Vict. c. 125, s. 26). A witness need not see the party execute the deed, for if such party request him to attest his signature after it has been written, and he do so, it will be sufficient.

(8) The *endorsed receipt-clause* acknowledging the payment of the consideration-money, signed by the recipient, should never be omitted, for although the receipt in the body of the deed is conclusive at Law between the parties themselves, Equity regards the endorsed receipt as the effectual discharge, since a future purchaser is not then required, unless he have notice to the contrary, to ascertain whether in fact the money was paid; while its absence is implied or presumptive notice of non-payment, thus charging the lands in Equity with its liquidation, and imposing on a future purchaser the necessity of requiring proof of its discharge, or, that wanting, a proper receipt from the person entitled to it (see 3 *Prest. Abr.* 15), when its want may be disregarded.

(9) *Extrinsic and occasional ceremonies.*

These are livery of seisin on feoffments; enrolment usually in Chancery of grants by the Crown; bargains and sales of freeholds, pursuant to 27 Hen. VIII. c. 16, or under the Land-tax Acts; gifts of lands to charities under 9 Geo. II. c. 36, and disentailing assurances according to 3 & 4 Wm. IV. c. 74; and registration of assurances affecting property in Yorkshire, Middlesex, Kingston-upon-Hull, and the Bedford Levels, and annuity-deeds in the Common Pleas under 18 Vict. c. 15, s. 12.

Whilst enrolment authenticates the transaction by giving a full transcript of the assurance, registration only affords a clue to it, since it generally discloses the date, names of the parties, the parcels, and subscribing witnesses only.

(10) The *stamp*, which does not strengthen the efficacy of a deed, but simply renders it admissible in evidence. A deed may be stamped before or after execution. Two months are allowed to stamp it after execution, at Somerset House, without a penalty. After that period, a penalty of 10*l.* is imposed, but the Commissioners of Inland Revenue have power to remit it within twelve months from the execution of the deed. When any doubt exists as to the appropriate stamp, the Commissioners decide it with an appeal to the Exchequer. A fee of 10*s.* must be paid to them, besides any incurred penalty.—13 & 14 *Vict.* c. 97, ss. 14, 15; 16 & 17 *Vict.* c. 59, s. 13; 17 & 18 *Vict.* c. 83, ss. 17, 18.

The Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125, ss. 29 31), cures an objection to the production in evidence of an unstamped or deficiently stamped document, by paying to the officer of the court the amount of stamp, and penalty, and also 1*l.* additional penalty.

Though a deed may be good in point of form, as apparently possessing the external and internal circumstances necessary to its validity, yet, it may be rendered invalid from many causes which may be thus classified:—

(I.) Those making it void *ab initio* when it can never take effect; as

(*a*) Where it is wanting in any of the essentials, for it is then absolutely null against all persons.

(*b*) Where a party has made it under threat, for then it is void as to him.

(II.) Those making it voidable, not being void from its beginning; as

(*a*) By dissent of parties, for instance the repudiation of an infant or wife's deed, after majority or upon widowhood.

(*b*) By dissent of strangers, as the grantee of a deed-poll or an indenture not executed by him, disclaiming the estate thereby given to him, or a husband repudiating his wife's purchase.

(III.) Those making it void by something *ex post facto*; as

(*a*) By an extra-judicial act, as razure or interlineation, or breaking off the seal, with the assent of the parties, or delivering up the deed to be cancelled. The act of a spoliator will not avoid a deed. To prevent any after-dispute, any alteration or interlineation made in a deed before execution should be particularised in the attestation clause. If a freehold estate have already passed by the deed, its cancellation will not divest such estate so as to revest it in the original owner; there must be a re-transfer to effect this.

(*b*) By a judicial act, as where by a decision of a court a deed is declared void (technically called a *vacat* of the instrument), by reason of fraud, or an illegal consideration, or that it attempts to derogate a prior and superior right.

The several species of deeds and assurances may be thus classed:—

(I.) Those which wholly operate by virtue of the Common Law, subdivided into

(*a*) Primary or original, which create or divide estates, being

(1) Feoffment.
(2) Bargain and sale improper.
(3) Gift.
(4) Grant.
(5) Bill of sale.
(6) Lease.
(7) Exchange.
(8) Partition.

(*b*) Secondary or derivative, which enlarge, extinguish, delegate the dealing with, or renounce estates already created, being

(9) Release.
(10) Confirmation.
(11) Surrender.
(12) Assignment.
(13) Under-lease.
(14) Power or letter of attorney.
(15) Defeazance.
(16) Disclaimer.

(II.) Those which wholly operate by virtue of the Statute of Uses, as

(17) Appointment in exercise of a power concerning uses.
(18) Revocation and new appointment.
(19) Bargain and sale proper.
(20) Covenant to stand seised.

(III.) Those which operate partly by the Common Law and partly by the Statute Law, as

(21) Grant to uses.
(22) Statutory release.
(23) Feoffment to uses.

(IV.) Those which operate by special custom, as

(24) Surrender to a lord.
(25) Admittance of a new tenant.

(V.) Those which operate by matter of record, as

(26) Private Act of Parliament.
(27) Royal grants.
(28) Vesting orders.

(VI.) Those which charge, discharge, or enlarge, or affect or concern estates, as

(29) Bond.
(30) Warrant of attorney and *cognovit actionem*.
(31) Debenture.
(32) Recognizance.
(33) Deed of covenant.
(34) Declaration of trust.
(35) Appointment of new trustees.

Deed of covenant. Covenants are frequently entered into by a separate deed, for title, or for the indemnity of a purchaser or mortgagee, or for the production of title-deeds. A covenant with a penalty is sometimes taken for the payment of a debt, instead of a bond with a condition, but the legal remedy is the same in either case.

Deed-poll, a single deed in the form of a manifesto or declaration to all the world of the grantor's act and intention. If there be no recital it usually speaks in the first person, but where recitals are introduced it speaks in the third person.

Deemsters [fr. *dema*, Sax., a judge or umpire], Judges in the Isle of Man and in Jersey, who, without process or any charge to the parties, decide all controversies in that island; they are chosen from among the parties themselves.—*Cam. Brit. & 4 Inst.* 284.

Deer-fald, a park or fold for deer.

Deer hayes, engines or great nets made of cord to catch deer.—19 *Hen. VIII.* c. 11.

De essendo quietum de tolonio, a writ which lay for those who were by privilege free from the payment of toll, on their being molested therein.—*F. N. B.* 226.

De expensis civium et burgensium, an obsolete writ addressed to the sheriff to levy the expenses of every citizen and burgess of Parliament.—4 *Inst.* 46.

De expensis militum, a similar writ to the last, to levy the expenses of the knights of the shire for attendance in Parliament.

De facto, in fact, opposed to *de jure*, of right.

The 11 Hen. VII. c. 1 (A.D. 1494), was made for the protection of those who have assisted and supported the king in possession of the crown, whether his title be a good one or not; as the preamble recites it, 'to be the duty of the subject to serve their prince and sovereign lord for the time being.'

Fuller (*Holy State*, b. 4, c. viii.) hath given us rather a quaint, but at the same time strongly descriptive account of the perilous situation of the subject before this wise statute. 'For they lived in a troublesome world, wherein the cards were so shuffled, that two kings were turned up trumps at once, which amazed men how to play their games.'—*Barr on Stat.* 451.

Defamation, scandalous words spoken concerning another, tending to the injury of his reputation, for which an action on the case for damages will lie; the 18 & 19 Vict. c. 41, abolished the jurisdiction of the ecclesiastical courts in suits for defamation as grievous and oppressive.

Default, omission of that which a man ought to do; neglect.

When a defendant has a day certain given him in court, and is then demandable, and being demanded does not appear, the court thereupon gives judgment against him by default. The defendant allows judgment by default either intentionally or through mistake or neglect; intentionally, where he has no merits, or where he does so according to a previous agreement with the plaintiff; through

mistake when he delivers a plea or rejoinder, &c. so informal or defective that it is treated as a nullity; and through neglect when perhaps he has no merits, but omits to plead, rejoin, &c. within the time limited by the rules of the court for that purpose. This is an implied confession of the action. See JUDGMENT BY DEFAULT.

Where a defendant makes default at the hearing of a cause in equity, the decree is absolute in the first instance, without giving the defendant a day to show cause. and such decree shall have the same force and effect as if the same had been a decree *nisi* in the first instance, and afterwards made absolute in default of cause shown by the defendant.—*Consol. Ord.* 1860, xxiii. r. 44.

Defaulter, one who makes default.

Defeasible [fr. *défaire*, Fr., to make void], that which may be annulled or abrogated.

Defeazance [fr. *défaire*, Fr., to undo], a collateral deed accompanying another, providing that upon the performance of certain matters, an estate or interest created by such other deed shall be defeated and determined. It is of three kinds:—(1) As applicable to freeholds. This is now seldom used, as it is preferable to set forth the conditions in the deed creating the freehold, so as to be complete in itself; (2) as applicable to chattels, real and executory interests, such as covenants, rents, and annuities; and (3) as applicable to bonds, recognizances, and warrants of attorney. The first kind, when it is adopted, must be made at the same time with the assurance to which it relates, and form a part of the same transaction. The second and third kinds may be made either at the time of, or at any time after, the execution of the principal assurance.

A defeazance should recite the deed to be defeated and its date: and must be made between the same parties as are interested in the recited deed or their representatives, and with the same formalities as the deed which created the estate to be defeated; it must be of a thing defeasible, and all the conditions must be strictly performed before the defeazance can be consummated.

It having hitherto been the law for centuries that a condition in a lease not to alien without license was determined by the first license granted (*Dumpor's case*, 4 *Co.* 119; 45 *Eliz.* & 1 *Smi. L. C.* 25–35), a defeazance was frequently adopted in order to revive the condition and so virtually to limit the license to the particular assignment; but the 22 & 23 Vict. c. 35, provides that where any license to do any act which without such license would create a forfeiture, or give a right to re-enter, under a condition or power reserved in any lease heretofore granted, or to be hereafter granted, shall at any time after the passing of this act (13th of August 1859), be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license), and all rights under covenants and powers of forfeitures and re-entry in the lease contained shall remain in full force and virtue; and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable by such license, in the same manner as if no such license had been given; and the condition or right of re-entry shall be, and remain in all respects as if such license had not been given, except in respect of the particular matter authorized to be done (s. 1).

Where in any lease heretofore granted, or to be hereafter granted, there is or shall be a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and a license at any time after the passing of this act shall be given to one of several lessees or co-owners to assign, or underlet his share or interest, or to do any other act prohibited to be done without license, or shall be given to any lessee or owner or any one of several lessees or owners to assign or underlet part only of the property, or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees, or owner or owners, of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be), over or in respect of such shares or interests, or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license (s. 2).

Defectum, challenge *propter*. See CHALLENGE.

Defence [fr. *defensio*, Lat.], popularly a justification, protection, or guard; in law, a denial by the defendant of the truth or validity of the plaintiff's complaint.

At *Common Law*, a defendant, after a plaintiff has declared, must either demur or plead. One or other of these courses he is bound to take, if he mean to maintain his defence. If he do neither, but confess the plaintiff's right, or say nothing, the court immediately gives judgment for the plaintiff: in the former case

as by confession—in the latter, by *non pros* or *nil dicet*.—*Step. Plead.* 150.

In *Equity*, the matters of defence which may be relied on are in their nature susceptible of two divisions, viz.: (1) into those which are dilatory, which merely delay or suspend, or obstruct the suit without touching the merits, until the impediment or obstacle insisted on is removed; and (2) into those which are peremptory and permanent, and go to the entire merits of the suit.

Dilatory defences may be again divided into four sorts; first to the jurisdiction of the court, insisting that the bill is not preferred to the proper tribunal, which is authorized to entertain the case upon its merits; secondly, to the person, that the bill is preferred by or against an improper person, not competent to maintain or defend it; thirdly, to the form of proceedings, that the suit is irregularly brought, or defective in its appropriate allegations or parties; and fourthly, to the propriety of maintaining the suit itself, because of the pendency of another suit for the same controversy.

Peremptory, or permanent defences, may be divided into two sorts; first, those which insist that the plaintiff never had any right to institute the suit; and, secondly, those which insist that the original right, if any, is extinguished or determined. Under the former head may be included the following defences:—(1) That the plaintiff has not a superior right to the defendant; (2) that the defendant has no interest; and (3) that there is no privity with the plaintiff, nor any other right to sustain the suit. Under the latter head may be included the following defences:—(1) That the right is determined by the act of the parties; or (2) that it is determined by operation of law.

The *modes* of defence are four, viz.: (1) by demurrer, by which the defendant demands the judgment of the court, whether he shall be compelled to answer the bill or not; (2) by plea, whereby he shows some cause why the suit should be dismissed, delayed, or barred; (3) by answer, which, controverting the case stated by the bill, confesses and avoids it: or traverses and denies the material allegations in the bill; or, admitting the case made by the bill, submits to the judgment of the court upon it; or relies upon a new case, or upon new matter stated in the answer, or upon both; (4) by disclaimer, which seeks at once a determination of a suit, by the defendant's disowning all right and interest in the matter sought by the bill. All or any of these modes of defence may be joined; and by Consol. Ord. 1860, xiv. r. 8, it is ordered, that no demurrer or plea shall be held bad and overruled upon argument, only because it does not cover so much of the bill as it might by law have extended to. And by r. 9, no demurrer or plea shall be held bad and overruled upon argument, only because the answer of the defendant extends to some part of the same matter as is covered by such demurrer or plea. *Story's Eq. Plead.* 345.

In *Criminal* matters, when a prisoner is brought to the bar and arraigned, he either confesses the charge, stands mute of malice, or does not answer directly to the charge, which may be entered as a plea of not guilty, or pleads to the jurisdiction, or in abatement, or demurs, or pleads specially in bar, or generally, that he is not guilty. In addition to these several modes of defence, there were formerly what were called declinatory pleas—the plea of sanctuary and the plea of clergy—both now abolished.—*Arch. Plead. by Jervis*, 72.

The defence in *Ecclesiastical* courts may be called the answer, in which the defendant denies, extenuates, or justifies.

The defence of one's self, and the mutual and reciprocal defence of such as stand in the relations of husband and wife, parent and child, master and servant, is a right which belongs to every person. If a man, or one standing in any of these relations to him, be forcibly attacked in his person or property, it is lawful for him to repel force by force; and the breach of the peace which happens is chargeable upon him only who began the affray. Self-defence, therefore, is justly called the primary law of nature, and it is not, neither can it be, in fact, taken away by the law of society. In the English law it is held an excuse for breaches of the peace, nay, even for homicide itself; but care must be taken that the resistance does not exceed the bounds of mere defence and prevention; for then the defender would himself become an aggressor.

Defend, to forbid or deny.

Defendant [*Deft.* abbrev.], the person sued in a personal action or suit, or indicted for a misdemeanor. He who is sued in a real action is called the tenant; the former term, however, is applicable to actions of every description, and is the expression most commonly used.

Defendemus, a word used in grants and donations, which binds the donor and his heirs to defend the donee, if any one go about to lay any incumbrance on the thing given, other than what is contained in the deed of donation. *Bract.* l. 2, c. xvi.

Defender of the faith [*fidei defensor*, Lat.], a peculiar title, belonging to the Sovereign of England, as that of *Catholic* to the King of Spain, and that of *Most Christian* to the King of France. These titles were originally given by the Popes of Rome; and that of *Defensor Fidei* was first conferred by Pope Leo X. on our King Henry VIII. as a reward for writing

against Martin Luther; and the bull for it bears date *quinto Idus, Octob.* 1521. The Pope, on King Henry's suppressing the houses of religion at the time of the Reformation, not only sentenced him to be deprived of this title, but to be deposed also from his crown; but in the thirty-fifth year of his reign, this title was confirmed by Parliament, and has continued to be used by all succeeding sovereigns to this day.—*Encyc. Lond.*

Defendere *se per corpus suum.* To offer duel or combat as a legal trial and appeal. Abolished by 59 Geo. III. c. 46. See BATTEL.

Defendere *unicâ manu*, to wage law; a denial of an accusation upon oath. See WAGER OF LAW.

Defeneration [fr. *de*, of, and *fœnero*, Lat., to lend upon usury], the act of lending money on usury.

Defensa, a park or place fenced in for deer.

Defensiva, a lord or earl of the marches, who was the warden and defender of his country.—*Cowel.*

Defensive allegation, the mode of propounding facts relied upon as a defence by a defendant in the spiritual courts. He is entitled to the plaintiff's answer upon oath, and may thence proceed to proofs as well as his antagonist.—3 *Step. Com.* 450.

Defenso, that part of any open field or place that was allotted for corn or hay, and upon which there was no common or feeding, was anciently said to be *in defenso*: so of any meadow ground that was laid in for hay only. The same term was applied to a wood where part was enclosed or fenced, to secure the growth of the underwood from the injury of cattle.—*Cowel.*

Defensum, an enclosure of land, any fenced ground.

Deferred Life Annuities, granted by Commissioners for Reduction of the National Debt. See 16 & 17 *Vict.* c. 45, s. 2.

Deficiente uno sanguine non potest esse hæres. 3 *Co.* 41.—(One blood being wanting, he cannot be heir). But see 3 & 4 *Wm. IV.* c. 106, s. 9.

Deficit, something wanting.

De fide et officio judicis non recipitur quæstio; sed de scientiâ, sive error sit juris aut facti.—*Bacon.*—(A question cannot be admitted as to the good faith and honesty of a judge; but otherwise concerning his knowledge, whether he be mistaken as to the law or the fact.)

It is an ancient rule that a judge of record is not liable to an action for anything done by him in his judicial character. This immunity is given for the public good and advancement of justice; for it is obvious that to administer law properly, the judge should be free in thought and independent in character. A judge, however, is not excused for neglect of duty or misconduct, or *à fortiori* for corruption.

Definitive sentence, the final judgment of a spiritual court, in opposition to provisional or interlocutory judgment.

Deforcement, the holding of lands or tenements to which another person has a right; so that this includes as well an abatement, an intrusion, or a disseisin, as any other species of wrong, by which he that has a right to a freehold is kept out of possession. It is such a detainer of the freehold from him having the right of property, but not the possession under that right, as falls within none of the injuries of abatement, intrusion, disseisin, or discontinuance.—3 *Step. Com.* 502.

Deforceor, or **Deforcor,** he that overcomes and casts out by force.—*Blount.*

Deforciant, the person against whom the fictitious action of fine was brought. Abolished by 3 & 4 Wm. IV. c. 74.

Deforciare, to withhold property from the right owner.

Deforciatio, a distress; a holding of goods for the satisfaction of a debt.—*Paroch. Antiq.* 239.

Defossion [fr. *de*, of, and *fodio*, Lat., to dig], the punishment of being buried alive.—*Ash.*

De frangentibus prisonam, *Statute of,* 1 Edw. II., st. 2, which enacts that no person shall have judgment of life or member for breaking prison, unless committed for some capital offence.

Defraudation, privation by fraud.

Defunct, one that is deceased; a dead man or woman.—*Encyc. Lond.*

Degradation, a deprivation of dignity; dismission from office. An ecclesiastical censure, whereby a clergyman is divested of his holy orders. There are two sorts by the canon law: one, *summary*, by word only; the other *solemn*, by stripping the party degraded of those ornaments and rights which are the ensigns of his degree. Degradation is otherwise called deposition, but the canonists have distinguished between these two terms, deeming the former as the greater punishment of the two. There is likewise a degradation of a lord or knight at common law, and also by Act of Parliament.—13 *Car. II.* c. 16.

Degradations, a term for waste in the French law.

Degree [fr. *degré*, Fr.; *degrat*, O. Fr.; *gradus*, Lat.], a step; the distance between relations; the state or condition of a person.

The stamp-duties on degrees at Oxford are repealed by 18 & 19 Vict. c. 36, s. 1; and at Cambridge by 21 Vict. c. 11, s. 1.

De grossis arboribus decimæ non dabuntur, sed de sylvâ cæduâ decimæ dabuntur.—2 *R. R.* 123.—(Of whole trees, tithes are not given; but of wood used to be cut, tithes are given).

Dehors [Fr.], foreign to, outside, out of the point in question.

De gratiâ speciali, certâ scientiâ, et mero motu, talis clausula non valet in his in quibus præsumitur principem esse ignorantem.—1 *Co.* 53.—(The clause 'Of our special grace, certain knowledge, and mere motion,' is of no avail in those things in which it is presumed that the prince was ignorant).

De idiotâ inquirendo, a common law writ to inquire whether a man be an idiot or not. It was tried by a jury of twelve men; and if they found him *purus idiota*, the profits of his lands and the custody of his person might have been granted by the sovereign to some subject who had interest enough to obtain them. Obsolete.—*F. N. B.* 232.

Dei judicium, the old Saxon trial by ordeal, so called because it was thought to be an appeal to God for the justice of a cause, and it was believed that the decision was according to the will and pleasure of Divine Providence. See ORDEAL.

De incremento (*of increase*).

De injuriâ suâ propriâ absque tali causâ (more compendiously called the traverse *de injuriâ*), a species of traverse by replication in pleading, now obsolete, which varied from the common form, and which, though confined to particular actions, and to a particular stage of the pleadings, was of frequent occurrence. It always tendered issue; but, on the other hand, differed (like many of the general issues), from the common form of a traverse, by denying in general and summary terms, and not in the words of the allegation traversed.

This species of traverse occurred in the replication in actions of trespass, trespass on the case (including the species of assumpsit), and in the plea in bar in replevin, but was not used in any other stages of the pleadings. In these actions it was the proper form, when the pleading to which it was an answer consisted merely of matter of *excuse* of the alleged trespass, grievance, breach of contract, or other cause of action. But if the pleading to be answered consisted of or comprised matter of title, or interest in the land, &c., the commandment of the plaintiff, or authority derived from him, matter of record, of discharge, satisfaction, or release, in any of these cases the traverse *de injuriâ* was generally improper, and the denial of any of these matters must have been in the common form, that is, in the words of the allegation traversed.

Where this replication had been improperly adopted, instead of an ordinary traverse, the objection could be taken by special and not general demurrer. Consult *Crogate's case*, 8 *Rep.* 672 *a*; *Saund.* 295 n. (1); *Stephen's Plead.* 190.

Deis or **Dais.** See DAGUS.

Dejeration [fr. *dejero*, Lat.], a taking of a solemn oath.

De jure [Lat.] (*by right*).

De jure decinarum, originem ducens de jure patronatus, tunc cognitio spectat ad legem civilem, i. e. *communem.*—*Godb.* 63.—(With regard to the right of tithes, deducing its origin from the right of the patron, then the cognizance of them belongs to the civil law, that is, the common law).

De jure judices, de facto juratores, respondent. (The judges answer to the law, the jury to the fact).

A fundamental rule of the common law, upon which the whole system of pleading is built. 'It is of the greatest consequence,' said Lord Hardwicke, 'to the law of England, and also to the subject, that the power of the judge and jury be kept distinct: that the judge determine the law, and the jury the fact: if ever they come to be confounded, it will prove the confusion and destruction of the law of England.'

Delamere, *Forest of.* See 19 & 20 *Vict.* c. 13.

De la plus belle, *Dower*, where a wife was endowed with the fairest part of her husband's estate. Being a consequence of the tenure by knight's service, it is virtually abolished by the statute 12 Car. II. c. 24, which converts those tenures into socage.

Delator [Lat.], an accuser, an informer, a sycophant.

Delatura, an accusation, also the reward of an informer.

Del credere [a phrase borrowed from the Italians, equivalent to our word guaranty or warranty, or the Scotch term warrandice], an agreement by which a factor, when he sells goods on credit, for an additional commission (called a *del credere* commission), guarantees the solvency of the purchaser and his performance of the contract. Such a factor is called a *del credere* agent. He is a mere surety liable only to his principal in case the purchaser makes default. *Story on Agency*, 28; *Smith's Merc. Law.*

Delectus personæ (*the choice of a person*). It is an established principle of the common law, that, as a partnership can commence only by the voluntary contract of the parties, so, when it is once formed, no third person can be afterwards introduced into the firm, without the concurrence of all the partners who compose the original firm. It is not sufficient, to constitute the new relation, that one or more of the firm shall have assented to his introduction; for the dissent of a single partner will exclude him, since it would, in effect, otherwise amount to a right of one or more of the partners to change the nature, and terms, and obligations of the original contract, and to take away the *delectus personæ*, which is essential to the constitution of a partnership. So stubborn, indeed, is this rule, that even the executors and other personal representatives of a partner do

not, in that capacity, succeed to the state and condition of that partner. The Roman law is direct to the same purpose. It even pressed the rule to a still further extent, and held that a positive stipulation between the partners at the commencement of the partnership, that the heir or personal representative of a partner should succeed him in the partnership, was inoperative and incapable of being enforced. The common law, however, treats such a stipulation as valid and obligatory. This also, according to Pothier, was the doctrine of the old French law; and the modern code of France has expressly adopted it, in opposition to the Roman law. Such is the law of Scotland.—*Story on Partnership*, 6.

Delegata potestas non potest delegari.—2 *Inst.* 597.—(A delegated power cannot be delegated.)

The Crown may, however, delegate to an individual the power of appointing the first members of a corporation created by charter under 1 Vict. c. 78; or may nominate a person to ascertain the individuals who compose the class to whom the charter is granted.

Delegates, *the High Court of*, formerly the court of appeal from the Ecclesiastical and Admiralty Courts. Abolished, the Judicial Committee of the Privy Council being constituted the court of appeal in such cases. See 2 & 3 *Wm. IV.* c. 92; 3 & 4 *Wm. IV.* c. 41; 6 & 7 *Vict.* c. 38.

Delegation, a sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a general power to act for the good of those who depute him.

Delegatus debitor est odiosus in lege.—2 *Buls.* 148.—(A delegated debtor is hateful in law.)

Delegatus non potest delegare.—(A delegate cannot delegate.)

The person to whom an office or a duty is delegated cannot lawfully devolve the duty upon another, unless he be expressly authorised so to do. An exception to this maxim arises from an implied authority by the recognised usage of trade; as, for instance, in the case of an architect or builder, who employs a surveyor to make out the quantities of the building proposed to be erected; here the civil law maxim applies—*in contractis tacitè insunt quæ sunt moris et consuetudinis*—terms which are in accordance with, and warranted by custom and usage, may be tacitly imported into contracts.

Deliberandum est diu quod statuendum est semel.—12 *Co.* 74.—(That which is to be resolved once for all, should be long deliberated upon.)

Delictum, challenge *propter*. See CHALLENGE.

Delinquens per iram provocatus puniri debet mitius.—3 *Inst.* 55.—(A delinquent provoked by anger ought to be punished more mildly.)

Deliverance, *second, writ of*. The judgment of *non pros* in replevin at common law is, that the defendant shall have a return of the goods replevied, and his costs. The plaintiff, however, is not prevented by this judgment from proceeding, for he may sue out the judicial writ of second deliverance, in execution of which the sheriff must again take the goods from the defendant and deliver them to the plaintiff, or the writ will operate in the sheriff's hand as a *supersedeas* of the writ *de retorno habendo*, if the latter writ has not as yet been executed. The proceedings upon this writ are the same as in ordinary cases of replevin, and if the defendant have judgment either upon verdict, demurrer, or of *non pros*, it is for a return irreplevisable, and he shall have a writ *de retorno habendo*, which being executed, the plaintiff cannot have any further writ of deliverance.—2 *Chit. Arch. Prac. by Pren.* 1077, 1082, and 1084.

Delivery of a deed, a requisite to a good deed. Deeds take precedence according to the time of their delivery, except in the register districts, where their precedence is according to their time of registration.

The delivery may be effected either by acts or by words, i. e. by doing something and saying nothing, as merely handing it to the grantee or his agent; or by doing nothing and saying something, as 'I deliver this writing as my act and deed,' or language of a similar import; or by doing and saying something.

Delivery is of two kinds:—

(*a*) *Absolute*, when the execution perfects the deed, and there is nothing left to be done; or

(*b*) *Conditional*, which is the handing of the writing to some third person, to be delivered by him as the act and deed of the grantor, when certain specified conditions shall be performed. Until the conditions are performed the instrument is called an escrow, scrowl, or writing.

Delivery of deeds. Where a bill in equity, seeking a discovery of deeds and writings, prays relief founded on the deeds or writings, of which the discovery is sought; if the relief so prayed be such as might be obtained at law (if the deeds or writings were in the custody of the plaintiff), he must annex to his bill an affidavit that they are not in his custody or power, and that he knows not where they are, unless they are in the hands of the defendant; otherwise the bill will be demurrable.—*Story's Eq. Plead.* 375.

De lunatico inquirendo, *writ*, a process issued to inquire into the condition of a person's mind. The Lord Chancellor or the Lords Justices of Appeal, to whom, by special autho-

vity from the sovereign, the custody of idiots and lunatics is intrusted, may, upon petition or information, grant a commission in the nature of the writ *de lunatico inquirendo* (which is analogous to that *de idiotâ inquirendo*), to inquire into the party's state of mind. If the party be found *non compos*, the care of his person, with a suitable allowance for his maintenance, is usually committed to one of his relations or friends, then called his committee.

The practice in lunacy cases has been amended by the Lunacy Regulation Acts, 1853 and 1855, 16 & 17 Vict. c. 70, and 18 Vict. c. 13, and the General Orders of the 7th November, 1853, promulgated pursuant thereto. See IDIOTS and LUNATICS.

Demand [fr. *demando* from *mando*, Lat., *manudare*, to hand-give; *mander*, Fr., to bid], a claim, a challenging, the asking of anything with authority, a calling upon a person for anything due. It is either *in deed*, written or verbal, as a demand for rent, or an application for payment of a debt, or *in law*, as an entry on land, distraining for rent, bringing an action.

Demandant. He who is actor or plaintiff in a real action, because he demands lands.—*Co. Litt.* 127.

Demandress, a female demandant.

Demease, death.

De medietate linguæ (*of a moiety of tongue*) jury. The 6 Geo. IV. c. 50, s. 47, enacts that, on the prayer of any alien indicted for felony or misdemeanor, the sheriff or other proper minister shall, by command of the court, return for one-half of the jury a competent number of aliens, if so many there be in the town or place where the trial is had; and if not, then so many aliens as shall be found in the same town or place, if any; and that no such alien juror shall be liable to be challenged for want of freehold or other qualification required, but that every such alien may be challenged for any other cause. This kind of jury is not allowed in a civil action, nor in cases of treason.

Indictments against scholars or privileged persons, belonging to the University of Oxford, are tried by a *jury de medietate*, half of freeholders and half of matriculated persons, before the High Steward of the University, or his deputy, in pursuance of the charter 7th June, 2 Hen. IV. confirmed by the statute 13 Eliz. c. 29.—2 *Reeve*, 461.

Demeine, Demain, or **Demesne** [fr. *demaine*, Fr.], that part of the lands of a manor which the lord has not granted out in tenancy, but which is reserved for his own use and occupation.

De melioribus damnis, *judgment.* Where the jury, by mistake, sever the damages between several defendants in an action of trespass, the plaintiff may cure the defect by taking judgment *de melioribus damnis* against one, and entering a *nolle prosequi* as to the other.—1 *Chit. Arch. Prac. by Pren.* 462.

Demesnial, pertaining to a demesne.

Demidietas, a half or moiety.

De minimis non curat lex.—*Cro. Eliz.* 353.—(The law cares not about very trifling matters.) See ACCRETION.

Demise, a grant by lease; it is applied to an estate either in fee or for term of life or years, but most commonly to the latter; it is used in writs for any estate.—2 *Inst.* 483.

The operative word 'demise' in a lease implies an absolute covenant on the part of the lessor, or person leasing, for the lessee's or termor's quiet enjoyment during the term, which, however, may be qualified by a more limited express covenant.

Also the death of the Sovereign, *demissio regis vel coronæ*, an expression which signifies merely a transfer of property; for when we say the demise of the Crown, we mean only that in consequence of the disunion of the Sovereign's natural body from his body politic, the kingdom is transferred or demised to his successor, and so the royal dignity remains perpetual.—*Plowd.* 177.

Demise, and **Redemise,** mutual leases of the same land, or something out of it. It is properly used upon the grant of a rent-charge, &c.

Demi-official, partly official or authorised.

Demi-vill, a town consisting of five frecmen, or frank-pledges.—*Spelman.*

Democracy [fr. *démocratie*, Fr.; *democrazia*, Ital.; *democracia*, Sp.; *democratia*, Lat.; of δημοκρατία, of δῆμος, the people, and κρατέω, Gk., to exercise power over], one of the three forms of government; that in which the sovereign power is neither lodged in one man, as in a monarchy, nor in the nobles, as in an oligarchy, but in the collective body of the people.

De molendino de novo erecto non jacet prohibitio.—*Cro. Jac.* 429.—(A prohibition lies not against a newly-erected mill.)

Demonstrative legacy. A legacy of quantity is ordinarily a general legacy; but there are legacies of quantity in the nature of specific legacies, as of so much money, with reference to a particular fund for payment. This kind of legacy is called by the civilians a demonstrative legacy: and it is so far general, and differs so much in effect from one properly specific, that if the fund be called in or fail, the legatee will not be deprived of his legacy, but be permitted to receive it out of the general assets; yet the legacy is so far specific, that it will not be liable to abate with general legacies upon a deficiency of assets.—2 *Wm. Exors.* 1043.

De morte hominis nulla est cunctatio longa. Co. Litt. 134.—(Concerning the death of a man no delay is long.)

Dempster, the chief judge of a Tinwald Court in the Isle of Man. See Scott's *Peveril of the Peak*, c. v.

Demurrage, a term used in commercial navigation, signifying an allowance made to the owners of a ship by the freighter, for detaining her in port longer than the period agreed upon for her sailing. It is usually stipulated in charter-parties and bills of lading, that a certain number of days, called running or working or lay days, shall be allowed for receiving or discharging the cargo, and that the freighter may detain the vessel for a further specified time, or as long as he pleases on payment of so much *per diem* for such overtime. When the contract of affreightment expressly stipulates that so many days shall be allowed for discharging or receiving the cargo, and so many more for over-time, such limitation is interpreted as an express stipulation on the part of the freighter, that the vessel shall in no event be detained longer, and that if detained he will be liable for demurrage. This holds even in cases where the delay is not occasioned by any fault on the freighter's part, but is inevitable. If, for example, a ship be detained, owing to the crowded state of the port, for a longer time than is allowed by the contract, demurrage is due; and it is no defence to an action for demurrage that it arose from port regulations, or even from the unlawful acts of the custom-house officers. Demurrage is not, however, claimable for a delay occasioned by the hostile detention of the ship, or the hostile occupation of the intended port; nor is it claimable for any delay wilfully occasioned by the master, or owners, or crew of the vessel. The claim for demurrage ceases as soon as the ship is cleared out and ready for sailing, though she should be detained by adverse winds or tempestuous weather.—3 *Chit. Com. Law*, 426; *Abbott on Shipping; Maude & Pollock on Shipping.*

Demurrer [fr. *demoror*, Lat.; or *demorrer*, Fr., to wait or stay], a pleading which admits the facts as stated in the pleading of the opponent, and referring the law arising thereon to the judgment of the court, waits until by such judgment the court decides whether he is bound to answer.

At *Common Law*, by the C. L. P. Act, 1852, s. 50, either party may object by demurrer to the pleading of the opposite party, on the ground that such pleading does not set forth sufficient ground of action, defence, or reply, as the case may be; and where issue is joined on such demurrer, the court shall proceed and give judgment according as the very right of the cause and matter of law shall appear unto them, without regarding any imperfection, omission, defect in, or lack of form; and no judgment shall be arrested, stayed, or reversed for any such imperfection, omission, defect in, or lack of form.

No pleading shall be deemed insufficient for any defect which could heretofore only be objected to by special demurrer (s. 51).

Either party may, by leave of the court or judge, plead and demur to the same pleading at the same time, upon an affidavit by such party or his attorney if required by the court or judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact, and that he is further advised and believes that the objections raised by such demurrer are good and valid objections in law, and it shall be in the discretion of the court or a judge to direct which issue shall be first disposed of (s. 80).

The party demurring may give a notice to the opposite party to join in demurrer in four days, which notice may be delivered separately or endorsed on the demurrer, otherwise judgment.

No motion or notice for a *concilium* shall be required; but demurrers as well as all special cases, special verdicts, and appeals from county courts, shall be set down for argument in the special paper at the request of either party, four clear days before the day on which the same are to be argued, and notice thereof shall be given forthwith by such party to the opposite party.

Four clear days before the day appointed for argument, the plaintiff shall deliver copies of the demurrer-book, special case, special verdict, or appeal cases, with the points intended to be insisted on to the Lord Chief Justice of the Queen's Bench, or Common Pleas, or Lord Chief Baron, as the case may be, and the senior puisne judge of the Court in which the action is brought, and the defendant shall deliver copies to the other two judges next in seniority; and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been delivered by the party making default; and the party making default shall not be heard until he shall have paid for such copies, or deposited with the master a sufficient sum to pay for such copies. If the statement of the points have not been exchanged between the parties, each party shall, in addition to the two copies left by him, deliver also his statement of the points to the other two judges, either by marking the same in the margin of the books delivered, or on separate papers.

When there shall be a demurrer to part only of the declaration or other subsequent pleadings, those parts only of the declarations and pleadings to which such demurrer relates shall be copied in the demurrer-books; and if any other

parts shall be copied, the master shall not allow the costs thereof on taxation, either as between party and party, or as between attorney and client.—*Rules, H. T.*, 1853, 14–17; 2 *Chit. Arch. Prac. by Pren.* 912.

A demurrer, in *equity*, is in the nature of a declinatory exception in the civil law, which was always put in before the prætor, *ante litem contestatam*. It may be to the whole bill, or a part only of the bill.

Whenever any ground of defence is apparent on the bill itself, either from the matter contained in it, or from defect in its frame, or in the case made by it, the proper mode of defence is by demurrer. A demurrer is an allegation by a defendant, which, admitting the matters of fact alleged by the bill to be true, shows, that as they are therein set forth they are insufficient for the plaintiff to proceed upon or to oblige the defendant to answer; or that for some reason apparent on the face of the bill, or because of the omission of some matter which ought to be contained therein, or for want of some circumstance which ought to be attendant thereon, the defendant ought not to be compelled to answer. It therefore demands the judgment of the court whether the defendant shall be compelled to make answer to the plaintiff's bill, or to some certain part thereof.

It is either general or special; *general*, when no particular cause is assigned, except the usual formulary (to comply with the rules of the court), that there is no equity in the bill; *special*, when the particular defects or objections are pointed out. The former will be sufficient (though special causes are usually stated) when the bill is defective in substance. The latter is indispensable where the objection is to the defects of the bill in point of form. It must be signed by counsel, but it is not put in upon oath, as it asserts no fact, and relies merely upon matter on the face of the bill. Where a demurrer is put into the whole bill for causes apparent on the record, if those causes are overruled the defendant will be allowed to assign other causes of demurrer *ore tenus* (by word of mouth), at the argument.

Demurrers to original bills, praying relief, may properly be divided into three classes:—

(1) To the jurisdiction, subdivided into four heads:—

(α) That the subject is not cognizable by any municipal court of justice.

(β) That the subject is not within the jurisdiction of a court of equity.

(γ) That some other court of equity is invested with the proper jurisdiction.

(δ) That some other court possesses the proper jurisdiction.

(2) To the person of the plaintiff, subdivided thus:—

(α) That the plaintiff is not entitled to sue, by reason of some personal disability.

(β) That the plaintiff has no title to the character in which he sues.

(3) To the matter of the bill, either as to its substance, or as to its form and frame; *first*, demurrers to substance may be subdivided thus:—

(α) That the value of the subject of the suit is too trivial to justify the court in taking cognizance of it; or, as the phrase usually is, that the suit is unworthy of the dignity of the court. The rule is not to entertain a bill under the value of 10*l.* or 40*s.* per annum in land, except in special cases, such as charity, fraud, &c.

(β) That the plaintiff has no interest in the matter, or no proper title to institute a suit concerning it.

(γ) Where a bill does not show any equity in the plaintiff to the relief which he seeks.

(δ) Though the plaintiff has an interest in the matter and a title to institute a suit concerning it, yet he has no right to call upon the defendant to answer his demand.

(ϵ) Want of interest of the defendant in the matter of the suit.

(ζ) That the object of the bill is to enforce a penalty or forfeiture.

Second, demurrers to the frame and form of the bill, subdivided into:—

(α) Defect of form.

(β) Multifariousness.

(γ) Want of proper parties, or misjoinder of parties.

As to demurrers to bills of discovery, see DISCOVERY.

Demurrers to bills not original or secondary may be thus stated: (1) To cross-bills, same as original bills, but the converse of this proposition is not universally true. A demurrer for want of equity will not hold to a cross-bill filed by a defendant in a suit, against the plaintiff in the same suit, touching the same matter. For, being drawn into the court by the plaintiff in the original bill, he may avail himself of the assistance of the court without being put to show a ground of equity to support its jurisdiction; as a cross-bill is generally considered as a matter of defence. (2) To bills of review, and to bills in the nature of bills of review, that there is a defect in the framing. (3) To bills to impeach decrees for fraud, that there is no fraud. (4) To bills to suspend or to avoid the operation of decrees, rarely, if ever, resorted to. (5) To bills to carry decrees into execution, that the plaintiff has no right, or that the decree is erroneous.—*Story's Eq. Plead.* 348–470.

A defendant has twelve days after appearance to demur to a bill. The plaintiff must set a demurrer down for argument within twelve days after filing, if it be to the whole bill, and

three weeks, if to part of the bill, otherwise he is held to have submitted thereto, unless in the meantime he serve an order for leave to amend bill, but the vacations are not to be reckoned in this case.—*Consol. Ord.* 1860, xiv. rr. 14, 15, and xxxvii. r. 3; *Smi. Eq. Pr.* 288.

As to *evidence*, if a witness, in *equity*, object to answer a question, or any part of it, he must state his objection in the form of a demurrer, which is taken down in writing, either by the examiner or by the commissioner, from the mouth of the witness, and after giving notices and copies thereof, the matter is argued by counsel in court. At *common law*, when it is thought by counsel that the facts proved do not maintain the issue, the question whether they do or do not being merely a question of law, a demurrer may be offered, which takes from the jury and refers to the court, the application of the law to the fact, but this practice has been almost entirely superseded by simply moving the court for a new trial, besides if there were *any* evidence to go to the jury, the demurring party would fail; a risk too serious to be hazarded.—1 *Chit Arch. Prac. by Pren.* 439.

In *criminal* prosecutions, a demurrer may be resorted to, when the fact as alleged is allowed to be true, but the defendant takes exception in point of law to the sufficiency of the indictment or information on the face of it, as if he insist that the fact as stated is no felony, treason, or whatever the crime is alleged to be. It is seldom resorted to.—7 *Geo. IV.* c. 64, ss. 20, 21; 14 & 15 *Vict.* c. 100, s. 25; 4 *Bl. Com.* 333.

Demy-sangue, half-blood.

Den, a valley.—*Blount.*

Den, and **Strond,** a liberty for ships or vessels to run or come ashore.—*Pla. tem. Ed. I.*

Dena terræ, a hollow place between two hills; a little portion of woody ground; a coppice.

Denariate, as much land as is worth one penny *per annum.*

Denarii, a sort of ready money.

Denarii de caritate, customary oblations made to a cathedral church at Pentecost.

Denarii S. Petri (commonly called Peter's pence), an annual payment on St. Peter's feast of one penny from every family to the Pope, during the time that the Roman Catholic religion prevailed in this kingdom.

Denarius, the chief silver coin among the Romans, worth 8*d.*, it was the seventh part of a Roman ounce; also an English penny. The denarius was first coined five years before the first Punic war, B. C. 269. In later times a copper coin was called denarius.—*Smith's Dict. Antiq.*

Denarius Dei, God's penny, or earnest given and received by parties to contracts, &c., paid in former times to the church or poor.

Denarius tertius comitatus, a third part or penny of the county paid to its earl, the other two parts being reserved to the Crown.—*Paroch. Antiq.* 418.

Denbara [fr. *den*, Sax., a vale, and *berg*, a barrow or hog], a pen for hogs; a swine-court. *Cowel.*

Denelage [*Dane*], the laws which the Danes enacted whilst they had the dominion in England.

Denial. See TRAVERSE.

Denization, the act of enfranchising, or making free.

Denizen [fr. *dónaison*, *donison*, O. Fr., a gift], an alien born, but who has either obtained, *ex donatione regis*, letters-patent to make him (either permanently or for a time) an English subject, or has acquired the privileges of a natural-born subject, pursuant to 7 & 8 Vict. c. 66. He is in a kind of middle state, between an alien and natural-born subject, and partakes of both of them. He may hold lands by purchase or devise, which an alien may not, but cannot take by inheritance; for his parent, through whom he must claim, being an alien, had no heritable blood; and therefore could convey none to his son. And upon a like defect of inheritable blood, the issue of a denizen, born before denization, cannot inherit to him, but his issue born after may. And no denizen can be of the Privy Council, or either House of Parliament, or have any office of trust, civil or military, or be capable of any grant of lands, &c., from the Crown.—2 *Step. Com.* 443.

Denominatio fieri debet à dignioribus.—(Denomination should be deduced from the more worthy.)

De nomine proprio non est curandum cum in substantiâ non erretur; quia nomina mutabilia sunt, res autem immobiles.—6 *Co.* 66.—(As to the proper name, it is not to be regarded, where it errs not in substance; because names are changeable, but things immutable).

De non apparentibus, et non existentibus, eadem est ratio.—5 *Rep.* 6.—(As to things not apparent, and those not existing, the rule is the same).

De non residentiâ clerici regis, an ancient writ where a parson was employed in the royal service, &c. to excuse and discharge him of non-residence.—2 *Inst.* 264.

De novo (*afresh; anew*).

De novo damus, a clause in a charter, rendering it, in effect, an original.

De nullo, quod est suâ naturâ indivisibile, et divisionem non patitur, nullam partem habebit vidua, sed satisfaciat ei ad valentiam.—*Co. Litt.* 32.—(A widow shall have no part of that which in its own nature is indivisible, and is

not susceptible of division; but let the heir satisfy her with an equivalent.)

Denshiring of land (otherwise called *burn-beating*), a method of improving land by casting parings of earth, turf, and stubble, into heaps, which, when dried, are burned into ashes for a compost.

Denumeration, the act of present payment. *Scott.*

Deodand [fr. *Deo dandum*, Lat.], a personal chattel which had been the immediate occasion of the death of any reasonable creature was forfeited to the Crown, to be applied to pious uses, and distributed in alms by the high almoner; but the right to deodands had been for the most part granted out to the lords of manors, or other liberties, to the perversion of their original design. The law made the following extraordinary distinction, that no deodand was due where an infant under the age of discretion was killed by a fall from a cart, or horse, or the like, not being in motion, whereas if an adult person fell thence, and was killed, the thing was certainly forfeited. In all indictments for homicide, the instrument of death and the value were presented and found by the grand jury (as that the blow was given by a certain bludgeon, value 9*d.*), that the Crown or the grandee might claim the deodand; for it was no deodand unless it was presented as such by a jury of twelve men.—3 & 4 *Wm. IV.* c. 99; 1 *Bl. Com.* 300. It is abolished by 9 & 10 Vict. c. 62.

De onerando pro ratâ portionis, an ancient writ, where a person was distrained for rent, which ought to be paid by others proportionably with him.—*F. N. B.* 234; *New. Nat. Br.* 586.

De odio et atiâ, an obsolete writ, which commanded the sheriff to inquire whether a prisoner charged with murder was committed on general cause of suspicion, or merely *propter odium et atiam*, for hatred and ill-will, with a view, if the latter were found the case, of afterwards issuing another writ to admit him to bail.—1 *Reeves*, 252.

Deor hege, the hedge enclosing a deer park.

Departure [fr. *decessus*, Lat.], in pleading, when a party deserts the ground that he took in his last antecedent pleading, and resorts to another. It can never take place till the replication, and it occurs more frequently in the rejoinder.

The rule against departure is evidently necessary to prevent the retardation of the issue. For while the parties are respectively confined to the grounds they have first taken in their declaration or plea, the process of pleading will exhaust, after a few alternations of statement, the whole facts involved in the cause, and thereby develope the question in dispute. But if a new ground be taken in any part of the series, a new state of facts being introduced, the result is consequently postponed. Besides, if one departure were allowed, the parties might, on the same principle, shift their ground as often as they pleased; and an almost indefinite length of altercation might, in some cases, be the consequence.—*Step. Plead.* 451.

Depeculation, a robbing of the prince or commonwealth; an embezzling of the public treasure.

Deponent [fr. *depono*, Lat., to lay down], a person who makes an affidavit; a witness; one who gives his testimony in a court of justice.

Depopulatio agrorum, destroying and ravaging a country.

Deportation, transportation, exile into a remote part of the kingdom, with prohibition to change the place of residence; exile, an abjuration, which is a deportation for ever into a foreign land, was anciently with us a civil death.—*Ayliffe.*

Depose, to lay down; to lodge; to degrade from a throne or high station.

Deposit, money lodged with a person as an earnest or security for the performance of some contract. Also a naked bailment of goods to be kept for the bailor without recompense, and to be returned when the bailor shall require it. The appellation and the definition are both derived from the civil law, *Depositum est, quod custodiendum alicui datum est.* It is, in the civil law, divisible into two kinds: (1) *necessary*, made upon some sudden emergency, and from some pressing necessity; as, for instance, in case of a fire, a shipwreck, or other overwhelming calamity, when property is confided to any person whom the depositor may meet without proper opportunity for reflection or choice, and thence it is called *miserabile depositum;* (2) *voluntary*, which arises from the mere consent and agreement of the parties. The common law has made no such division. There is another class of deposits, called *involuntary*, which may be without the assent, or even knowledge of the depositor; as lumber, &c., left upon another's land by the subsidence of a flood or unusual tide, and goods lodged in a similar manner by a whirlwind.

The civilians again divide deposits into *simple deposits*, made by one or more persons having a common interest, and *sequestrations*, made by one or more persons, each of whom has a different and adverse interest in controversy touching it; and these last are of two sorts, *conventional*, or such as are made by the mere agreement of the parties, without any judicial act; and *judicial*, or such as are made by order of a court in the course of some proceeding.

There is another class of deposits called *irregular*, as when a person, having a sum of money which he does not think safe in his own

hands, confides it to another, who is to return to him, not the same money, but a like sum, when he shall demand it. There is also a *quasi* deposit, as where a person comes lawfully to the possession of another person's property, by finding it; and a *special* deposit of money or bills in a bank, where the specific money, the very silver or gold coin, or bills deposited, are to be restored, and not an equivalent.—*Story on Bailments*, tit. 'On deposits,' chap. ii.

A deposit of title-deeds as a security for the repayment of a borrowed sum of money, constitutes an equitable mortgage. See EQUITABLE MORTGAGE.

Depositary, one with whom anything is lodged in trust, as depository is the place where it is put. The obligation on the part of the depositary is, that he keep the thing with reasonable care, and, upon request, restore it to the depositor, or otherwise deliver it, according to the original trust.

Deposition, death; depriving a person of a dignity, &c.; also the act of giving public testimony; evidence put down in writing by way of answer to interrogatories, exhibited for that purpose.

It is an incontrovertible rule at common law, that when the witness himself may be produced, his deposition cannot be read, for it is not the best evidence. But it may be read not only where it appears that the witness is actually dead, but in all cases where he is dead for all purposes of evidence; as where diligent search has been made for the witness and he cannot be found; where he resides in a place beyond the jurisdiction of the court; or where he has become lunatic or attainted. See DE BENE ESSE; PERPETUATE TESTIMONY, BILLS TO. As to depositions in criminal proceedings, see 7 Geo. IV. c. 65; 11 & 12 Vict. c. 42.

Depositor, one who makes a deposit.

De prærogativâ regis, the statute 17 Edward II. st. 1, which enacts, in affirmance of the common law, that the king shall have ward of the lands of natural fools, taking the profits, without waste or destruction, and shall find them necessaries; and after the death of such idiots, he shall render the estate to the heirs, in order to prevent such idiots from aliening their lands, and their heirs from being disinherited.

Deprivation, taking away from a clergyman his patronage, vicarage, or other spiritual promotion or dignity, either, first, by sentence declaratory in the proper court for fit and sufficient causes; such as attainder for treason or felony, or conviction of other infamous crime; for heresy, infidelity, gross immorality, and the like; or for farming or trading contrary to law, after two former convictions for the same offence; or, secondly, in pursuance of divers penal statutes, which declare the benefice void, for some nonfeasance or neglect, or else some malfeasance or crime, as for simony; for maintaining any doctrines in derogation of the sovereign's supremacy, or of the thirty-nine articles, or of the book of common prayer; for neglecting to read the liturgy and articles in the church, and to declare assent to the same within two months after induction; or for using any other form of prayer than the liturgy of the Church of England, or for continued neglect, after order of the bishop followed by sequestration, to reside on the benefice, in all which and similar cases the benefice is *ipso facto* void, without any formal sentence of deprivation.—3 *Step. Com.* 37.

Deputy [fr. *député*, Fr.; from *deputatus*, Lat.], one who governs and acts instead of another, or who exercises an office, &c. in another man's right. A deputy cannot be appointed unless the grant of the office authorises such appointment, as where it is to one to exercise by deputy, &c. By 3 & 4 Wm. IV. c. 42, every sheriff is directed to appoint a sufficient deputy, having an office within a mile of the Inner Temple Hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting all rules and orders made as to the execution of any process or writ directed to the sheriff. As to the appointment of deputy recorder, see 6 & 7 *Vict.* c. 89, s. 7.

A deputy differs from an assignee, in that an assignee has an interest in the office itself, and does all things in his own name, for whom his grantor shall not answer, except in special cases; but a deputy has not any interest in the office, and is only the shadow of the officer in whose name he acts. A deputy cannot make a deputy.—9 *Rep.* 49.

There is a distinction in doing an act by an agent and by a deputy, whom the law deems such. An agent can only bind his principal when he does the act in the name of the principal. But a deputy may do the act in his own name, and sign his own name, and the principal will be thereby bound, for a deputy has, in law, the whole power of his principal.

Deputy Speaker of the House of Commons, see 18 & 19 *Vict.* c. 84.

Deputy Steward, a steward of a manor may depute, or authorize another to hold a court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So an under-steward or deputy may authorise another as sub-deputy, *pro hâc vice*, to hold a court for him; such limited authority not being inconsistent with the rule *delegatus non potest delegare*.

This deputy or under-steward may be appointed either in writing or by parol, although the appointment of the chief steward should not contain an express authority for that purpose.

De quibus sur disseisin, a writ of entry now abolished.

Der [fr. *dar*, Brit,], water.

Deraign, or **Dereyn** [fr. *derationare*, Lat.; *deraigner*, or *deragner*, Fr.], to confound, to displace, also to prove.—*Glanv.* l. 2, c. iii. Also to justify, or refuse to clear one from, an accusation.

De rationabili bonorum parte, a writ, anciently given to the wife and children of a man, to recover their reasonable parts of his goods, which he could not bequeath away from them; a custom now utterly abolished, for a man has a full power of disposition over his goods and chattels.

Derelict Lands, those suddenly left by the sea, as when the sea shrinks back below the usual water-mark. Vessels forsaken at sea are called *derelict ships.*

Derivativa potestas non potest esse major primitivâ.—Noy; Wing. 66.—(The derivative power cannot be greater than the primitive.)

Derivative Conveyances, secondary deeds, which presuppose some other conveyance primary or precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. See DEED.

Derogation, the act of weakening or restraining a former law or contract.

Derogatory-clause in a person's will, a sentence or secret character inserted by the testator, of which he reserves the knowledge to himself, with a condition that no will he may make thereafter should be valid, unless this clause be inserted word for word. This is done as a precaution to guard against later wills being extorted by violence, or otherwise improperly obtained. By the law of England such a clause would be void as tending to make the will irrevocable.

Descender, *writ of formedon in,* an abolished process.—*F. N. B.* 21.

Descent, one of the two chief methods of acquiring an estate in lands. It is the hereditary succession of property vested in a person by the operation of law, i. e. by his right of representation as heir-at-law. It is defined, in the interpretation clause of the 3 & 4 Wm. IV. c. 106, as 'the title to inherit lands by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation as where he shall be a child or other issue.' See CANONS OF INHERITANCE.

Descent cast, the devolving of reality upon the heir on the death of his ancestor intestate. It does not take away or defeat a right of entry or action after 31st December, 1833.—*3 & 4 Wm. IV.* c. 27.

Desertion, the criminal offence of abandoning the naval or military service without license. See the *Annual Mutiny* or *Marine Mutiny Acts*; also, an abandonment of a wife or children. By 20 & 21 Vict. c. 85, s. 16, a sentence of judicial separation may be obtained either by the husband or wife on the ground of desertion, without cause, for two years and upwards, and see s. 21, as to orders for the protection of the property of wives deserted by their husbands. See also 21 & 22 *Vict.* c. 108, s. 8.

Designatio justiciariorum est à rege; jurisdictio vero ordinaria à lege.—4 Inst. 74.—(The appointment of justices is by the king, but their ordinary jurisdiction by the law.)

Designatio personæ, the description of a person or a party to a deed or contract.

Designatio unius est exclusio alterius, et expressum facit cessare tacitum.—Co. Litt. 210.—(The appointment of one is the exclusion of another, and that which is expressed makes that which is understood to cease.)

Designs, *copyright in.* These productions of genius, whether ornamental or useful, are protected by statute. See COPYRIGHT.

De similibus ad similia eâdem ratione procedendum est.—(From like to like we are to proceed by the same rule.)

De similibus idem est judicium.—7 Co. 18.—(In like cases the judgment is the same.)

De son tort (*of his own wrong*), *executor.* If a stranger take upon himself to act as executor, without any just authority (as by intermeddling with the goods of the deceased, and many other transactions), he is called in law an executor of his own wrong, *de son tort,* and is liable to all the trouble of an executorship, without any of the profits or advantages; but the doing of acts of necessity or humanity, as locking up the goods or burying the corpse of the deceased, will not amount to such an intermeddling as will charge a man as executor of his own wrong. Such an one cannot bring an action himself in right of the deceased; but actions may be brought against him. And in all actions by creditors against such an officious intruder he shall be named as executor generally; for the most obvious conclusion which strangers can form of his conduct is, that he has a will of the deceased wherein he is named executor, but has not yet taken probate thereof. He is chargeable with the debts of the deceased so far as assets come to his hands; and, as against creditors in general, he is allowed all payments made to any other creditor in the same or a superior degree, himself only excepted. And though as against the rightful executor or administrator he cannot plead such payment, yet it shall be allowed him in mitigation of damages; unless, perhaps, upon a deficiency of assets, whereby the rightful executor may be prevented from satisfying his own debt.—*1 Wms. Ex.* 225-240.

Despacheurs, persons appointed to settle cases of average.

Desperate debt, a hopeless debt; an irrecoverable obligation.

Despitus, a contemptible person.

Desponsation, the act of betrothing persons to each other.

Despot [fr. δεσπότης, Gk., a governor, a ruler], an absolute prince; one who governs with unlimited authority. The word in its origin signified the same with the Latin *herus*, and the English *master*. The Emperor Alexius, surnamed the Angel, created the dignity of *despot*, and made it the first after that of emperor, above that of Augustus, Sebastocrator, or Cæsar. The despots were usually the emperor's sons or sons-in-law, and their colleagues or co-partners in the empire, as well as their presumptive heirs. Under the successors of Constantine the Great the title of *Despot of Sparta* was given to the emperor's son or brother, who had the city of Sparta, or Lacedæmon, by way of appennage. Despot is at present a title of quality given to the princes of Wallachia, Servia, and some of the neighbouring countries.—*Encyc. Lond.*

Despotism, absolute power.

Desrenable [Fr.], unreasonable.

Destitute wayfarers, as to relief of, see 11 & 12 *Vict.* c. 110, ss. 1, 10; and 12 & 13 *Vict.* c. 103, s. 2.

Desubito, to weary a person with continual barkings, and then to bite, provided against by old laws.—*Leg. Alured*, 26.

Desuetude, that which is obsolete.

Detachiare, to seize or take into custody another person's goods, &c. by attachment or other process of law.—*Cowel.*

Detainer, *forcible.* See Forcible Entry.

Detainer, *unlawful.* The wrongful keeping of a person's goods, although the original taking may have been lawful. As if I distrain another's cattle, *damage feasant*, and before they are impounded he tenders me sufficient amends; now, though the original taking was lawful, my subsequent detention of them after tender of amends, is not lawful, and he shall have an action of replevin against me to recover them, in which he shall recover damages for the *detention*, and not for the *caption*, because the original taking was lawful.—3 *Step. Com.* 539.

Detainer, *writ of,* one of the five forms of process prescribed by the 2 Wm. IV. c. 39, s. 1, for the commencement of a personal action against a person already in the prison of one of the courts. Superseded by 1 & 2 Vict. c. 110, ss. 1, 2.

A process lodged with the sheriff against a person in his custody is called a detainer; the officer, therefore, always searches the sheriff's office to see if there be any detainers lodged there against a person in his custody, before he discharges him.

De tallagio non concedendo, 34 Edw. I. st. 4. See 2 *Reeves*, 104.

Determinable freeholds, estates for life, which may determine upon future contingencies before the life for which they are created expires. As if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens—when the widow marries, or when the grantee obtains a benefice—the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life; because the time for which they will endure being uncertain, they may by possibility last for life, if the contingencies upon which they are to determine do not sooner happen.—2 *Bl. Com.* 121.

Detinet (*he detains*), a species of action of debt, which lies for the specific recovery of goods, under a contract to deliver them.—1 *Reeves*, 159.

Detinue, a personal action at law arising *ex delicto.* It may be maintained by one who has either an absolute or a special property in goods against another, who is in actual possession, either by delivery or finding, &c. of such goods, and refuses to re-deliver them. The plaintiff seeks to recover the goods *in specie*, or in failure thereof the value, and also damages for the detention.

The grounds of the action are: (1) a property in the plaintiff, either absolute or special (at the time of action brought) in personal goods, which are capable of being ascertained; (2) a possession in the defendant by bailment, finding, &c.; (3) an unjust detention on the part of the defendant.—1 *Selw. N. P.* 660.

As to the actual recovery of a chattel detained, see *C. L. P. A.* 1852, s. 78, and 19 & 20 *Vict.* c. 97, s. 2.

Detinuit (*he detained*).

Detratari, to be torn in pieces by horses.—*Fleta*, l. 1, c. xxxvii.

Detunicare, to discover or lay open to the world.—*Matt. Westm.* 1240.

Deus solus hæredem facere potest non homo.—*Co. Litt.* 7.—(God alone, and not man, can make an heir.)

Devadiatus, or **Divadiatus,** an offender without sureties or pledges.

Devastavit (*he has wasted*), a devastation or waste of the property of a deceased person, by an executor or administrator by extravagance or misapplication of the assets, for which he is liable, as the creditors or legatees cannot be prejudiced by his misconduct.—2 *Wm. Exs.* 1629, *et seq.*

Devenerunt, an obsolete writ, heretofore directed to the escheator on the death of the

heir of the king's tenant, under age and in custody, commanding the escheator that, by the oaths of good and lawful men, he inquire what lands and tenements, by the death of the tenant, came to the king.—*Dyer*, 860.

De ventre inspiciendo, *writ*, an original process issuing out of Chancery on petition, for the security of the next heir (i. e. *verus hæres*, not *hæres apparens*), or on behalf of a tenant in tail, or *hæres factus* as a devisee in fee, in tail, or for life, to guard them against supposititious births.

The first writ issued on these occasions is to see whether the widow be with child, and *quando paritura*; and if the jury (which is composed of men and women, though *the search* is made by the latter) find her with child, then she is (in strictness) to be removed by a second writ, issuing out of the Common Pleas (where the first is returnable), to a castle (so are the old authorities) where the sheriff is to keep her safely; but it has been held that there is no occasion to execute the writ in that strict manner, provided people of skill have, from time to time, free access to the widow, and may be present at the birth.—1 *Mad. Chan.* 11.

There does not exist an analagous writ in order to protect the succession to personal estate against such a fraud. The method would then be to try the legitimacy of the child after its birth.

Devest, or **Divest** [fr. *de* and *vestis*, Lat.], to deprive, to take away; opposite to *invest*, which is to deliver possession of anything to another.

Devil on the neck, an instrument of torture, formerly used by the Papists to extort confessions, &c. It was made of several irons, which were fastened to the neck and legs, and wrenched them together so as to break the back.—*Cowel.*

Devisable, capable of being devised.

Devisavit vel non. An issue sent from the Court of Chancery to a court of law, to try the validity of a paper asserted and denied to be a will disposing of real estate, to ascertain whether or not the testator did devise, or whether or not that paper was his will.

Devise [fr. *deviser*, Fr., to sort into parcels], a gift of lands, &c. by a last will and testament. The giver is called the *devisor*, the person to whom the lands are given, the *devisee*.

Devoire [Law Fr.], a duty; a tax of custom.

Devonshiring. See DENSHIRING.

Deuterogamy [fr. δεύτερος, Gk., second, and γάμος, marriage], a second marriage.

Dewan, Duam, place of assembly; native minister of the revenue department; and chief justice in civil causes, within his jurisdiction; receiver-general of a province. This term is also used to designate the principal revenue servant under a European collector, and even of a Zemindar. By this title the East India Company were receivers-general of the revenues of Bengal under a grant from the Great Mogul.—*Indian.*

Dewanny, Duannee, the office or jurisdiction of a Dewan.

Dewanny. Court of Adawlut. A court for trying revenue and other civil cases.—*Indian.*

Dextrarius, one at the right hand of another.

Dextras dare, to shake hands in token of friendship; or to give up oneself to the power of another person.—*Wats.* 332.

Diaconate, the office of a deacon.

Dialectics, that branch of logic which teaches the rules and modes of reasoning.

Diallage [fr. διαλλαγή, Gk., interchange], a rhetorical figure in which arguments are placed in various points of view, and then turned to one point.—*Encyc. Lond.*

Dialogus de Scaccario. This has generally passed as the work of Gervase of Tilbury; but Mr. Madox thinks it was written by Richard Fitz-Nigel, Bishop of London, who succeeded his father in the office of treasurer, in the reign of Richard I., and was therefore qualified for such an undertaking. This book treats, in the way of dialogue, upon the whole establishment of the exchequer, as a court and an office of revenue; giving an exact and satisfactory account of the officers and their duties, with all matters concerning that court, during its highest grandeur, in the reign of Henry II. This is done in a style somewhat superior to the law-Latinity of those days.—1 *Reeves*, 220.

Dianatic, a logical reasoning in a progressive manner, proceeding from one subject to another.—*Encyc. Lond.*

Diarium, daily food, or as much as will suffice for the day.—*Du Cange.*

Diasperatus, stained with many colours.—*Mon. Ang.* t. 3, p. 314.

Dica [fr. δέκα, Gk., ten], a tally for accounts.

Dicast [fr. δικαστής, Gk.], an officer in ancient Greece answering nearly to our juryman.

Dice, all games played with dice, except backgammon, are unlawful.—4 *Step. Com.* 353.

Dictores, arbitrators.

Dictum, an arbitrament; an award.

Diem clausit extremum, a writ which issued out of Chancery to the escheator of the county, upon the death of any of the king's tenants *in capite*, to inquire by a jury of what lands he died seised, and their value, and who was his next heir.—*F. N. B.* 251, and see 4 *Step. Com.* 81.

Dies amoris (*the day of love*), the appearance day of the Term on the fourth day, or *quarto die post.* It was the day given by the favour and indulgence of the court to the defendant for his appearance, when all parties appeared

in court, and had their appearance recorded by the proper officer.

Dies cedit, the right to the thing is fixed; *dies venit,* the thing may be demanded. Two expressions in Roman law which signify the vesting or fixing of an interest, and the interest becoming a present one.—*Sand. Just.* 322.

Dies datus, the day of respite given to a defendant.

Dies dominicus non est juridicus.—*Co. Litt.* 35.—(A dominical day, i. e. a Sunday, is not a court day.)

Dies fasti, nefasti, et intercisi (*business days, holidays, and half-holidays*).

For the purpose of the administration of justice all days were divided by the Romans into *fasti* and *nefasti. Dies fasti* were the days on which the prætor was allowed to administer justice in the public courts; they derived their name from *fari* (*fari tria verba; do, dico, addico,* Ovid, *Fast* i. 45, &c.); Varro, *De Ling. Lat.* vi. 29, 30, edit. Muller; Macrob. *Sat.* i. 16. On some of the *dies fasti* comitia could be held, but not on all.—Cic. *pro Sext.* 15, with the note of Manutius.

Dies nefasti were days on which neither courts of justice nor comitia were allowed to be held, and which were dedicated to other purposes. Varro, *l. c.* According to the ancient legends, they were said to have been fixed by Numa Pompilius, Liv. i. 19. One part of a day might be *fastus,* while another was *nefastus.*—Ovid, *Fast* i. 50.

Dies inceptus pro completo habetur.—(A day begun is held as complete.)

Dies incertus pro conditione habetur.—(An uncertain day is held as a condition.)

Dies juridicus, a court-day.

Dies marchiæ, the day of meeting of English and Scotch, which was annually held on the marches or borders to adjust their differences and preserve peace.

Dies non juridicus, not a court-day.

Diet [fr. *dies,* Lat., an appointed day, *Skinner*; or *diet,* an old German word, meaning a multitude, *Junius*], a deliberative assembly of princes or estates. The term is principally applied to the general meetings of the states of Germany. The statute of Nottingham, 10 Edw. III. s. 3, relating to excess in diet (*de cibariis utendis*) is repealed by 19 & 20 Vict. c. 64.

Dieta, a day's journey; a day's work.

Dieu et mon droit (*God and my right*), the motto of the royal arms, first assumed by Richard I.

Dieu et son acte (*the visitation of God*), words often used in our law. It is a maxim that the act of God, or inevitable accident, shall prejudice no man, *actus Dei nemini facit injuriam.*

Diffacere, to destroy.

Difficile est ut unus homo vicem duorum sustineat.—4 *Co.* 118.—(It is difficult that one man should sustain the place of two.)

Difforciare rectum (*to take away or deny justice*).

Diffranchisement, the act of taking away the privileges of a city, or a borough town.

Digama, or **Digamy** [fr. διγαμία, Gk.], second marriage; marriage to a second wife after the death of the first; as *bigamy* in law is having two wives at once. Originally a man who married a widow or married again after the death of his wife was said to be guilty of bigamy.—*Co. Litt.* 40 *b,* n.

Digest, generally a compilation or distribution of a subject into various classes or departments; particularly the Pandects of Justinian in fifty books, containing the opinions and writings of eminent lawyers, digested in a systematical method. See PANDECTS.

Dignitary [fr. *dignus,* Lat., worthy], a clergyman advanced to a bishop, dean, archdeacon, prebendary, &c. But there are prebendaries without cure or jurisdiction, who are not dignitaries.—3 *Inst.* 155.

Dignities, a species of incorporeal hereditament, in which a man may have a property or estate. They were originally annexed to the possession of certain estates in land, and created by a grant of those estates; or, at all events, that was the most usual course. And although they are become little more than personal distinctions, they are still classed under the head of real property; and, as having relation to land, in theory, at least, may be entailed by the Crown, within the Statute *de Donis*; or limited in remainder, to commence after the determination of a preceding estate-tail in the same dignity. See PEOPLE.

Dijudication, judicial distinction.

Dilapidation, decay; a kind of ecclesiastical waste, either voluntary, by pulling down, or permissive, by suffering the chancel, parsonage house, and other buildings thereunto belonging to decay. An action for dilapidations lies, either in the spiritual court by the canon law, or in the courts of common law, and it may be brought by the successor against the predecessor if living, or if dead, then against his executors; and against an alienee, if it were made over to him to defeat the remedy for dilapidations.—13 *Eliz.* c. 10; 5 & 6 *Vict.* c. 108, s. 19. See 3 *Step. Com.* 67.

Dilationes in lege sunt odiosæ.—(Delays in law are hateful.)

Dilatory pleas, a class of defence at common law, founded on some matter of fact not connected with the merits of the case, but such as may exist without impeaching the right of action itself. They are either pleas to the *jurisdiction,* showing that by reason of some matter therein stated the case is not within the

jurisdiction of the court; or pleas in *suspension*, showing some matter of temporary incapacity to proceed with the suit; or pleas in *abatement*, showing some matter for abatement or quashing the declaration. These pleas must be verified by affidavit or otherwise, and pleaded within four days from delivery of declaration.—4 *Anne*, c. 16. They are in general not allowable after a plea in bar. All dilatory pleas, including those in suspension, as well as pleas to the jurisdiction, are sometimes inaccurately classed as pleas in abatement.—*Step. Plead.* 50; 1 *Chit. on Plead.* 718.

All declinatory and dilatory pleas in equity are properly pleas, if not in abatement, at least in the nature of pleas in abatement; and, therefore, in general, the objections founded thereon must be taken, *ante litem contestatam*, by plea, and are not available by way of answer, or at the hearing. And it has been said that pleas of these kinds may be successively pleaded, one after another, in their proper order; that is to say, first, declinatory pleas; secondly, dilatory pleas; and thirdly, pleas in bar. For it has been said, that though no man shall be permitted to plead two dilatories at separate times, nor several bars, because he may plead them all at once, yet, after a plea to the jurisdiction, he may be admitted to plea in bar, because it is consistent with those pleas to plead in bar at the same time.—*Story's Eq. Plead.* 549.

In criminal cases, a plea in abatement or dilatory plea, is founded on some matter of fact extraneous to the indictment, tending to show that it is defective in point of form; and has principally occurred in the case of a *misnomer*, i. e. a wrong name or a false addition to the defendant. But see the powers of amendment given to the judges by 14 & 15 Vict. c. 100, ss. 1, 2, 25.

Diligence, care, of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety; but the law recognises only three degrees of diligence. (1) Common or ordinary, which men, in general, exert in respect of their own concerns; the standard is necessarily valuable with respect to the facts, although it may be uniform with respect to the principle. (2) High or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns. (3) Low or slight, which is that which persons, of less than common prudence, or indeed of prudence at all, take of their own concerns.

The civil law is in perfect conformity with the common law. It lays down three degrees of diligence, ordinary (*diligentia*), extraordinary (*exactissima diligentia*), slight (*levissima diligentia*).—*Story on Bailments*, 19.

Diligiatus [fr. *de lege ejectus*, Lat.], outlawed.

Dilligrout, pottage formerly made for the king's table on the coronation day. There was a tenure in serjeanty, by which lands were held of the king by the service of finding this pottage at that solemnity.—39 *Hen. III.*

Dimetæ, the ancient Latin name of the people who inhabited Carmarthenshire, Pembrokeshire, and Cardiganshire.

Dimidietas, the moiety or half of a thing.

Diminution, the act of making less, opposed to *augmentation*. In proceedings for reversal of judgment, if the whole record be not certified, or not truly certified by the inferior court, the party injured thereby, in both civil and criminal cases, may allege a diminution of the record, and cause it to be rectified.

Dimissory Letters, where a candidate for holy orders has a title in one diocese and is to be ordained in another, the proper diocesan sends his letters dimissory directed to some other ordaining bishop, giving leave that the bearer may be ordained, and have such a cure within his district.—*Cowel.*

Dinarchy [fr. δίς, Gk., and ἀρχή, dominion], a government of two persons.

Diocesan, belonging to a diocese; a bishop, as he stands related to his own clergy or flock.

Diocesan Courts, the consistorial courts of each diocese, exercising general jurisdiction of all matters arising locally within their respective limits, with the exception of places subject to *peculiar* jurisdiction: deciding all matters of spiritual discipline—suspending or depriving clergymen—and administering the other branches of the ecclesiastical law.—3 *Step. Com.* 14.

Diocese, or **Diocess** [fr. *diocese*, Fr.; *diocesi*, Ital. and Span.; διοίκησις, fr. διοικέω, to govern, Gk.; *diœcesis*, Lat.], the circuit of every bishop's jurisdiction; it is divided into archdeaconries, each archdeaconry into rural deaneries, and rural deaneries into parishes.—*Co. Litt.* 94.

Dioichia, the district over which a bishop exercised his spiritual functions.

Diploma [fr. διπλόω, Gk., to fold double, consisting of two leaves], a royal charter or prince's letters-patent. An instrument given by colleges and societies, on commencement of any degrees. A license for a clergyman to exercise the ministerial function, or a physician, &c. to practise his art.

Diplomacy, a knowledge of the interests of different states, and the policy of foreign courts, &c. by means of ambassadors, envoys, consuls, &c. As to diplomatic relations with Rome, see 11 & 12 Vict. c. 108. Persons holding diplomatic pensions under 2 & 3 Wm. IV. c. 116, may be elected members of the House of Commons.—22 & 23 *Vict.* c. 5.

Diplomatics (should not be confounded with *diplomacy*), the art of judging of ancient

charters, public documents or diplomas, &c. and discriminating the true from the false.

It will not be out of place to subjoin here some rules that may serve as guides in the proper selection of historical documents. (1) The authority of any chartulary or public act is preferable to that of a private writer, even though he were contemporary. These public registrars it is always necessary to consult, if possible, before having recourse to the authority of private letters; and a history that is not supported by such public vouchers must in consequence be very imperfect. (2) When public acts are found to accord with the testimony of contemporary authors, there results a complete and decisive proof, the most satisfactory that can be desired, for establishing the truth of historical facts. (3) The testimony of a contemporary author ought generally to be preferred to that of an historian, who has written long after the period in which the events have happened. (4) Whenever contemporary writers are defective, great caution must be used with regard to the statements of more modern historians, whose narratives are often very inaccurate, or altogether fabulous. (5) The unanimous silence of contemporary authors on any memorable event is of itself a strong presumption for suspecting, or even for entirely rejecting, the testimony of very recent writers. (6) Historians who relate events that have happened anterior to the times in which they lived, do not, properly speaking, deserve credit, except in so far as they make us acquainted with the sources whence they have drawn their information. (7) In order to judge of the respective merits of historians, and the preference we ought to give some beyond others, it is necessary to examine the spirit and character of each, as well as the circumstances in which they are placed at the time of writing.—*Encyc. Lond.*; *Kock's Europe, Introd.*

Direct, an epithet for the line of ascendants and descendants in genealogical succession.

Director, a superintendent; one who has the general management of a scheme, design, or speculation.

Directors of convict prisons. See 13 & 14 *Vict.* c. 39; 20 & 21 *Vict.* c. 3.

Directors, persons appointed or elected according to law, authorised to manage and direct the affairs of a corporation or company. The whole of the directors collectively form the board of directors. They are generally invested with certain powers by the acts of the legislature, to which they owe their existence.

Directory statute. The term *directory*, when applied to a statute which enjoins or forbids the doing of certain acts, is used in two different senses:—

(I.) As opposed to *declaratory*, i. e. a statute which merely declares what the common law is.—1 *Bl. Com.* 54 & 86.

(II.) As opposed to *imperative*. When a statute directs that an act should be done in a specified manner, or authorises it upon certain conditions, if a strict compliance with its provisions is not essential to the validity of the act, it is said to be *directory*, but if such compliance is essential, it is said to be imperative. See *per Lord Mansfield, in R.* v. *Loxdale*, 1 *Burr.* 447; *Dwarris on Statutes*, 606.

Dirimant impediments, absolute bars to marriage, which would make it null *ab initio*.

Disability, incapacity to do any legal act. It is divided into two classes: (1) *absolute*, which, while it continues, wholly disables the person; such are outlawry, excommunication, attainder, and alienage; (2) *partial*, as infancy, coverture, idiotcy, lunacy, and drunkenness.

Disabling statutes, acts of Parliament restraining and regulating the exercise of a right or the power of alienation.

Disadvocare, to deny a thing.

Disafforest, to throw open; to reduce from the privileges of a forest to the state of common ground.

Disagreement, the refusal by a grantee, lessee, &c., to accept an estate, lease, &c., made to him; the annulling of a thing that had essence before. No estate can be vested in a person against his will, consequently no one can become a grantee, &c., without his *agreement*; the law implies such an agreement until the contrary is shown, but his disagreement renders the grant, &c., inoperative. If an infant purchase an estate, he may, on coming to full age, disagree thereto; and if he do not agree thereto, his heirs, after his death, may waive it. If a person of unsound mind purchase an estate, he cannot afterwards disagree thereto himself; but if he does not recover, or after recovery dies without agreement, his heir may disagree thereto. If a *feme coverte* purchase an estate, her husband may disagree thereto; and if he neither agrees nor disagrees, the purchase is good during the coverture, but after his death, notwithstanding his agreement, the wife may disagree thereto, and so after her death may her heirs, if she does not herself agree thereto. Persons who purchase an estate under duress may disagree thereto when the duress ceases.—See *Co. Litt.* 2 *b*, 3 *a*, 380 *b*; 3 *Preston's Abstracts*, 104; 2 *Bl. Com.* 292; *Vin. Abr.* [Disagreement.]

Disalt, to disable a person.—*Litt.*

Disappropriation. See APPROPRIATION.

Disbarring, expelling a barrister from the bar, a power vested in the benches of each of the four inns of court, subject to an appeal to the fifteen judges.

Disboscatio, a turning wood-ground into arable or pasture.

Discarcare, to unlade a ship or vessel.

Disceit. See DECEIT.

Discent. See DESCENT.

Discharged Prisoners' Aid Act, 25 & 26 Vict. c. 44.

Discharge, *Order of.* See ORDER OF DISCHARGE AND BANKRUPTCY.

Disclaimer, a renunciation or a denial by a tenant of his landlord's title, either by refusing to pay rent, denying any obligation to pay, or by setting up a title in himself or a third person, and this is a distinct ground of forfeiture of the lease or other tenancy, whether of land or tithe; and where a tenant for a term of years under a lease delivered up possession of the premises and the lease, in fraud of his landlord, to a person who claimed under a hostile title, and not with the intention that he should hold under the lease, it was held that the term and lease were thereby forfeited. But a *qualified* denial, as an offer to pay rent, if the claimant, by derivative title, will adduce reasonable evidence of his right, will not necessarily amount to a disclaimer.

A devisee in fee may, by deed, without matter of record disclaim the estate devised, and after such disclaimer has no interest in the estate.—1 *Chitty's Gen. Prac.* 287.

An executor may, before probate, disclaim the executorship, and the executor of an executor may, before probate of the will of his own testator, disclaim to be the executor of the first testator, but he cannot so disclaim after he has proved the will of his own testator; for he thereby becomes, to all intents, his complete executor, and consequently the executor of the first testator. When an executor is, by the will, appointed trustee of any portion of the testator's personal effects, he cannot, after probate, disclaim the trusts: but where the executor is by the will made trustee of *real estate* devised to him alone, or to him and other persons in trust, it is considered doubtful whether even *after* probate he may not disclaim the office of trustee of the real estate.—*Watkin's Conv.* 438.

A trustee who has not accepted may disclaim, but a conveyance by him of the trust-estate to a co-trustee would amount to an acceptance of the trusts. An estate of freehold may be disclaimed as well by deed as by matter of record, and even by conduct; but a deed is the best evidence of disclaimer.—1 *Sander's Uses,* 426; 2 *Hayes's Introd.* 72. The word '*disclaim*' is introduced in the 3 & 4 Wm. IV. c. 74, s. 77, to obviate a question whether a married woman may disclaim.—7 *Cru. Dig. app.* 12.

It is also a mode of defence in equity where the defendant renounces all claim to the subject of the demand made by the plaintiff's bill. But it can seldom be put in without an answer; for if the defendant have been made a party by mistake, having had an interest which he may have parted with, the plaintiff may require an answer sufficient to ascertain whether that is the fact or not; and if, in truth, it is so, an answer seems necessary to enable the plaintiff to make the proper person a party, instead of the defendant disclaiming. A mere disclaimer, therefore, is scarcely to be deemed sufficient or proper, except where the bill simply alleges that the defendant claims an interest in the property in dispute, without more; for under such circumstances, if he claim no interest, that is a sufficient answer to the allegation.—*Story's Eq. Plead.* 642.

As to disclaimer of patent. See 2 *Step. Com.* 34.

Discontinuance, an interruption or breaking off. This happens when he who had an estate-tail made a larger estate of the land than by law he was entitled to do: in which case the estate was good, so far as his power extended who made it, but no further. *Finch, L.* 190; 1 *Rep.* 44. The learning relative to discontinuances has now become of no account, as far as future transactions are concerned, not merely in consequence of the abolition of fines, but by the effect of the 3 & 4 Wm. IV. c. 27, which provides (s. 39) that no discontinuance shall thereafter avail to take away the right of entry. Discontinuance was a wrong so forcible as to take away at once the right of entry; while disseisin, abatement, or intrusion did not, unless followed by a descent-cast, take away that right.

A discontinuance at common law thus arises: If a defendant plead only to part of a declaration, and say nothing as to the remainder, the plaintiff is entitled to sign judgment against him by *nil dicit,* as to the unanswered part of the declaration. But if the plaintiff demur or reply to the plea, without signing judgment for the part not answered, the whole action is said to be discontinued. A discontinuance is cured, however, after verdict, by the statute of Jeofails, 32 Hen. VIII. c. 30; and after judgment, by *nil dicit,* confession, or *non sum informatus,* by 4 Anne, c. 16. And as the entries of continuances are abolished (*Rule* 31, *T. T.* 1853), it may become a question in what cases a discontinuance will now amount to error.—*Step. Plead.* 247.

A *rule to discontinue* is obtained by a plaintiff, when he finds that he has misconceived his action, or that for some defect in the pleadings, or other reason, he will not be able to maintain it. It is granted only to plaintiffs; even an avowant in replevin cannot have it. The terms are in the discretion of the court, but it is always granted upon payment of costs.—2 *Chit. Arch. Prac. by Pren.* 1470.

To entitle a plaintiff to discontinue after plea pleaded, it shall not be necessary to obtain the

defendant's consent, but the rule shall contain an undertaking on the part of the plaintiff to pay the costs, and a consent that if they are not paid within four days after taxation, defendant shall be at liberty to sign judgment of *non pros.*—*Rule* 23, *H. T.* 1853.

By the Common Law Procedure Act, 1852, s. 159, 'the plaintiff in error, whether in fact or law, shall be at liberty to discontinue his proceedings by giving to the defendant in error a notice, headed in the court and cause, and signed by the plaintiff in error, or his attorney, stating that he discontinues such proceedings, and thereupon the defendant in error may sign judgment for the costs of, and occasioned by, the proceedings in error, and may proceed upon the judgment on which the error was brought.' As to discontinuance in ejectment, see *Common Law Procedure Act*, 1852, ss. 200, 201.

There is no need of a formal discontinuance of an action before a plaintiff proves his debt, or enters his claim against a bankrupt-defendant, under a bankruptcy, for the proof or entry itself operates as a discontinuance of it.—12 & 13 *Vict.* c. 106, s. 182.

Discontinuare nihil aliud significat quam intermittere, desuescere, interrumpere.—Co. Litt. 325.—(To discontinue signifies nothing else than to intermit, to disuse, to interrupt.)

Discovert, a widow; a woman unmarried; one not within the bonds of matrimony.

Discovery, revealing or disclosing a matter.

The Courts of Common Law have, until a very recent period, laboured under the infirmity of not being able to compel a litigant in their courts to disclose any fact resting merely within his knowledge, or discover any document in his power or possession, which would aid them either in the enforcement of a right, in the repelling of an unjust demand, or in the redress of a wrong; an infirmity which the equity-judges cured, by compelling such a party to disclose the fact, or discover the document, upon his oath, in his answer to a bill of complaint, filed by the opposite party for the purpose, which bill is, therefore, emphatically denominated a bill of discovery, its nature being an original bill, not praying relief.

The late V. C. Wigram, in his work, entitled '*Points in the Law of Discovery*,' epitomised the two cardinal principles on this subject, in the two following propositions:—

(1) It is the right, as a general rule, of a plaintiff in equity to exact from the defendant a discovery upon oath as to all matters of fact which, being well pleaded in the bill, are material to the plaintiff's case about to come on for trial, and which the defendant does not by his form of pleading admit.

(2) The right of a plaintiff in equity to the benefit of the defendant's oath is limited to a discovery of such material facts as relate to the '*plaintiff's case*,' and does not extend to a discovery of the manner in which the '*defendant's case*' is to be exclusively established, or to evidence which relates exclusively to his case. The book (2nd edit. 1840) quoted above (in which these propositions are numbered 26 Prop. II. p. 27, Prop. III. p. 15, and form the main text for the whole commentary of the book), and the 'excellent work' of Hare, *on Discovery*, contain a complete exposition of the law on this subject.

Let us take a glance at the requirements necessary to the maintenance of a discovery-suit. It will sometimes be necessary, for the more perfect understanding of the subject, to explain its inseparable practice, although theory and principle are the main discussion of this article.

The bill, then, which initiates it must exhibit such a case as renders the discovery material to the party filing it, in order to support or defend the action, either pending, or about to be commenced without delay, in the Common Law Court. It must also set forth, with reasonable certainty, his legal title and interest, which must be vested *in præsenti*; a grievance constituting a valid ground for the action or defence; and the description of any documents which may be required; together with the interest of the party, against whom the bill is filed, and the particular matter about which the discovery is sought. The bill, if filed by the defendant or expected defendant-at-law, should pray an injunction to restrain the action-at-law until the defendant in such discovery-suit shall have brought in his answer, and until the further order of the Court of Equity.

It appears that an affidavit is not necessary to accompany the bill, when its object is for a mere discovery without any relief; since this could only hitherto have been obtained in the Court of Chancery.

As to the circumstances, which will justify the defendant in Equity in resisting the discovery sought by the bill, they may be thus briefly enumerated:—

The defendant may file a demurrer to the bill, when it discloses a defect or informality, on these grounds:—

(1) That the case made by the bill is not such as Equity assumes a jurisdiction over to compel a discovery; since it discloses

(*a*) Proceedings not of a purely civil nature, but of a criminal character.

(*b*) Proceedings not in controversy in any court, but only before arbitrators.

(*c*) Proceedings depending in a court, having the power to compel the discovery sought; or

(*d*) Proceedings against public policy, or barred by a statute of limitations.

(2) That the discovery is in aid of a non-sustainable action.

(3) That the bill omits to state whether the action is commenced, or intended so to be.

(4) That the discovery is wholly or partially immaterial.

(5) That the bill is filed by or against persons not being parties to the action to be aided.

(6) That the defendant has no interest in the controversy, but is simply a disinterested witness.

(7) That there is a want of that privity which alone entitles the plaintiff to the discovery sought from the defendant.

(8) That the discovery sought would disclose the defendant's title; and this is a conclusive objection, since to sift the titles of others, from curiosity or malice, cannot be endured, as it would tend to shake the general security of property 'by which method all purchases might be blown up.'

(9) That the discovery may perhaps expose the defendant to a criminal charge, ecclesiastical censure, penalty, or forfeiture, or compel him to self-crimination.

The rule protecting a defendant from such a perilous discovery is founded on an obvious public policy; but it does not apply where a statute compels the discovery, as for instance the Stock Jobbing Act 7 Geo. II. c. 8, s. 2, or the Sworn Brokers Act, 57 Geo. III. c. 60, or where the plaintiff is solely entitled to take advantage of the penalty, or forfeiture, and he has expressly waived it; or where the defendant has stated that he has already incurred the penalty; or where the penalty is the result of a covenant or special agreement; for a man may, by contract, put himself out of the protection given by the rules of the court.—*Robinson* v. *Kitchin*, 25 *Law Jour. Ch.* 354.

(10) That the discovery seeks the disclosure of facts confided to the defendant in his character of counsel, attorney, solicitor, or arbitrator.

(11) That the defendant has equal Equity with the plaintiff, and is, therefore, entitled to be protected from a discovery, which may endanger, disturb, or delay, his present rights, as a purchaser for value without notice of the plaintiff's claim.

(12) That the discovery is sought of official governmental communications or state-documents.

Should any of these objections be not apparent on the bill, the defendant may bring them forward, if they exist, by plea, which is merely a special answer, and in effect suggests that the plaintiff has omitted to state in his bill a fact, which if stated therein would have rendered the bill demurrable. This is also the proper mode of defence, when Equity has no jurisdiction in the matter, or when the plaintiff is laboring under some personal disability, or when he is not entitled to the character in which he sues, or when the discovery sought is merely a matter of legal defence barring the action at law, or when the value of the matter involved is beneath the dignity of the court.

When a demurrer has been filed to the bill, the question raised by it is argued in the first instance.

If the Equity-Judge allow the demurrer, the bill is out of court, and the suit is at an end; but if the demurrer be overruled, this is not a final decision of the suit, but the defendant must then resort to other modes of defence. If a plea be filed to the bill, the court proceeds to adjudicate upon it at once. If the plea is bad in form or in substance, it is set down for argument on these points of law, and if overruled, the defendant is driven to his defence upon some other pleading; but if the plea is held good in form and substance, the plaintiff may then take issue upon its truth, and upon its second hearing the cause will be finally disposed of.

When a defendant cannot evade the discovery sought of him, either by demurrer or plea, or if his demurrer or plea fail upon argument, he should then submit to put upon the file of the court a full and sufficient answer, upon which he will be compellable to produce any documents admitted by him to be in his possession at the trial at Law, without the further aid of the Court of Equity. It must, however, be observed that a defendant by an answer may have the benefit of every possible ground of defence.

This suit, seeking only a discovery from the defendant, never progresses to a hearing before the Court of Equity; and therefore, the bill cannot be dismissed for want of prosecution; since the suit determines with the sufficiency of the defendant's answer. After this event, however, one step can be taken, and that is by the defendant, who may obtain an order as of course for the payment of his taxed costs by the plaintiff, who is bound to pay them. Should, indeed, the suit have become abated, it cannot be revived for the mere purpose of costs.

The deficiencies at Common Law upon the subject of suitor-testimony and disclosure have been in a great measure supplied by statutory authority.

The legislature, seeing how many transactions are effected by the parties alone, no other persons being present, and, therefore, no disinterested testimony relating to it being producible, has very properly exploded the unreasonable maxim, *nemo testis esse debet in propriâ causâ*, which frequently amounted to a positive denial of justice, and has enacted, that the parties to an action at law shall be

competent and compellable to give evidence on the trial of such action—thus admitting litigants to give evidence, the credibility of which is to be decided by a jury.—14 & 15 *Vict.* c. 99, s. 2, amended by 16 & 17 *Vict.* c. 83, as to the husbands and wives of the parties giving testimony with certain exceptions.

As to the discovery of documents, it has now been provided, that *whenever an action or other legal proceeding is pending* in a superior court of Common Law, such court and any of its judges may, on the application of either of the litigants, compel the opposite party to allow the applicant to inspect all documents in his custody, or under his control, relating to such action or proceeding; and, if necessary, to take examined copies of them, or to procure them to be duly stamped, in all cases in which hitherto a discovery might have been obtained in a Court of Equity, at the instance of such applicant.—14 & 15 *Vict.* c. 99, s. 6. Also that, 'upon the application of either party to any cause or other civil proceeding in any of the superior courts, upon an affidavit of such party of his belief that any document to the production of which he is entitled for the purpose of discovery or otherwise is in the possession or power of the opposite party, it shall be lawful for the court or judge to order that the party against whom such application is made, or if such party be a body corporate that some officer to be named of such body corporate, shall answer on affidavit, stating what documents he or they has or have in his or their possession or power, relating to the matters in dispute, or what he knows as to the custody they, or any of them, are in; and whether he or they objects or object (and if so on what grounds) to the production of such as are in his or their possession or power; and upon such affidavit being made, the court or judge may make such further order thereon as shall be just' (The Common Law Procedure Act, 1854—17 & 18 Vict. c. 125, s. 50). This Act also empowers the parties to an action at law to examine one another as witnesses, either upon interrogatories or orally, before the cause is brought to an issue. See ss. 51–57.

Discretio est scire per legem quid sit justum. 10 *Co.* 140.—(Discretion is to know through law what is just.)

Discount [fr. *dis* and *conté*, Fr.], abatement; a sum of money deducted from a debt in consideration of its payment before the stipulated time. The creditor, by receiving his money before it is due, is able to put it out at interest during the interval, and he should therefore only receive such a sum as if put out at interest would produce the amount of the debt when it would become due. It is usually said to be of two kinds; viz. discount of bills, and discount of goods; but they are essentially the same. The rule for calculating discount on correct principles is as follows:—

As the amount of 100*l.*, together with interest on it at the given rate for the given time,
Is to the given sum or debt;
So is 100*l.* to the present worth, or
So is the interest of 100*l.* for the given time
To the discount of the given sum.—*McCull. Comm. Dict.*

The usual method of allowing discount, by deducting from the amount of the debt the interest which it would produce at the given rate during the given time, is inaccurate. The true discount for any given sum, for any given time, is such a sum as would, if put out at interest in that time, amount to the interest of the sum to be discounted; the proper discount, therefore, to be received for the immediate advance of 100*l.* due twelve months hence, is not 5*l.* but 4*l.* 15*s.* 2½*d.*, for this sum will, at the end of the year, amount to 5*l.*, which is what the 100*l.* would have produced.

Discussion. By the Roman law sureties were not primarily liable to pay the debt for which they became bound as sureties; but were liable only after the creditor had sought payment from the principal debtor, and he had failed to pay. This was called the benefit or right of discussion. Under those systems of jurisprudence which adopt the Roman law, and under the present law of France, the rule is similar; and the obligation contracted by the surety with the creditor is, that the latter shall not proceed against him until he has first discussed the principal debtor, if he is solvent. This right the surety enjoys, as the *beneficium ordinis vel excussionis.* And, again, if other persons are joined with him in the obligation as sureties, he is not in the first instance to be proceeded against for the whole debt, but only for his share of it, if his co-sureties and co-obligees are solvent. This is commonly known as the benefit of division, or *beneficium divisionis.* If the suit should be brought in a different country from that where the contract or obligation is made, the right of discussion or division would still belong to the surety, as an incident to his contract, although it did not exist by the law of the place where the suit was brought (*lex fori*). The converse proposition would be equally true. The same rules as to the *lex loci contractûs* applies to the lien of a vendor, upon a real estate sold for the payment of the purchase money, according to the law of England; the lien given for the purchase money upon goods or merchandise sold, by the civil law and by the law of some modern countries; the right of stoppage *in transitu* of the vendor of goods, in case of the insolvency of the purchaser in the course of the transit; the lien of the holder of a bottomry bond on the thing pledged; the lien of mariners on the ship for

their wages; the priority of payment *in rem*, which the law sometimes attaches to peculiar, debts or to particular persons. In these and like cases, where the lien or privilege is created by the *lex loci contractûs*, it will generally, although not universally, be respected and enforced in all places where the property is found, or where the right can be beneficially enforced by the *lex fori*. And on the other hand, where the lien or privilege does not exist in the place of the contract, it will not be allowed in another country, although the local law, where the suit is brought, would otherwise sustain it.—*Story's Confl. of Laws*, 456.

Diseases Prevention Act, 18 & 19 Vict. c. 116; amended by 23 & 24 Vict. c. 77.

Disenfranchise, or **Disfranchise,** to deprive of freedom, privilege, or immunity.

Disentailing Deed, an enrolled assurance barring an entail, pursuant to 3 & 4 Wm. IV. c. 74.

Disforest. See DISAFFOREST.

Disgavel, to exempt from the tenure of gavelkind.

Disgrading, the act of degrading; a degradation.

Disherison, the act of debarring from inheritance.

Disheritor, one who puts another out of his inheritance.

Dishonor, to refuse or neglect to pay a bill of exchange or promissory note when due.

Disincarcerate, to set at liberty, to free from prison.

Disinherison. See DISHERISON.

Disme [fr. *decimæ*, Lat.], a tenth, the tenth part, tithes due to the clergy, the tenth of all spiritual livings.—2 *& 3 Edw. III.* c. 35.

Dismissal of Bill. A bill in equity may be dismissed by the court at the hearing. Also by the plaintiff before decree, when he is not able to prosecute his suit effectually, either as against all the defendants, or as against such of them as he thinks he can dispense with. After decree the bill can only be dismissed upon re-hearing or appeal; and by the defendant either for want of prosecution, or upon an abatement of the suit by the death of the plaintiff or otherwise.—*Smi. Eq. Pr.* 364.

Dismortgage, to redeem from mortgage.

Disparagement [fr. *dis*, apart, and *par*, Lat., equal], the matching an heir in marriage under his degree or against decency.—*Co. Litt.* 107.

Disparata non debent jungi.—*Jenk. Cent.* 24.—(Opposed things ought not to be joined.)

Dispark, to throw open a park, to set at large.

Dispatches [fr. *despercher*, Fr., to send away quickly, to discharge], a packet of letters, &c. sent by a public officer on some affair of state or public business.

Dispauper, when a person by reason of his poverty is admitted to sue *in formâ pauperis*, and afterwards, before the suit be ended, acquires any lands or personal estate, or is guilty of anything whereby he is liable to have this privilege taken from him, then he loses the right *in formâ pauperis*, and is said to be dispaupered.

Dispensation, an exemption from some law, a permission to do something forbidden, an allowance to omit something commanded.

Dispensatio est mali prohibiti provida relaxatio, utilitate seu necessitate pensata; et est de jure domino regi concessa, propter impossibilitatem prævidendi de omnibus particularibus. 10 *Co.* 88.—(A dispensation is the provident relaxation of a *malum prohibitum*, weighed from utility or necessity; and it is conceded by law to the king on account of the impossibility of foreknowledge concerning all particulars.)

Dispensatio est vulnus, quod vulnerat jus commune.—*Dav.* 69.—(A dispensation is a wound, which wounds common law.)

Dispersonare, to scandalize or disparage.—*Blount.*

Dispone, to transfer or alienate.—*Sch. Law.*

Dispunishable, without penal restraint.

Disrationare, or **Dirationare,** to justify; to clear one's self of a fault; to traverse an indictment; to disprove.—*Encyc. Lond.*

Dissection. The anatomical examination of a dead body. It is regulated by 2 & 3 Wm. IV. c. 75, 'An Act for regulating Schools of Anatomy.' The 16th section repeals so much of 9 Geo. IV. c. 31, as authorised the dissection after execution of the body of a person convicted of murder.

Disseise, to dispossess, to deprive.

Disseisee, a person turned out of possession.

Disseisin [fr. *dissaisin*, Fr.], a wrongful putting out of him that is seised of the freehold, not, as in *abatement* or *intrusion*, a wrongful entry, where the possession was vacant; but an attack upon him who is in actual possession, and turning him out; it is an ouster from a freehold in deed, as abatement and intrusion are ousters in law.—3 *Step. Com.* 502.

Disseisinam satis facit, qui uti non permittit possessorem, vel minus commode, licet omnino non expellat.—*Co. Litt.* 331.—(He makes disseisin enough who does not permit the possessor to enjoy, or makes his enjoyment less beneficial, although he does not expel him altogether.)

Disseisor, a person who unlawfully puts another out of his land.

Disseisoress, a woman who unlawfully puts another out of his land.

Dissenters, Protestant seceders from the Established Church, formerly denominated *Nonconformists*, and descended from the *Puritans*.

They are usually divided into the four denominations of Presbyterians, Independents, Methodists, and Baptists; but as to Church government, the Baptists are Independents. With respect to the penal laws, which tend to the enforcement of legal uniformity, they are either abrogated or made subject to important relaxations or exceptions. The 19 Geo. III. c. 44, provides that any dissenting preachers or teachers may keep schools or instruct youth; the 9 Geo. IV. c. 17, repealed the Corporation and Test Acts, and a new form of declaration substituted in lieu of taking the Sacrament. The 7 & 8 Vict. c. 45, provides for meeting-houses or chapels founded for dissenters; and 9 & 10 Vict. c. 59, protects them from molestation. See 18 & 19 *Vict.* c. 81; and 3 *Step. Com.* 54, *et seq.*

Dissignare, to break open a seal.

Dissimilium dissimilis est ratio.—Co. Litt. 191.—(Of dissimilars the rule is dissimilar.)

Dissolution, the act of breaking up an assembly; loosening anything compacted or united. A partnership may be dissolved either by a proper notice, or effluxion of time, as agreed upon in the articles of partnership, or by death, marriage, lunacy, bankruptcy, insolvency, or decree in equity, &c.—*Story on Partnership,* 383. As to dissolution of Railway Companies, see 9 & 10 *Vict.* c. 28; and 13 & 14 *Vict.* c. 83.

A dissolution is the civil death of the Parliament, and is effected in three ways:—(1) By the Sovereign's will, expressed either in person or by representation, which is a branch of the royal prerogative. (2) By the demise of the Crown. The 7 & 8 Wm. III. c. 15; 6 Anne, c. 7; and 37 Geo. III. c. 127, enact that the Parliament in being shall continue for six months after the death of any king or queen, unless sooner prorogued or dissolved by the successor; that if the Parliament be, at the time of the king's death, separated by adjournment or prorogation, it shall, notwithstanding, assemble immediately; that in case of the demise of the king between the dissolution of a Parliament and the day appointed by the writs of summons for the new one, the last preceding Parliament shall immediately convene for six months, unless sooner prorogued or dissolved by his successor; and that in the event of the king's death on or after the day appointed for assembling the new Parliament, but before it has assembled, then the new Parliament shall, in like manner, convene for six months, unless sooner prorogued or dissolved. (3) By length of time, i. e. seven years.—1 *Geo. I.* st. 2, c. 38.

Dissolution of Marriage. See DIVORCE.

Distinguenda sunt tempora, aliud est facere, aliud perficere.—(Times are to be distinguished; it is one thing to do, another to complete.)

Distinguenda sunt tempora; distingue tempora, et concordabis leges.—1 *Co.* 24.—(Times are to be distinguished; distinguish times, and you will make laws agree.)

Distrain, to make seizure of goods or chattels by way of distress.

Distrainer, or Distrainor, he who seizes a distress.

Distraint, seizure.

Distress [fr. *distringo,* Lat., to bind fast; *districtio,* Mid. Lat., whence *distraindre,* Fr.], a taking, without legal process, of a personal chattel from the possession of a wrong-doer into the hands of a party grieved, as a pledge for the redressing an injury, the performance of a duty, or the satisfaction of a demand. The power of distress is derived either: (1) from common right—as where a person seised in fee grant out a lesser estate with the reversion to himself, and a reservation of rent or other certain services, the law gives him this remedy for such rent or services without any express provision; (2) from special powers—as where one not being the reversioner, and consequently not able to distrain of common right, may, on granting a lease, reserve to himself by express stipulation the power of distraining. A distress may be made of common right for all rent-service, and by particular reservation for rent-charges, and also for rents-seck since the 4 Geo. II. c. 28, s. 5, extended the same remedy to rents-seck, rents of assize, and chief-rents, and thereby in effect abolished all material distinction between them. With respect to fee-farm-rents, it has been held that distress is not incident to them, unless the case be brought within the 4 Geo. II. c. 28, s. 5.—*Bradbury* v. *Wright,* 2 *Dougl.* 624.

Distress may also be made on cattle damage feasant, for annuities and rent-charges, rates and taxes, amerciaments in a court-baron, penalties and tolls imposed by by-laws, and under the Tithe Commutation Act, 6 & 7 Wm. IV. c. 71.

Accepting security for the rent, as a bill of exchange, or promissory note, will not take away the right to distrain, for the rent is of a higher nature, and the acceptance of a security of an unequal degree is no extinguishment of the claim. It may be generally stated that so long as the rent is in arrear the landlord has the power of distraining for it, and nothing but payment or tender will take away such power. The right to distrain depends upon an actual demise to the tenant at a *fixed* rent. All persons seised in fee, who have granted out a lesser estate with a reservation of rent, may distrain for rent in arrear. A mortgagee after giving notice of the mortgage to the tenant in possession under a lease *prior* to the mortgage, may distrain for the rent in arrear

at the time of the notice, as well as for rent which may accrue after such notice, although he was not in the actual seisin of the premises, nor in the receipt of the rents and profits at the time it became due; but he may not distrain for rent due upon a lease made by the mortgagor *after* the mortgage, unless he has accepted rent from the tenant, or has given him notice to pay rent and the tenant has acquiesced. See *Moss* v. *Gallimore*, 1 *Smith, L. C.* 542. Executors before probate and administrators may distrain, 3 & 4 Wm. IV. c. 42, ss. 37, 38. Receivers appointed by the Court of Chancery can distrain, and need not apply first to the court for a particular order for that purpose. By 8 & 9 Vict. c. 106, s. 9, it is enacted, 'that when the reversion expectant on a lease made either before or after the passing of this act, of any tenements or hereditaments of any tenure, shall, after the said 1st day of October, 1845, be surrendered or merge, the estate which shall for the time being confer as against the tenant under the same lease, the next vested right to the same tenements or hereditaments, shall, to the extent and for the purpose of preserving such incidents to, and obligations on, the same reversion, as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the same lease.'

All chattels and personal effects found upon the premises may be distrained, whether they belong to the tenant or a stranger, *except* goods of third persons which happen to be upon the tenant's premises in the way of his trade; goods in the hands of a factor; beasts of the plough; goods and utensils of trade, while there is any other property on the premises, or whilst they are in actual use; cattle and goods of a temporary guest at an inn, &c.; fixtures being part of the freehold; goods in the custody of the law; wearing apparel, if in actual use; and animals, *feræ naturæ*.

A distress cannot be made in the night, i. e. after sunset and before sunrise (except in the case of cattle *damage feasant*, otherwise they might escape), nor on the same day on which the rent becomes due; but must be made within six years from its becoming due. The 8 Anne, c. 14, ss. 6, 7, gives a landlord power to distrain, within six calendar months, after determination of the lease, but it must be made during the continuance of the landlord's title or interest, and also during the possession of the tenant. By 3 & 4 Wm. IV. c. 27, s. 2, distresses for the recovery of any rent may be made at any time within twenty years next after the time at which the right to make them shall have first accrued; but (by s. 42) no arrears of rent can be recovered by distress, action, or suit, but within six years next after the same shall have become due, &c. It must be made upon the land whence the rent issues, and the whole of what is due should be distrained for at one time. The outer door of the house can in no case be broken open; but if the outer door be open, the person distraining may justify breaking open an inner door or lock, to find any goods distrainable. The distress may be made either by the landlord himself, or by an authorised agent, who is called a bailiff, under a warrant of distress. An inventory of as many goods as are judged sufficient to cover the rent distrained for, and also the charges of the distress, must then be made, which is served personally on the tenant, together with a notice of the fact of the distress having been made, and the time when the rent and charges must be paid, or the goods replevied. When the distress has been thus made, it is always the safer way to remove the goods immediately, and in the notice to acquaint the tenant whither they are removed. In many cases, however, the tenant, for his own convenience, requests the landlord to permit them to remain on the premises, and consents to allow him to retain possession beyond the five days given for replevying; in such cases a written consent should be procured, and some person left in possession of the goods upon the premises. As to the landlord's right of following for thirty days goods fraudulently removed, see 11 *Geo. II.* c. 19.

The landlord cannot sell the goods distrained before the expiration of the five days, i. e. five times twenty-four hours, allowed by the statute 2 W. & M. sess. 1, c. 5, which five days are inclusive of the day of the sale, but exclusive of the time of the sale; therefore the distress may be removed on the sixth day. Before sale an appraisement must be made by two sworn appraisers; and the sheriff's office should be searched to see if the goods have been replevied. If there be any surplus from the sale, it must be handed over to the tenant. But where the value of the goods distrained is not sufficient to cover the rent, &c., a second distress will be allowed. 17 Car. II. c. 7, s. 4. The expenses of distresses for less than 20*l.* are regulated by 57 Geo. III. c. 93.

The remedies for a wrongful distress are replevin; an action of trespass *de bonis asportatis*, or *quare clausum fregit*, for damages; an action of detinue for the thing distrained itself, or trover for its value. The remedy for an irregular distress is an action of trespass, or on the case, for the special damage, 11 Geo. II. c. 19, s. 19. The proper remedy for an excessive distress is a special action on the case founded upon the statute of Marlborough, 52 Hen. III. c. 21.—*Woodfall's Land. and Tenant, by Horn*, 347; *Smith's Land. and Tenant, by Maude.*

Distress infinite, one that has no bounds with regard to its quantity, and may be repeated from time to time, until the stubbornness

of the party is conquered. Such are distresses for fealty or suit of court, and for compelling jurors to attend.—3 *Bl. Com.* 231.

Distresses, pledges taken by the sheriff from those who came to fairs, for their good behaviour: which, at the end of the fair or mercat, were delivered back, if no harm were done.—*Scotch term.*

Distribution, the act of dealing out to others; dispensation. The Statute of Distributions (sometimes called a Parliamentary Will), 22 & 23 Car. II. c. 10, explained by 29 Car. II. c. 3, enacts, that the surplusage of intestates' personal estate (except of *femes covert*, the administration and enjoyment of whose estates belong, by the principle of the common law, to their husbands) shall, after the expiration of one full year from the death of the intestate, be distributed in the following manner: one-third shall go to the widow of the intestate, and the residue in equal proportions to his children, or, if dead, to their representatives, that is, their lineal descendants; if there be no children or legal representatives subsisting, then a moiety shall go the widow, and a moiety to the next of kindred, in equal degree, and their representatives; if no widow, the whole shall go to the children; if neither widow nor children, the whole shall be distributed amongst the next of kin, in equal degree, and their representatives; but no representatives are admitted among collaterals farther than the children of the intestate's brothers and sisters. The intestate's mother-in-law takes nothing. The following relations are considered as of the same degree of kindred:—(1) parents and children; (2) grandfather, grandson, and brother; (3) great-grandfather, great-grandson, uncle, and nephew; (4) great-great-grandfather, great-great-grandson, great-uncle, great-nephew, first cousin. The half-blood take equally with the whole blood, in the same degree.—2 *Wm. Ex.* 1335, *et seq.* The 19 & 20 Vict. c. 94, abolishes all special local customs concerning the distribution of personal estates of intestates.

Distributive finding of the issue. The jury are bound to give their verdict for that party who, upon the evidence, appears to them to have succeeded in establishing his side of the issue. But there are cases in which an issue may be found distributively, i. e. in part for plaintiff and in part for defendant.—*Step. Plead.* 91.

District [fr. *districtus*, Lat.], the circuit or territory within which a person may be compelled to appear.—*Cowel.* Circuit of authority; province.—*Encyc. Lond.*

District parishes, ecclesiastical divisions of parishes for all purposes of worship, and for the celebration of marriages, christenings, churchings, and burials; formed at the instance of 'Her Majesty's Commissioners for building New Churches.' See 3 *Step. Com.* 116, *et seq.*

Districtione scaccarii. The 51 Hen. III. st. 5, relating to distresses in the Exchequer for the King's debts.

Districtio, a distress, a distraint.

Distringas (*that you distrain*), anciently called *constringas*, a writ addressed to the sheriff, and issued to effect various purposes. The cases in which it was used in common law proceedings may be thus stated:—

(1) A *distringas* to compel *appearance*, where defendant has a place of residence within England or Wales. This writ is abolished by the C. L. P. A. 1852, s. 24, and the practice provided for by s. 17 substituted in its stead.

(2) A *distringas nuper vicecomitem*, to compel the late sheriff to sell goods, &c. or to bring in the body, is obsolete.—1 *Chit. Arch. Prac. by Pren.* 637, 658.

(3) A *distringas in detinue*, a special writ of execution to compel defendant to deliver the goods by repeated distresses of his chattels; or a *scire facias* might be issued against a third person in whose hands they might happen to be, to show cause why they should not be delivered; and if the defendant still continued obstinate, then (if the judgment had been by default or on demurrer) the sheriff summoned an inquest to ascertain the value of the goods and the plaintiff's damages, which (being either so assessed, or by the verdict in case of an issue) were levied on the goods or person of the defendant.—1 *Rol. Ab.* 797. See DETINUE. As to *Distringas* in *quare impedit*, see QUARE IMPEDIT.

(4) A *distringas juratores*, a jury process, abolished by C. L. P. A. 1852, s. 104.

In equity, a *distringas* is issued in these two cases:—

(1) Against a corporation aggregate; the first process to compel appearance is *distringas*, and on its return, an *alias distringas*, and then a *pluries* are issued, and upon the return of the latter, if default is made, an order *nisi* for a sequestration is obtained as of course, and if no cause shown, the order will be made absolute. 11 *Geo. IV.* & 1 *Wm. IV.* c. 36.

(2) When a transfer of stock, or the payment of dividends by the Bank of England is sought to be immediately restrained, then instead of moving or petitioning the Court of Chancery for a restraining order, a *distringas* may be issued, pursuant to 5 Vict. c. 5, s. 5.

The Consol. Ord. 1860, Ord. xxvii., provides for the mode of obtaining this writ, by directing, that 'any person claiming to be interested in any stock transferable at the Bank of England, standing in the name or names of any other person or persons, or body politic or corporate in the books of the Governor and Company of the Bank of England, may, by his

solicitor, prepare a writ of *distringas* pursuant to the form set out in the first schedule to the 5 Vict. c. 5, and may present the same for sealing at the office of the Clerks of Records and Writs, leaving there an affidavit duly sworn by the person, or one of the persons applying for such writ, or his solicitor, that the party is beneficially interested in the stock, which should be particularly described in the affidavit.

'Such writ of *distringas*, and all process thereunder, may, at any time, be discharged by the order of the court, to be obtained, as of course, upon the petition of the person on whose behalf the writ was issued, or to be obtained upon the application, by motion on notice, or by petition duly served, of any other person claiming to be interested, in the stock sought to be affected by such writ, the court awarding costs according to its discretion.

'Where the Governor and Company of the Bank of England, after having been served with a copy of a writ of *distringas*, and a notice not to permit the transfer of the stock in such notice and in the said affidavit specified, or not to pay the dividends thereon, receive a request from the person in whose name or names such stock is standing, or some person on his behalf, or representing him, to allow such transfer, or to pay such dividend, the said Governor and Company shall not by force or in consequence of such *distringas* be authorised, without the order of this court, to refuse to permit such transfer to be made, or to withhold payment of such dividends for more than *eight days* after the date of such request.'

The effect of this writ is temporary; if, therefore, the person who obtained it wish to continue the restraint upon the transfer, he must either obtain a restraining order, or file a bill against the party interested in the fund, and move for a writ of injunction against the bank, pursuant to 40 Geo. III. c. 36.

Disturbance, annoyance; also the wrongful obstruction of the owner of an incorporeal hereditament in its exercise or enjoyment. There are five sorts of this injury, viz. disturbance of (1) franchise, (2) common, (3) ways, (4) tenure, and (5) patronage.—3 *Step. Com.* 526–530.

Disturbance of Divine worship, an offence against the public peace. See 3 *Step. Com.* 42 and 58.

Disturber. If a bishop refuse or neglect to examine or admit a patron's clerk, without reason assigned or notice given, he is styled a disturber by the law, and shall not have any title to present by lapse; for no man shall take advantage of his own wrong.—2 *Bl. Com.* 278.

Dittay, the manner of proceeding against a criminal in the Court of Justiciary.—*Scotch Law.*

Ditto [fr. *detto*, Ital.], the aforesaid, or the same.

Divan [an Arabic or Turkish word], a council-room, a state-chamber, a raised bench or cushion at the upper end of a Turkish room upon which the principal persons sit.

Diversité des Courtes, a law treatise supposed to be written in the early part of the 16th century.

Diversity, a plea by a prisoner in bar of execution, alleging that he is not the same who was attainted; upon which a jury is immediately impanelled to try the collateral issue thus raised, viz. the identity of the person; and not whether he is guilty or innocent, for that has been already decided.—4 *Bl. Com.* 396.

Dives costs, full, as contradistinguished from *pauper* costs.

Divest. See DEVEST.

Divide et impera, cum radix et vertex imperii in obedientium consensu rata sunt.—4 *Inst.* 35. (Divide and govern, since the foundation and crown of empire are established in the consent of the obedient.)

Dividend, a share, the part allotted in division; the interest paid on the public funds; the division of a bankrupt's or insolvent's effects.

Dividenda, an indenture; one part of an indenture.—*Old Records.*

Divinatio, non interpretatio, est, quæ omnino recedit à literâ.—*Bacon.*—(It is guessing, not interpretation, which altogether departs from the letter.)

Divine Service, *tenure by*, an obsolete holding, in which the tenants were obliged to perform some special divine services, as to sing so many masses, to distribute such a sum in alms, &c.—*Litt.* s. 137.

Divisa, a device, award, or decree; also a devise; also bounds or limits of division of a parish or farm, &c.—*Cowel.* Also a court held on the boundary, in order to settle disputes of the tenants.—*Anc. Inst. Eng.*

Divisibilis in semper divisibilis.—(A thing divisible may be for ever divided.)

Divorce [fr. *divortium*, Lat.], the dissolution of the marriage contract; it is either total, by dissolution of the marriage, or partial, by judicial separation. See 20 & 21 *Vict.* c. 85; 21 & 22 *Vict.* c. 108.

As the ancient Hebrews paid a stipulated price for the privilege of marrying, they seemed to consider it the natural consequence of making a payment of that kind that they should be at liberty to exercise a very arbitrary power over their wives, and to renounce or divorce them whenever they chose. This state of things, as Moses himself clearly saw, was not equitable as respected the woman, and was very often injurious to both parties. Finding himself, however, unable to overrule feelings and practices of very ancient standing, he merely

annexed to the original institution of marriage a very serious admonition to this effect: viz. that it would be less criminal for a man to desert his father and mother than, without adequate cause, to desert his wife. He also laid a restriction upon the power of the husband so far as this, that he would not permit him to repudiate the wife without giving her a bill of divorce. He further directed that the husband might receive the repudiated wife back, in case she had not, in the meanwhile, been married to another person.

He had liberty to divorce her if he saw in her *the nakedness of a thing*. The meaning of this expression, however, was sharply contested in the later times of the Jewish nation. The school of Hillel contended that the husband might lawfully put away the wife for any cause, even the smallest. The mistake committed by the school of Hillel in taking this ground was, that they confounded moral and civil law. It is true, as far as the Mosaic statute or the civil law was concerned, the husband had a right thus to do; but it is equally clear that the ground of legal separation must have been, not a trivial, but a prominent and important one, when it was considered that he was bound to consult the rights of the woman, and was amenable to his conscience and his God. The school of Shammai explained the phrase '*nakedness of a thing*' to mean actual *adultery*. This interpretation of the phrase gives to the law a moral aspect, and assigns a reason, as the ground of divorce, of the truest moral nature; but the truth is that the phrase, in itself considered, will not bear this interpretation, and the law, beyond question, was designed to be merely a *civil* and not a moral one.—*Jahn's Bib. Antiq.* c. x., s. 160.

Divorce and Matrimonial Causes, *the Court for*, a tribunal recently established by 20 & 21 Vict. c. 85, amended by 21 & 22 Vict. c. 108, 22 & 23 Vict. c. 61, 23 & 24 Vict. c. 144, and 25 & 26 Vict. c. 81.

Divortium dicitur à divertendo, quia vir divertitur ab uxore.—Co. Litt. 235.—(Divorce is called from *divertendo*, because a man is diverted from his wife.)

Doab, or **Doowab,** any tract of country included between two rivers.—*Indian.*

Do, ut des (*I give, that you may give*).

Do, ut facias (*I give, that you may perform*).

Dock [fr. *docke*, Fle., a birdcage], the place or cage in a court of criminal law in which a prisoner is placed during his trial.

Docket, Docquet [fr. *tocyn*, W., a slip or ticket], or **Dogged,** a list; a brief writing on a small piece of paper or parchment, containing the effect of a greater writing; a register. As to the docquet of a decree in Chancery, see *Smith's Ch. Pr.* 469.

Doctor and Student. Saint Germain is an author who gained considerable note in the reign of Henry VIII. by this famous book. The first dialogue of this work came out in 1518, in Latin, with the following title, 'Dialogus de Fundamentis Legum Angliæ et de Conscientiâ.' The second dialogue was printed in English, in 1530, and the next year there appeared a translation of the first dialogue. Both afterwards passed several editions, under the title of 'Doctor and Student.' The 'Doctor and Student' consists of two dialogues between a doctor of divinity and a student of the common law. These contain discussions on the grounds of our law, and where objections had been stated to some of its rules and maxims, it is endeavoured to reconcile them with reason and good conscience. The whole is treated in a popular way, with the freedom and language of conversation, conveying, by means of objections and their answers, *not* an *unsatisfactory* account of many principles and points of the common law.—4 *Reeves*, c. xxx. pp. 416, 418.

Doctors' Commons, an institution near St. Paul's Cathedral where the Ecclesiastical and Admiralty Courts were held. In 1768 a royal charter was obtained, by virtue of which the members of the society and their successors were incorporated under the name and title of 'The College of Doctors of Laws exercent in the Ecclesiastical and Admiralty Courts.' The college consists of a president (the Dean of the Arches for the time being) and of those doctors of laws who, having regularly taken that degree in either of the Universities of Oxford and Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, shall have been elected fellows of the college in the manner prescribed by the charter. By 20 & 21 Vict. c. 77, ss. 116, 117, power is given to the college to sell their real and personal property and to surrender their charter of incorporation, and upon surrender the college is to be dissolved.

Documents, records, writings, precepts, instructions, or directions.

Doe, John, the fictitious plaintiff in ejectment, whose services are dispensed with since the abolition of the fiction by the Common Law Procedure Act, 1852, 15 & 16 Vict. c. 76.

Dog [fr. *dogge*, Icel.; *dogghe*, Du.] The 2 & 3 Vict. c. 47, explained by 17 & 18 Vict. c. 60, s. 2, prohibits, under a penalty, the use of any dog for the purposes of draught.

Dog-draw, the manifest deprehension of an offender against venison in a forest, when he is found drawing after a deer by the scent of a hound led in his hand; or where a person has wounded a deer or wild beast, by shooting at him, or otherwise, and is caught with a dog drawing after him to receive the same.—*Manwood*, p. 2, c. viii.

Dog stealing is punishable, on summary

conviction, for the first offence, by six months' imprisonment and hard labour, or fine not exceeding 20*l.* beyond the value of the dog. A second offence is, however, an indictable misdemeanor, punishable by fine or imprisonment, and hard labour not exceeding eighteen months, or by both. Similar punishment is provided for persons found in possession of dogs or their skins, knowing them to have been stolen, and a justice may order the restoration of the stolen property to the owner. Corruptly taking money or reward, to aid in the recovery of a stolen dog, is punishable by imprisonment and hard labor for eighteen months. See 24 & 25 *Vict.* c. xcvi., ss. 18, 19, 20, and 21.

Dogger, a light ship or vessel; *dogger-fish*, fish brought in ships.

Dogger-men, fishermen that belong to dogger-ships.

Dogma, an ordinance of the senate.—*Civil Law.*

Doitkin, or **Doit** [fr. *duit*, Du.; *daoto*, Venet., *da otto soldi*, a piece of eight *soldi*], a base coin of small value, prohibited by 3 Hen. V. c. 1.

Do law [*facere legem*, Lat.], to make law.

Dole, the act of distribution or dealing; a portion or lot; a boundary mark, e. g. a post or mound of earth.

Dole-fish, the share of fish which the fishermen yearly employed in the north seas customarily receive for their allowance.

Dole-meadow, one wherein the shares of divers persons are marked by doles or landmarks.

Doles, or **Dools,** slips of pasture left between the furrows of ploughed land.

Dolg-bote [fr. *dolg.*, Sax., wound, and *bote*, recompense], a recompense for a scar or wound.

Dolosus versatur generalibus.—2 *Co.* 34.—(A deceiver deals in generalities.)

Dolus auctoris non nocet successori.—(The fraud of a predecessor prejudices not his successor.)

Dolus circuitu non purgatur. — *Bacon.* — (Fraud is not purged by circuity.)

Dolus est machinatio, cum aliud dissimulat aliud agit.—*Lane*, 47.—(Deceit is an artifice, since it pretends one thing and does another.)

Doli capax (*capable of crime*).

Doli incapax (*incapable of crime*).

Dolus malus (opposed to *dolus bonus*, artifice which the law considers honestly employed) means fraud.—*Sand. Just.* 195.

Domboc, or **Dombec** [Sax.], dome-book.

Dome, or **Doom** [Sax.], a judgment, sentence, or decree.

Deme-book [*liber judicialis*, Lat.], a book composed under the direction of Alfred, for the general use of the whole kingdom, containing the local customs of the several provinces of the kingdom. This book is said to have been extant so late as the reign of Edward IV., but it is now lost. It probably contained the principal maxims of the common law, the penalties for misdemeanors, and the forms of judicial proceedings. This much at least may be collected from the injunctions to observe it which were found in the laws of Edward the Elder, son of Alfred.—1 *Bl. Com.* 64.

Alfred has generally been styled the *legum Anglicanarum conditor*, as Edward the Confessor is the *restitutor*; but, Palgrave says, 'the authentic code of the legislature does not support these assertions. The laws of Alfred abound in valuable regulations of criminal jurisprudence, but they are entirely silent with respect to those institutions which, according to later historians, are to be ascribed to his sound policy and wisdom.'—*Rise and Prog. of Eng. Commonwealth*, 46. And see 2 *Hallam's Mid. Ages*, 402.

Domesday, or **Domesday-book** [*liber judiciarius vel censualis Angliæ*, Lat.], a most ancient record made in the time of William the Conqueror, and now remaining in the Exchequer fair and legible, consisting of two volumes, a greater and lesser; the greater containing a survey of all the lands in England, except the counties of Northumberland, Cumberland, Westmoreland, Durham, and part of Lancashire, which, it is said, were never surveyed; and excepting Essex, Suffolk, and Norfolk, which three last are comprehended in the lesser volume. There is also a third book, which differs from the others in form more than in matter, made by command of the same king. And there is a fourth book kept in the Exchequer, which is called Domesday, and, though a very large volume, is only an abridgment of the others. Likewise a fifth book is kept in the Remembrancers' Office in the Exchequer, which has the name of Domesday, and is the same as the fourth above mentioned. Our ancestors had many dome-books. The question whether lands are ancient demesne or not is to be decided by the Domesday of Wm. I., whence there is no appeal. The addition of *day* to this Dome-book, was not meant for an allusion to the final day of judgment, as most persons have conceived, but was to strengthen and confirm it, and signifies the judicial decisive record or book of dooming justice and judgment.—*Spelman*; 1 *Reeves*, 219.

Domesmen [hence, *Æg deme*, I judge], judges or men appointed to doom and determine suits and controversies. See DAYSMEN.

Domestics, menial servants, so called from being *intra mœnia domûs* (within the walls of a house). The contract between them and their masters arises upon the hiring. In this country it is usual to engage domestic servants at a fixed amount of wages per annum. But there is generally no express stipulation as to the time that the service is to last; and when the terms are not otherwise defined, the contract

is thus understood, that either party may determine the service at pleasure, upon a month's warning or upon payment of a month's wages. A clerk or person who serves in an office of business, though employed in some sense *intra mœnia domûs*, is nevertheless no menial within the sense here used. If hired without any mention of time, he is engaged by the year (at least if the wages be payable by the year or quarter), and cannot be turned off at a month's notice, like a common domestic.—2 *Step. Com.* 243, 247.

Domicellus, a better sort of servant in monasteries; also an appellation of a king's bastard. *Encyc. Lond.*

Domicile, the place where a person has his home.

By the term 'domicile,' in its ordinary acceptation, is meant the place where a person lives or has his home. In this sense, the place where a person has his actual residence, inhabitancy, or commorancy, is sometimes called his domicile. In a strict and legal sense, that is properly the domicile of a person where he has his true fixed permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning (*animus revertendi*).

Two things, then, must concur, to constitute domicile: first, residence; and, secondly, the intention of making it the home of the party. There must be the fact and the intent; for as Pothier has truly observed, a person cannot establish a domicile in a place, except it be *animo et facto.*

From these considerations and rules the general conclusion may be deduced, that domicile is of three sorts; domicile by birth, domicile by choice, and domicile by operation of law. The first is the common case of the place of birth, *domicilium originis*; the second is that which is voluntarily acquired by a party, *proprio marte*; the last is consequential, as that of the wife arising from marriage.—*Story's Confl. of Laws*, c. iii. The best definition, as applied to an acquired domicile, is—that place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or temporary purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. — *Lord* v. *Colvin*, 4 *Drew*, 366.

It is a clearly established rule that the validity of a will, disposing of personal estate, is regulated by the law of the country in which the deceased was domiciled at the time of his death. The application of this rule to the cases of British subjects dying abroad, and of foreigners dying in this country, leaving wills, gave rise to great inconvenience, to remove which two statutes have been passed.

By 24 & 25 Vict. c. cxiv., 'An Act to amend the law with respect to Wills of Personal Estate made by British subjects,' it is enacted that every will, &c., made out of the United Kingdom by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his or her death) shall, as regards personal estate, be held to be well executed, for the purpose of being admitted in England or Ireland to probate, and in Scotland to confirmation, if the same be made according to the forms required either by the law of the place where it was made or by the law of the place where the deceased was domiciled when it was made, or by the laws then in force in that part of Her Majesty's dominions where he had his domicile of origin (s. 1). Every will, &c., made within the United Kingdom by any British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his or her death) shall, as regards personal estate, be held to be well executed, and shall be admitted in England and Ireland to probate, and in Scotland to confirmation, if it be executed according to the forms required by the laws for the time being in force in that part of the United Kingdom where the same is made (s. 2). No will, &c., shall be held to be revoked, or to have become invalid, nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making the same (s. 3). Nothing in this act shall invalidate any will or other testamentary instrument, as regards personal estate, which would have been valid if the act had not been passed, except as such will, &c., may be revoked or altered by any subsequent will, &c., made valid by the act (s. 4). This act shall extend only to wills, &c., made by persons who die after the passing of the act (s. 5).

By 24 & 25 Vict. c. cxxi., 'An Act to amend the law in relation to the Wills and Domicile of British subjects dying whilst resident abroad, and of Foreign subjects dying whilst resident within Her Majesty's dominions,' after reciting that, by reason of the present law of domicile, the wills of British subjects, dying whilst resident abroad, are often defeated, and their personal property administered in a manner contrary to their expectations and belief, and it is desirable to amend such law, but the same cannot be done effectually without the consent and concurrence of foreign states, it is enacted in substance: That whenever Her Majesty shall, by convention with any foreign state, agree that the provisions of the act shall be applicable to British subjects, and to the subjects of such foreign state, Her Majesty, by order in council, may direct, and after the publication of such order in the 'Gazette,' no British subject, resident at the time of his death in the foreign country named in such order, shall be deemed

to have acquired a domicile in such country, unless he shall have been resident therein for one year immediately preceding his decease, and shall have made and deposited in a public office of such foreign country (to be named in the order) a declaration in writing of his intention to become domiciled in such country; and every British subject dying resident in such country, but without having so resided, and made such declaration, shall be deemed, for all purposes of testate or intestate succession as to moveables, to retain the domicile he possessed at the time of his going to reside in such foreign country (s. 1). After such convention, order in council, and publication in the 'Gazette,' no subject of such foreign country, who at the time of his death shall be resident in Great Britain or Ireland, shall be deemed to have acquired a domicile therein, unless he have been so resident for one year preceding his death, and have deposited with the Secretary of State for the Home Department a similar declaration (s. 2). The act is not to apply to naturalised foreigners (s. 3).

Domigerium, power over another; also danger.—*Bract.* l. 4, t, 1, c. x.

Domina, a title given to honorable women, who anciently, in their own right of inheritance, held a barony.

Dominant tenement, a term used in the civil and Scotch law relating to servitudes, meaning the tenement or subject in favor of which the service is constituted, as the tenement over which the servitude extends is called the servient tenement. See *Bell; Smith's Dict. of Antiq.* tit. 'Servitudes;' and *Gale on Easements.*

Dominica. See 2 & 3 *Wm. IV.* c. 125; 5 & 6 *Wm. IV.* c. 57; and 23 & 24 *Vict.* c. 57.

Dominica in ramis palmarum, Palm Sunday.

Dominical, that which denotes the Lord's Day, or Sunday.

Dominicide [fr. *dominus*, Lat., master, and *cædo*, to kill], the act of killing one's lord or master.

Dominium directum, the dominion of the soil, placed either mediately or immediately in the Crown.

Dominium utile, the possessory title to the soil, or the right to its use and profits, designated by the term *seisin.* It is the highest interest which a subject can acquire in realty.

Dominium non potest esse in pendenti.—(Lordship cannot be in suspense.)

Dominus. This word, prefixed to a man's name, in ancient times, usually denoted him a knight or a clergyman, a gentleman or a lord of the manor; also a principal in the Roman Law.

Dominus aliquando non potest alienare.—(A lord sometimes cannot alienate.)

Dominus capitalis loco hæredis habetur, quoties per defectum vel delictum extinguitur sanguis sui tenentis.—Co. Litt. 18.—(The supreme lord takes the place of the heir, as often as the blood of the tenant is extinct through deficiency or crime.)

Dominus litis, the master or controller of a suit or litigation; also an advocate who, after the death of his client, prosecuted a suit to sentence for the executor's use.—*Civ. Law.*

Dominus navis, the absolute owner of a ship.

Dominus non maritabit pupillum nisi semel. Co. Litt. 9.—(A lord cannot give a ward in marriage but once.)

Dominus rex nullum habere potest parem, multo minus superiorem. (The king cannot have an equal, much less a superior.)—1 *Reeves,* 115.

Domitæ naturæ, tame and domestic animals, as horses, kine, sheep, poultry, &c.

Domitellus, a title anciently given to the French kings' natural sons. See DOMICELLUS.

Dommages interêts [Fr.], damages.

Domo reparandâ, a writ that lay for one against his neighbour, by the anticipated fall of whose house he feared a damage and injury to his own.—*Reg. Orig.* 153.

Domus conversorum, an ancient house built or appointed by King Henry III. for such Jews as were converted to the Christian faith; but King Edward III., who expelled the Jews from this kingdom, deputed the place for the custody of the rolls and records of the Chancery.

Domus Dei, the House of God, applied to many hospitals and religious houses.

Domus sua cuique est tutissimum refugium. 5 *Rep.* 92.—(To every one his own house is the safest refuge.)

Dona clandestina sunt semper suspiciosa.—3 *Co.* 81.—(Clandestine gifts are always suspicious.)

Domus procerum, the House of Lords, abbreviated into *Dom. Proc.* or *D. P.*

Donary, a thing given to sacred uses.

Donatio mortis causâ, a gift of personal property in prospect of death; a death-bed disposition; an initiate gift of personalty consummated by the giver's death.

It is derived from the civil law; Justinian's Inst. lib. 2, tit. 7, shows its nature To render this kind of gift valid, it (1) must be made by the giver, when ill, in anticipation of his death; (2) must be intended to take effect only upon his death by his existing illness, for his recovery from that illness, or his subsequent personal revocation of the gift, as by resuming its possession, will defeat it; and (3), a *traditio* or delivery, either actual or symbolical, of the subject of the gift, or of the instrument which represents it, must be made to the donee, either for his own use, or upon trust for

another person, or for a particular purpose. It is to be observed that the gift of a cheque upon a banker is not good as *donatio mortis causâ*, because it is a gift which can only be made effectual by obtaining payment of it in the donor's lifetime, and is revoked by his death. See *Tate* v. *Hilbert*, 2 *Ves. Jun.* iii. (1793). And so a promissory note not payable to bearer.

The following is a critical case upon this subject:—E. on his death-bed gave his wife a cheque on his bankers for 1,000*l.* A few days afterwards, E. told B., a friend, that he wished to give Mrs. E. 1,000*l.* and had drawn a cheque in her favor upon his bankers, but he was afraid they would not pay the cheque over the counter, and he wished B. to take the cheque, and give Mrs. E. B.'s own cheque in exchange. This was done, and E.'s cheque was paid into B.'s bankers, who received the money two hours before E.'s death. B.'s cheque was post dated. Being crossed, and Mrs. E. not having any banker, the money was not received by her, but after the death of E. she obtained an uncrossed cheque from B., which was duly paid. It was held by the Master of the Rolls that E.'s cheque was given to B. in E.'s life-time in trust for Mrs. E., and that she was entitled to the 1,000*l.*; and by the Lords Justices upon appeal, that it was a good *donatio mortis causâ*, and that Mrs. E. was entitled to the 1,000*l.* *Bouts* v. *Ellis*, 4 *De G. M. & G.* 249; 17 *Beav.* 121; and see *Tate* v. *Leithead*, *Kay*, 658. This kind of gift resembles a legacy, but differs from a gift *inter vivos*, inasmuch as it is ambulatory, incomplete, and revokable during the donor's life; is liable to his debts upon a deficiency of assets; may be made to his wife, and is subject to legacy duty; 36 *Geo. III.* c. 52, s. 7; and 8 & 9 *Vict.* c. 76. It, however, differs from a legacy, in that it does not need probate, for the donee's title being directly derived from the giver in his life-time, it is not a testamentary act; and it is taken against and not from, the executor, whose assent to its enjoyment is not necessary. It is so vested in the donee, that he has a right, in case of personal estate, to compel the donor's executor or administrator to carry into effect the intention manifested by the person whom he represents; as, for example, if the donation be a bond, to compel the executor or administrator to allow the donee to use his name in suing upon the bond, he being indemnified, for it has become a trust for the donee. See 1 *Williams on Executors*, 686.

Donatio non præsumitur.—(A gift is not presumed.)

Donatio perficitur possessione accipientis.—*Jenk. Cent.* 109.—(A gift is perfected by possession of the receiver.)

Donatio principis intelligitur sine præjudicio tertii.—*Davis*, 75 *b.*—(A gift of the prince is understood, without prejudice of a third party.)

Donationum alia perfecta, alia incepta et non perfecta; ut si donatio lecta fuit et concessa, ac traditio nondum fuerit subsecuta.—*Co. Litt.* 56.—(Some gifts are perfect, others incipient or not perfect; as if a gift were read and agreed to, but delivery had not then followed.)

Donative, a species of advowson, when the Queen or any subject by her license founds a church or chapel, and ordains that it shall be merely in the gift or disposal of the patron; subject to her visitation only, and not to that of the ordinary; and vested absolutely in the clerk by the patron's deed of donation without presentation, institution, or induction. This is said to have been anciently the only way of conferring ecclesiastical benefices in England. If the patron *once* waive the privilege of donation and present to the bishop, and his clerk is admitted and instituted, the advowson becomes presentative, and shall never be donative any more.—2 *Bl. Com.* 23.

Donatory, the person on whom the king bestows his right to any forfeiture that has fallen to the Crown.—*Scotch Law.*

Donator nunquam desinit possidere antequam donatarius incipiat possidere.—*Dyer*, 281.—(He who gives never ceases to possess before that the receiver begins to possess.)

Donatrix, a female giver. See DONOR.

Donee [fr. *dono*, Lat.], one to whom a gift is made.

Don grant et render, *a fine sur*, was a double fine, comprehending the fine *sur cognizance de droit come ceo, &c.*, and the fine *sur concessit*, and might have been used to create particular limitations of estates; whereas the fine *sur cognizance de droit come ceo, &c.*, conveyed nothing but an absolute estate, either of inheritance or at least of freehold.—1 *Step. Com.* 571.

Donis conditionalibus, *Statute de*, 13 Edward I. c. 1, A.D. 1226, otherwise called Westminster the Second. At the date of this statute a gift to a man and the heirs of his body, provided that if he had no heirs the lands should revert, was construed to give the donee a conditional fee, which enabled him, after issue begotten, to alien the land, and thereby to disinherit the issue, and to deprive the donor of his right of reverter. This interpretation is declared by this statute to be 'contrary to the minds of the givers, and the form expressed in the gift:' wherefore it is ordained that the 'will of the giver, according to the form in the deed of gift manifestly expressed, be henceforth observed; so that they to whom the land is given under such con-

dition, shall have no power to alien the land so given, but that it shall remain unto the issue of them to whom it is given after their death, or shall revert to the giver or his heirs if issue fail, or there is no issue at all. And if a fine be levied hereafter upon lands so given, it shall be void in law.' The intolerable mischief introduced by this statute was got rid of by the fictitious proceedings of common recoveries, which were abolished by 3 & 4 Wm. IV. c. 74, an act that has completely unfettered these estates.

Donor, a giver, a bestower, one who gives lands to another in tail, &c.

Doom [fr. *dom.* A.S., judgment; fr. *deman*, to deem or form a judgment], judicial sentence; judgment.

Doomsday-book. See DOMESDAY-BOOK.

Doorkeeper of the Court of Chancery. His office is abolished by 15 & 16 Vict. c. 87, s. 27.

Dormant claim, a claim in abeyance.

Dormant partners, those whose names are not known or do not appear as partners, but who nevertheless are silent partners, and partake of the profits, and thereby become partners, either absolutely to all intents and purposes, or at all events in respect to third parties. Dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm, as principals. Unknown partners are properly secret partners; but in common parlance they are usually designated by the appellation of dormant partners. They are held responsible as partners until retirement to third parties, although they may not be so chargeable *inter sese.*—*Story on Partnership*, 95, 113, 155, 350; *Gow on Partnership; Collyer on Partnership.*

Dormiunt aliquando leges, nunquam moriuntur.—2 *Inst.* 161.—(The laws sometimes sleep, never die.)

Dorture [contracted from *dormiture*], a dormitory; a place to sleep in.

Dos rationabilis vel legitima est cujuslibet mulieris de quocunque tenemento tertia pars omnium terrarum et tenementorum, quæ vir suus tenuit in dominio suo ut de feodo, &c.—*Co. Litt.* 336.—(Reasonable or legitimate dower belongs to every woman of a third part of all the lands and tenements of which her husband was seised in his demesne, as of fee, &c.)

Dos de dote peti non debet.—4 *Co.* 122.—(Dower from dower ought not to be sought.)

Dossale, hangings of tapestry.

Dotal, relating to the portion of a woman; constituting her portion; comprised in her portion.

Dotation, the act of giving a dowry or portion; endowment in general.

Dote assignanda, a writ that lay for a widow, where it was found by office that the king's tenant seised of lands in fee, or fee-tail, at his death, and that he held of the king in chief, &c.—*F. N. B.* 26; *Reg. Orig.* 297.

Dote unde nihil habet, a writ of dower that lies for the widow against the tenant, who bought land of her husband in his lifetime, whereof he was solely seised in fee-simple or fee-tail, and of which she is dowable.—*F. N. B.* 147.

Doti lex favet; præmium pudoris est, ideò parcatur.—*Co. Litt.* 31.—(The law favors dower; it is the reward of chastity, therefore let it be preserved.)

Dotis administratione, admeasurement of dower, where the widow holds more than her share, &c.

Double avail of marriage, the double of the value of the vassal's wife's tocher, due to the superior, when the vassal refused a wife equal to him and offered by the superior; but this was modified to three years' rent of the vassal's free estate.—*Scotch Law.*

Double complaint, a grievance made known by a clerk or other person, to the archbishop of the province against the ordinary, for delaying or refusing to do justice in some cause ecclesiastical, as to give sentence, institute a clerk, &c. It is termed a double complaint, because it is most commonly made against both the judge and him at whose suit justice is denied or delayed; the effect whereof is, that the archbishop taking notice of the delay, directs his letters, under his authentical seal, to all clerks of his province, commanding them to admonish the ordinary, within a certain number of days, to do the justice required, or otherwise to appear before him or his official, and there allege the cause of his delay; and to signify to the ordinary that if he neither perform the thing enjoined, nor appear and show cause against it, he himself, in his court of audience, will forthwith proceed to do the justice that is due.—*Cowel.*

Double or treble costs. The true mode of estimating the amount of *double* costs was, first to allow the successful party the single costs, including the expenses of witnesses, counsels' fees, &c., and then allow him one-half of the amount of the single costs, without deducting counsels' fees, &c. *Treble* costs consisted of the single costs, half of the single costs, and half of that half. But these costs are repealed by 5 & 6 Vict. c. 97, which enacts that the successful party shall be entitled only to full and reasonable costs, to be taxed by the proper officer, which taxation shall, as in ordinary cases, be subject to review.

By 13 & 14 Vict. c. 61, s. 18, 'if any party shall sue another in any county court for any debt or other cause of action for which he hath already sued him, and obtained judgment, in

any other court, the proof of such former suit having been brought and judgment obtained may be given, and the party so suing shall not be entitled to recover in such second suit, and shall be adjudged to pay three times the cost of such second suit to the opposite party.'

Double, or **treble damages,** are given, in some cases, by particular statutes, but at common law the damages are always single. They are not reckoned in the same manner as double and treble costs, but arithmetically.

Double entry, a term among merchants to signify that books of account are kept in such a manner that they present the debit and credit of every transaction. It is used in contradistinction to single entry.

Double-distilled equity, the mortgage of an equity of redemption.—*Cook* v. *Gregson*, 4 *W. R.* 582 (1856).

Double insurance, where a person, being fully insured by one policy, effects another on the same subject with other insurers, he may recover the amount of his actual loss against either set of insurers. But as insurance is a contract of indemnity only, the law will not allow him to recover beyond that amount; and if he obtain full satisfaction upon either of his policies, the under-writers upon this are entitled to contribution from the underwriters upon the other. If the policies are of the same date, all the underwriters on the several policies are equally bound to return to the assured the premiums paid by him for the sum insured above the value of the subject matter of insurance in proportion to their subscription, but if of different dates, and the amount insured in the first set of policies is not equal to the value of the subject matter, the underwriters on the last set of policies are alone liable for a return of the premium.—*Park on Insurance*, 422; 1 *Arnold on Insurance*, 345, *et seq.*

Double pleading. This is not allowed either in the declaration or subsequent pleadings. Its meaning with respect to the former is, that the declaration must not, in support of a single demand, allege several distinct matters, by any one of which that demand is sufficiently supported. With respect to the subsequent pleadings, the meaning is, that none of them is to contain several distinct answers to that which preceded it; and the reason of the rule in each case is, that such pleading tends to several issues in respect of a single claim.

The object of this rule being to enforce a single issue upon a single subject of claim, admitting of several issues, where the claims are distinct, the rule is accordingly carried no further than this in application. The declaration, therefore, may, in support of *several demands*, allege as many distinct matters as are respectively applicable to each. So the plea, though it must not contain several answers to the whole of the declaration, may nevertheless make distinct answers to such parts of it as relate to different matters of claim or complaint; the power, however, of alleging in a plea distinct matters, in answer to such parts of the declaration as relate to different claims, seems to be subject to this restriction—that neither of the matters so alleged be such as would alone be a sufficient answer to the whole. So in the replication and other subsequent parts of the series, a severance of pleading may take place in respect of several subjects of claim or complaint.

A pleading will be double that contains several answers, whatever be the class or quality of the answer. Matter will suffice to make a pleading double though it be ill pleaded, but matter immaterial cannot operate to make a pleading double. No matter pleaded only as a necessary inducement to another allegation will operate to make a pleading double, that is, no matters, however multifarious, will operate to make a pleading double, that together constitute but one connected proposition or entire point.—*Step. Plead.* 285.

Double rent. By 11 Geo. II. c. 19, s. 18, it is enacted, that in case any tenant or tenants shall give notice of his, her, or their intention to quit the premises, and shall not accordingly deliver up the possession thereof at the time in such notice contained, the said tenant or tenants, his, her, or their executors or administrators, shall, from thenceforward, pay to the landlord double the rent or sum which he, she, or they should otherwise have paid. A tenant who has given notice, and paid double rent, may quit without fresh notice. The acceptance of single rent, which has accrued due subsequently to the notice, is, it seems, a waiver of the landlord's right to double rent, although it does not necessarily imply that the tenancy should continue. The double rent is recoverable either by distress or action at law. See *Woodfall's Landlord and Tenant* and *Smith's Landlord and Tenant.*

Double value. By 4 Geo. II. c. 28, s. 1, it is enacted, that if any tenant or tenants for life, or tenants for years, or persons coming in under or in collusion with them, hold over any lands, tenements, or hereditaments, after the determination of their estates, after demand made, and notice *in writing* given, for delivering the possession thereof, by the landlord, or the person having the reversion or remainder therein, or his agent thereunto lawfully authorised, such tenant or tenants so holding over shall pay to the person so kept out of possession, at the rate of *double the yearly* value of the lands, tenements, and hereditaments so detained, for so long a time as the same are detained; to be recovered by action of debt, against which recovery there shall be no relief in equity. See *Woodfall's Landlord and Tenant* and *Smith's Landlord and Tenant.*

Double voucher, when a recovery was had, and an estate of freehold was first conveyed to any indifferent person against whom the *præcipe* was brought, and then he vouched the tenant-in-tail, who vouched over the common vouchee. For if a recovery were had immediately against a tenant-in-tail, it barred only the estate in the premises of which he was then actually seised, whereas, if the recovery were had against another person, and the tenant-in-tail were vouchee, it barred every latent right and interest which he might have in the lands recovered.—2 *Bl. Com.* 359. Recoveries were abolished by 3 & 4 Wm. IV. c. 74.

Double waste. When a tenant, bound to repairs, suffers a house to be wasted, and then unlawfully fells timber to repair it, he is said to commit double waste.

Doubles, letters-patent.—*Cowel.*

Doubtful sex. The ancients have several fables founded on the idea of the union of the qualities of the male and female in the same individual. One of the personages who was supposed to be thus endowed was named Hermaphroditus, i. e. *Mercurio Venus* (for Ἑρμῆς is Mercury, and Ἀφροδιτή is Venus), because, according to the classic fable, he was the son of Mercury by his sister Venus. In the woods where he frequently hunted a nymph called Salmacis lived, who greatly admired him, for he was very beautiful, but a great woman-hater. She often tempted the young man, but was often repulsed, yet she did not despair. She lay in ambush at a fountain where he usually came to bathe, and when he was in the water she also leaped in; but she could not overcome his extraordinary modesty. Thereupon, it is said, she prayed to the gods above, that the bodies of both might become one, which was granted. Hermaphroditus was amazed when he saw this change of his body; and desired that, for his comfort, some other person might be like him. He obtained his request; for whoever washed himself in that fountain (called Salmacis, in the country of Caria) became an Hermaphrodite, that is, had both sexes.—*Ovid's Metam.* l. 4.

From this modest youth, then, came the term, as applicable to this class of beings. The researches of modern anatomists have completely set at rest the long-debated question of hermaphroditism, in the vulgar acceptation of the word. It is anatomically and physiologically impossible. Yet is it equally well established that many cases of extraordinary mal-formation have occurred, but they are either males, with some unusual organisation or position of the urinary or generative organs, or females with an enlarged clitoris, or prolapsed uterus; or individuals in whom the generative organs have not produced their usual effect in influencing the development of the body. Thus it is evident that instead of combining the powers of both sexes, they are for the most part incapable of exerting any sexual function.

Yet the prejudices of ancient nations seem to have marked these unfortunate individuals as objects of persecution, and to have subjected them to the operation of the most absurd and cruel laws. Diodorus mentions that they were burnt by the Athenians and Romans. At an early period of Roman history a law was enacted that every child of this description should be shut up in a chest and thrown into the sea; and Livy gives an instance, where, on some difficulty with respect to the sex of a newly-born infant, it was directed to be thrown into the sea—*tanquam fœdum et turpe prodigium. Livy*, xxvii. 37; *Eutropius*, iv. 36. The Jewish Talmud, we are told, contains many ordinances founded on the apparent predominance of sex. The canon and civil laws have also many enactments concerning them. An old French law allowed them great latitude. It enacted that they should choose one sex, and keep to it. The Hindoo Institutes of Menu provide for singular contingencies.—*The Chinese*, by *Davis*, vol. i., p. 221. These absurd notions and practices have now disappeared; but the subject is important on many accounts, as these unusual deviations often render the sex of an individual doubtful, and impose even on professional men.

Our common law on this subject is thus laid down: a monster having deformity in any part of its body, yet if it have human shape, may inherit. And every heir is either a male, or a female, or an hermaphrodite, that is, both male and female. And an hermaphrodite, who is also called *androgynus*, shall be heir either as a male or female, according to that kind of sex which prevails, and accordingly it ought to be baptized. The same rule—*hermaphroditus tam masculo quam fœminæ comparatur secundum prævalescentiam sexus incalescentis*—guides in cases concerning tenants by the courtesy.—2 *Bl. Com.* 247.

M. St. Hilaire remarks that 'legislation, admitting only two grand classes of individuals on whom it imposes duties, and grants different and almost opposite rights, according to their sex, does not truly embrace the entire of the cases; for there are subjects who have really no sex, such as neuter hermaphrodites, and hermaphrodites mixed by superposition; and on the other hand, certain individuals, the bisexual hermaphrodites, who present the two sexes united in the same degree.'—*Lancet* (n. s.), vol. xii., p. 48.

Dow [fr. *do*, Lat.], to give or endow.

Dow-purse. A considerable sum of money anciently put into a plate, and presented by the bridegroom to the bride on the wedding night as a sort of purchase of her person.—*Old Scholiast.* This custom was not peculiar to

Rome; it obtained among the Greeks (ὄρθριον δῶρον) likewise, as among the Jews, and is found among many eastern nations. It also prevailed under the name of *morgengabe*, or morning present, over a great part of the north of Europe, where some faint traces of it are still to be found; and something of the kind was customary in many parts of England, and perhaps is so still under the name of *dow-purse*.—*Stock. Juv.* 128.

Dowable, entitled to dower.

Dowager, a widow endowed.

Dowager queen, the widow of the king. As such she enjoys most of the privileges belonging to her as queen consort. It is not treason to conspire her death or violate her chastity, because the succession to the crown is not thereby endangered. No man, however, can marry her without a special license from the sovereign, on pain of forfeiting his lands or goods.—1 *Bl. Com.* 233.

Dower [fr. *dos dotis*, Lat., a marriage-gift; *dotare*, *douer*, Fr., endow, to furnish with a marriage portion. *Dotarium*, M. Lat., *dotaire*, prov.; *douaire*, Fr., a dowry or marriage provision; *douairière*, a widow in possession of her portion, a dowager], the right which a wife (not being an alien, unless she be naturalised or made a denizen) has in the third part of the lands and tenements of which her husband dies possessed in fee-simple, fee-tail-general, or as heir in special tail, which she holds from and after his decease, in severalty by metes and bounds, for her life, whether she have issue by her husband or not, and of what age soever she may be at her husband's decease, provided she be past the age of nine years.

The circumstances necessary to create dower are: 1st, marriage, which must be duly celebrated between parties canonically qualified to enter into such a contract, in conformity to the maxim, *ubi nullum matrimonium, ibi nulla dos.* But if the marriage be dissolvable, and it be not annulled in the lifetime of the husband, the widow will be entitled to her dower. The fact of marriage is proved by the bishop's certificate; 2nd, the husband must be seised in law of the estate out of which the wife claims dower, if the marriage were solemnised on or *before* the 1st January, 1834, but seisin is since rendered unnecessary by the Dower Act, which shall be presently explained; and 3rd, the wife's estate is consummated by her husband's death.

The original law of dower became among our ancestors, with the increase of alienation, highly inconvenient and obstructive of the free course of conveyances. The legislature, by the 27 Hen. VIII. c. 10 (the Statute of Uses), set about a method of diminishing the evil by providing a *jointure* in lieu of *dower*. By effect of this statute no widow can claim both jointure and dower. Jointure, in its strict acceptation, meant a joint estate, limited to both husband and wife; but it is now understood to be a sole estate limited only to the wife. To a strict legal jointure these six things are requisite:—1. The provision for the wife must take effect in possession or profit immediately after the husband's death; 2. It must be for her own life at least, and not *pour autre vie*, or for any term of years, or for any smaller estate. But the widow will be bound by the acceptance of a precarious interest if she were adult at the time she agreed to the jointure; 3. It must be made to herself and no other in trust for her; 4. It must be made in satisfaction of the whole, and not of part of her dower; 5. It must be either expressed or averred to be in satisfaction of dower; and 6. It may be made either before or after marriage; if made *after* marriage, she may waive it, and claim her dower, unless it be provided by act of parliament.

But this statutable bar was found highly inconvenient, and recourse was had to many ingenious devices to prevent or defeat dower, but they were all more or less imperfect, and at length gave way to the universal practice of making an artificial form of conveyance, which obtained the name of a conveyance to uses to bar dower. The land was conveyed to such uses as the owner should appoint, and, in default of appointment to him for life, and on the determination of his estate in his lifetime, to a trustee and his heirs for the life of the owner in trust for him, and on the determination of the estate of the trustee, to the owner and his heirs.

An equitable bar of dower was deemed sufficient as between vendor and purchaser; as if a wife contract before marriage to relinquish her dower, either in consideration of a substituted provision, or of marriage, which is valuable in itself, and the highest consideration known to the law.

'The general result is,' as the Real Property Commissioners reported, 'that the right to dower exists beneficially, in so few instances, that it is of little value considered as a provision for widows, and we believe it may be confidently asserted that it is never calculated on as a provision by females who contract marriage, or their friends: yet there is so much of uncertainty in the modes by which dower is prevented, that the actual or possible existence of the right is a very frequent and serious impediment to the transfer of property, and the ascertaining in each case that it does not exist in the widows of any of the persons through whom the property has passed, or procuring the necessary acts to be done for preventing or barring it, where it does or may exist, or securing the future production of the evidence of its non-existence, are the causes of frequent and great delay and expense attending such

transfers. Thus where there is no person who can derive any benefit from the law of dower, that law exists often as a clog to the transfer of property, sometimes as a legal pretext for delaying the performance of a contract, and sometimes as the inevitable cause of, or a mischievous temptation to, litigation. Generally we conceive that the right to dower may be said to exist to the injury of proprietors and purchasers, and to a comparatively small extent for the benefit of widows, and to some extent also to their injury, in leading them into, or involving them in, litigation.

'The true principle (as we think) on which the law of dower was originally established, and on which it has a claim on the grounds of justice and policy (without sacrificing the general convenience) to be supported, is, that it should be considered as that interest in an estate of inheritance which the law takes from the heir of a deceased proprietor for the support of his widow, whose claims, in natural justice and policy, appear to stand at least on an equal footing with the claims of the heir; it is so far analogous to the provision which a law established in more modern times has made for the widow out of the husband's personal estate undisposed of by his will. By combining this principle with another of high and perhaps paramount importance, a principle which the law has carefully established almost to its fullest extent, viz. that a right of alienation should be inseparably incident to property of every description, we think that the law of dower may be put on a footing more beneficial on the whole to widows, and free from nearly all the present inconveniences and mischiefs.'

This report led the way to the passing of the Dower Act, 3 & 4 Wm. IV. c. 105, which places a wife's right to dower entirely at the mercy of her husband.

The first section is the glossary clause, and enacts 'that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall, in this act, *except* where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows:—

'"Land," to extend to manors, advowsons, messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof.

'Every word importing the singular number only, to extend and be applied to several persons or things, as well as one person or thing.

'When a husband dies *beneficially* entitled to any land for an interest not dowable at law, and such interest, *whether wholly equitable, or partly legal and partly equitable*, is an estate of inheritance in possession, or equal thereto (other than estate in joint-tenancy), his widow is entitled, *in equity*, to dower out of the same land (s. 1).'

This section has abolished a great anomaly. Dower is considered as a mere *legal* right, and did not attach unless the husband was, during the coverture, solely seised in possession of the legal inheritance; it was held, therefore, that equity ought not to create the right where it did not subsist at law, and that a wife was not dowable of a trust estate. Yet a man might then, as now, be tenant by the courtesy of his deceased wife's trust estate; a seemingly partial diversity, for which Lord Chancellor Talbot said he could see no reason, but which, as he found it settled, he did not feel himself at liberty to correct (3 *P. Wms.* 234). This distinction is abolished, and dower is made to attach, in equity, upon the beneficial interest in possession of a sole owner of the inheritance, whether the ownership be exclusively equitable, or be in part composed of a legal estate enjoyed beneficially.

The widow is not entitled to dower out of the estates of joint-tenants, because of the right of survivorship.

When a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband have not recovered possession thereof, provided the dower be sued for or obtained within the period during which such right of entry or action might be enforced (s. 3).

Before this act a seisin was necessary, as we have seen, but a seisin in law was sufficient, i.e. where the inheritance in lands and hereditaments, of which a man died seised or possessed, descends upon his heir, who dies before entry or possession; if the heir had left a widow she would have had dower.

No widow shall be entitled to dower out of any land which shall have been *absolutely disposed* of by her husband in his lifetime or by his will (s. 4). All *partial* estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject or liable, are valid and effectual as against the right of his widow to dower (s. 5). A widow shall not be entitled to dower out of any land of her husband when, in the deed by which it was conveyed to him, or by any deed executed by him, it shall be *declared* that his widow shall not be entitled to dower out of such land (s. 6). A widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate, *when*, by his will he declares his intention that she shall not be entitled to dower out of such land, or out of any of his land (s. 7). The widow's right to dower shall

be subject to any conditions, restrictions, or directions, which shall be declared by her husband's will (s. 8). Where a husband devises any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, she shall not be entitled to dower out of or in any land of her husband, unless a contrary intention appear by the will (s. 9).

These sections contain the essential alterations made by this act, and put the widow's dower altogether in the husband's power. It used to be a principle, that, after a title to dower had once attached, it was not in the power of the husband alone to defeat it by any act in the nature of alienation or charge, whether voluntarily, as by deed or will, or involuntarily, as by bankruptcy, &c.; and that, therefore, all interests created by the husband after the attachment of title to dower, were voidable as to that part of the land which was recovered in dower.

The fourteenth section enacts, 'that this act shall not extend to the dower of any woman who shall have been, or shall be, married on or before the 1st January, 1834, and shall not give to any will, deed, contract, engagement, or charge executed, entered into, or created before the said 1st January, 1834, the effect of defeating or prejudicing any right to dower.'

There is great obscurity in this section, and it gave rise to two serious questions: (1) Whether a title to dower was within the Fines and Recoveries Act, so that a woman married on or before the 1st January, 1834, could extinguish her title by a deed acknowledged under the act? and it has been long settled that, in every case requiring the wife's conveyance, the substituted assurance, under the 3 & 4 Wm. IV. c. 74, applies. (2) Whether the dower of a woman married *on or before* 1st January, 1834, out of lands purchased by the husband *after* that day, may be excluded by a declaration, alienation, &c., under the Dower Act? The sound opinion seems to be, that the new law was made *exclusively* for women *married after* the 1st January, 1834, and, therefore, inasmuch as the titles to dower, attaching after 1st January, 1834, of women married on or before that day, cannot be defeated by a declaration or otherwise, under this act; it follows, as a reasonable consequence, that such women cannot claim dower out of *equitable* estate under the second section of this act. This saving clause, which continues to a large class of wives the old provisions, will have the effect of prolonging the practice of inserting limitations to prevent dower, in order to render the fact of marriage on or before the 1st January, 1834, immaterial to the future title. In practice, the ordinary uses to prevent dower are inserted together with the declaration. Mr. Fearne invented these uses.—*Cont. Rem.* 347.

The tenth section enacts, that no gift or bequest made by any husband to or for the benefit of his widow, of or out of his *personal* estate, or of or out of any of his land *not liable to dower*, shall defeat or prejudice her right to dower, *unless* a contrary intention be declared by his will.

Acceptance of a bequest of personalty neither did, nor, since this act, does, operate in bar of dower, unless an intention to that effect can be unequivocally established. See *Ayres* v. *Wilson*, 1 *Ves. sen.* 230.

Nothing in the act prevents any Court of Equity enforcing any covenant or agreement, entered into by or on the part of the husband not to bar his widow's right to dower out of his lands, or any of them (s. 11); so that it should be ascertained by a purchaser of an estate free of dower, under this act, that the vendor has not entered into any agreement *not* to bar his widow's dower.

Nothing in the act is to interfere with any rule of equity by which legacies bequeathed to widows, in satisfaction of dower, are entitled to priority over other legacies (s. 12).

The principle alluded to in this clause is, that where a general legacy is given in consideration of a debt owing to the legatee, or of his relinquishing any right or interest, inasmuch as such a bequest cannot be treated as a bounty, like other bequests, but as the purchase-money for such right or interest, payment of it will be preferred to any other general legacies, which are merely voluntary, and, therefore, a legacy given to a widow in satisfaction of dower does not, in the event of a deficiency of assets, abate in proportion to the other legacies. This principle, however, only applies to cases where, on the testator's death, his widow is entitled to dower.

No widow is now entitled to dower *ad ostium ecclesiæ*, or *ex assensu patris* (s. 13).

The right to dower is consummated upon the husband's death, but the widow has no estate in the lands until the heir assign the dower, unless the precise portion of land has been particularly specified. If the property be capable of division, and held by the husband in severalty, dower must be assigned by metes and bounds, but if otherwise, it must be done in a special and certain manner. If the heir or terretenant refuse to assign the dower, the widow has several remedies for recovering it. Where no dower has been assigned, the writ of dower *unde nihil habet* will lie, but if any part have been assigned, the writ of dower will lie. The widow may file a bill in Chancery, for she labors under so many difficulties at law, from the embarrassment of trust terms and other matters,

that equity will fully assist her not only in establishing her right at law, but also in completely relieving her when such right is ascertained.

No arrears of dower, nor any damages on account thereof, are recoverable by action or suit, for more than six years next before the commencement of such action or suit, by 3 & 4 Wm. IV. c. 27, s. 40. But the action, it appears, may be brought within sixty years after right accrued.

Dower unde nihil habet, *Writ of*, the remedy for a widow to whom no dower had been assigned within the time limited by law. —3 *Bl. Com.* 183. Abolished by 'The Common law Procedure Act, 1860' (23 & 24 Vict. c. 126), s. 26.

Dower, *Writ of right of*, the remedy for a widow who had been deforced of part of her dower.—3 *Bl. Com.* 183. Abolished by 'The Common Law Procedure Act, 1860' (23 & 24 Vict. c. 126), s. 26.

Dowl and deal [fr. *dal*, Brit., *divisio*, from *dælan*, Sax., whence *dealing*], a division.

Dowle Stones, stones dividing lands, &c.—*Cowel.*

Downing Street Public Offices Extension Act, 18 & 19 Vict. c. 95, extended by 22 Vict. c. 19.

Dowress, a widow entitled to dower.

Dowry [*dos mulieris*, Lat.], otherwise called *maritagium*, or marriage goods, that which the wife brings the husband in marriage. This word should not be confounded with dower.—*Co. Litt.* 31.

Dozein, a territory or jurisdiction. See DECINERS.

Dozen peers, twelve peers assembled at the instance of the barons, in the reign of Henry III., to be privy counsellors, or rather conservators of the kingdom.

Draco Regis, the standard ensign or military colors borne in war by our ancient kings, having the figure of a dragon painted thereon. *Rog. Hoved.* 1191.

Draft, or **Draught,** a bill drawn by one person upon another for a sum of money; an order in writing to pay money; also a rough copy of a legal document, &c., to be settled previously to a fair copy being made for engrossment.

Dragoman, an interpreter in the East.

Drainage of settled estates. By 8 & 9 Vict. c. 56, which repealed 3 & 4 Vict. c. 55, the owners of limited interests in settled estates may apply to the Court of Chancery by petition for leave to make permanent improvements therein, 'by draining the same with tiles, stones, or other durable materials; or by warping, irrigation, or embankment in a permanent manner, or by erecting any buildings thereon of a permanent kind, incidental or consequential to such draining, warping, irrigation, or embankment, and immediately connected therewith.' The Court of Chancery, upon such an application, and proof that the money advanced has been duly expended, may make a charge on the inheritance, to be repaid by equal annual instalments, not less than 12 nor more than 18 in number, with interest thereon, in the meantime, payable half-yearly; or in the case of buildings, by equal annual instalments, not less than 15, nor more than 25 in number. As to the course of proceeding in Chancery, see *Orders* 4th March, 1846.

By the Public Money Drainage Acts, tenants for life, and other owners of land, may obtain advances from government for works of drainage, which may be completed within five years; such advances to be repaid by a rent-charge on the land, after the rate of 6*l.* 10*s.* rent-charge for every 100*l.* advanced, and to be payable for the term of twenty-two years. 9 & 10 Vict. c. 101, explained and amended by 10 Vict. c. 11; 10 & 11 Vict. c. 38; 11 & 12. Vict. c. 119; 13 Vict. c. 31; and 19 Vict. c. 9. By the Private Money Drainage Act, 1849, 12 & 13 Vict. c. 100, amended by 19 & 20 Vict. c. 9, the owner of any land in Great Britain or Ireland may, with the sanction of the Inclosure Commissioners for England and Wales, borrow or advance money for the improvement of such land by works of drainage, such money, with interest, not exceeding five per cent. per annum, to be charged on the inheritance of the land, by way of a rent-charge, which is to be personal estate, for the term of twenty-two years.

Drana, or **Drecca,** a drain or water-course. See also 24 & 25 Vict. c. 133.

Drapery [*pannaria*, Lat.], used as a head in our old statute books, and extended to the making and manufacturing of all sorts of woollen cloths.

Drawback, a term used in commerce to signify the remitting or paying back upon the exportation of a commodity of the duties previously paid on it.

A drawback is a device resorted to for enabling a commodity affected by taxes to be exported and sold in the foreign market on the same terms as if it had not been taxed at all. It differs in this from a bounty, that the latter enables a commodity to be sold abroad for *less* than its natural cost, whereas a drawback enables it to be sold exactly at its natural cost. 'Drawbacks,' as Dr. Smith has observed, 'do not occasion the exportation of a greater quantity of goods than would have been exported had no duty been imposed. They do not tend to turn towards any particular employment a greater share of the capital of the country than would go to that employment of its own accord, but only to hinder the duty from driving away any

part of that share to other employments. They tend not to overturn that balance which naturally establishes itself among all the various employments of the society, but to hinder it from being overturned by the duty. They tend not to destroy, but to preserve, what it is in most cases advantageous to preserve—the natural division and distribution of labor in the society.' Were it not for the system of drawbacks it would be impossible, unless when a country enjoyed some very peculiar facilities of production, to export any commodity that was more heavily taxed at home than abroad. But the drawback obviates this difficulty, and enables merchants to export commodities loaded at home with heavy duties, and to sell them in the foreign market on the same terms as those fetched from countries where they are not taxed.

Most foreign articles imported into this country may be warehoused for subsequent exportation. In this case they pay no duties on being imported; and, of course, get no drawback on their subsequent exportation.

Sometimes a drawback exceeds the duty or duties laid on the article; and in such cases the excess forms a real bounty of that amount, and should be so considered.

It is enacted by 3 & 4 Wm. IV. c. 52, that no drawback or bounty shall be allowed upon the exportation from the United Kingdom of any goods, unless such goods shall have been entered in the name of the person who was the real owner thereof at the time of entry and shipping, or of the person who had actually purchased and shipped the same, in his own name and at his own liability and risk, on commission, according to the practice of merchants, and who was and shall have continued to be entitled in his own right to such drawback or bounty except in the cases therein-after provided for (s. 86).

No drawback shall be allowed upon the exportation of any goods, unless such goods be shipped within three years after the payment of the duties inwards thereon. And no debenture for any drawback or bounty upon the exportation of any goods shall be paid after the expiration of two years from the shipment of such goods; and no drawback shall be allowed upon any goods which, by reason of damage or decay, shall have become of less value for home use than the amount of such drawback; and all goods so damaged, which shall be cleared for drawback, shall be forfeited; and the person who caused such goods to be so cleared shall forfeit 200*l*., or treble the amount of the drawback, at the option of the commissioners of customs (s. 90).

No drawback or bounty shall be allowed upon goods exported and cleared as being press-packed, unless the quantities and the qualities of the same be verified by oath of the master packer thereof, or, in case of his unavoidable absence, by oath of his foreman (s. 93).

No goods cleared for drawback or bounty, or from any warehouse, shall be carried to be put on board ship for exportation, except by a person authorised for that purpose by license of the commissioners of customs (s. 94).

Draw-latches, thieves, robbers, wasters, and roberdsmen.—5 *Edw. III.* c. 14; 7 *Ric. II.* c. 5.

Drawee, the person on whom a bill of exchange is drawn, who is called, after acceptance, the acceptor.

Drawer, the person making a bill of exchange and addressing it to the drawee.

All persons of age, and of sound mind and understanding (or *compotes mentis*), females as well as males (but not a married woman, except by the authority of her husband, or where her husband is under some civil incapacity), alien-friends, trustees, agents, guardians, executors and administrators, and other persons acting *en autre droit*, partners, acting within the scope of the business of the partnership, and corporations, acting through the instrumentality of an agent, for purposes and objects authorised by, and within the scope of, their charters, and *à fortiori*, if express authority is given to them, may become drawers or other parties to bills of exchange.

Dreit. DROIT, which see.

Drenches, or **Drenges**, tenants *in capite*. They are said to be such as, at the coming of William the Conqueror, being put out of their estates, were afterwards restored to them, on their making it appear that they were the true owners thereof, and neither *in auxilio* or *consilio* against him.—*Spelm.*

Drengage, the tenure by which the drenches or drenges held their lands.

Drift of the Forest [*agitatio animalium in forestâ*, Lat.], a view or examination of what cattle are in a forest, chase, &c., that it may be known whether it be surcharged or not; and whose the beasts are, and whether they are commonable. These drifts are made at certain times in the year by the officers of the forest; when all cattle are driven into some pound or place enclosed, for the before-mentioned purposes, and also to discover whether any cattle of strangers be there, which ought not to common.—*Man.* p. 2, c. xv.

Drift-land, Drofland, or **Dryfland**, a yearly rent paid by some tenants for driving cattle through a manor.—*Encyc. Lond.*

Drince-lean, a contribution of tenants in the time of the Saxons towards a potation of ale, provided to entertain the lord or his steward.

Drivers, &c. of public carriages. As to their misconduct, see 2 & 3 *Wm. IV.* c. 120; 6 & 7 *Vict.* c. 86, s. 35; and 12 & 13 *Vict.* c. 92, s. 22.

Drofdenn, a grove or woody place where cattle were kept.

Droit [Fr.], right, justice, equity. There were many writs of *droit* or right used in our law, but they were all abolished by 3 & 4 Wm. IV. c. 27, except a writ of dower, or writ of dower *unde nihil habet.*

Droits of Admirálty, the perquisites attached to the office of Admiral of England (or Lord High Admiral). Prince George of Denmark, the husband of Queen Anne and Lord High Admiral, resigned the rights to these *droits* to the Crown, for a salary, as Lord High Admiral, of 7,000*l.* a year. When the office was vacant, they belonged of right to the Crown. Of these perquisites, the most valuable is the right to the property of an enemy seized on the breaking out of hostilities. Large sums were obtained by the Crown on various occasions in the course of the last great war for the seizure of the enemy's property, most of which, however, were eventually given up to the public service. In the arrangement of the Civil List, during the last two reigns, it was settled that whatever *Droits* of Admiralty accrued were to be paid into the Exchequer for the use of the public. The Lord High Admiral's right to the tenth part of the property captured on the seas has been relinquished in favor of the captors.

Droit d'aubaine [*jus albinatus*, Lat., i. e. *alibi natus*, born elsewhere], in French law, a right of the king, entitling him, at the death of an alien, to all he was worth, unless he had a peculiar exemption.—*Spelm.*

Droit-droit, or **jus duplicatum,** a double right, i. e. the right of possession joined with the right of property, which makes a complete title to lands, tenements, and hereditaments. And when to this double right the actual possession is also united, when there is, according to the expression in Fleta, *juris et seisinæ conjunctio*, then, and then only, is the title to property completely legal.—2 *Bl. Com.* 199.

Droit ne done pluis que soit demaunde.—2 *Inst.* 286. (Justice gives no more than is demanded.)

Droit ne poet pas morier.—*Jenk. Cent.* 100.—(Right cannot die.)

Droitural, relating to right.

Dromoes, dromos, dromunda, ships of great burden; men-of-war.—*Walsing.* 1292.

Droog, a fortified hill or rock.—*Indian.*

Drovers, those that buy cattle in one place to sell in another.—*Willes*, 590.

Dru, a thicket or wood.—*Domesday Book.*

Drunkenness, intoxication with strong liquor; habitual inebriety. It is an offence against the public economy, and punishable by statutes 4 Jac. I. c. 5, and 21 Jac. I. c. 7, ss. 1, 3, with the forfeiture of 5*s.* to be paid within one week after conviction to the churchwardens, for the use of the poor; and upon a second conviction, the offender shall be bound with two sureties in 10*l.* for his good behaviour. See 9 *Geo. IV.* c. 61, s. 35. By the law of England drunkenness is no excuse for a crime. 'A drunkard,' says Sir Edward Coke (1 *Inst.* 247), 'who is *voluntarius dæmon*, has no privilege thereby; but what hurt or ill soever he doth, his drunkenness doth aggravate it: *nam crimen ebrietas et incendit et detegit.*'

The Scotch law is thus explained by Mr. Alison:—Drunkenness is no excuse for crimes; 'but, on the other hand, if either insanity has supervened from drinking, without the panel's having been aware that such an indulgence in his case leads to such a consequence; or if it have arisen from the combination of drinking with a half crazy or infirm state of mind, or a previous wound or illness, which rendered spirits fatal to his intellect, to a degree unusual in other men, or which could not have been anticipated, it seems inhuman to visit him with the extreme punishment which was suitable in the other case. In such a case the proper course is to convict; but in consideration of the degree of infirmity proved, recommend to the royal mercy.'—*Prin. Crim. Law of Scot.* 654.

Drunkenness sometimes causes a short access of delirium or mania, to which the name of *delirium tremens*, or *mania à potu*, is given. This state may continue some days or even weeks. It differs from drunkenness, in that the latter disappears in twelve or fifteen hours at most, if not renewed by drink. Certainly the individual seized with this delirium is not responsible for his actions; and if he is to be punished for the immorality of the cause of his reprehensible act, a large number of the insane must also be included in a similar infliction.—*Orfila's Leçons*, 2nd edit. vol. ii., p. 127.

The late Mr. Justice Story (*Mason's Rep.* vol. v. p. 28), said, 'the question made at the bar is, whether insanity, whose remote cause is habitual drunkenness, is, or is not, an excuse in a court of law for a homicide committed by the party while so insane, but not at the time intoxicated or under the influence of liquor. We are clearly of opinion that insanity is a competent excuse in such a crime. In general, insanity is an excuse for the commission of every crime, because the party has not the possession of that reason which includes responsibility. An exception is when the crime is committed by a party while in a fit of intoxication, the law not permitting a man to avail himself of the excuse of his own gross vice and misconduct to shelter himself from the legal consequences of such crime. But the crime must take place and be the *immediate* result of the fit of intoxication, and *while it lasts*, and not, as in this case, a remote consequence, superinduced by the antecedent exhaustion of the party, resulting from gross and habitual drunkenness. However criminal in a moral point of view

such an indulgence is, and however justly a party may be responsible for his acts arising from it to Almighty God, human tribunals are generally restricted from punishing them. since they are not the acts of a reasonable being. Many species of insanity arise remotely from what, in a moral view, is a criminal neglect or fault of the party; as from religious melancholy, undue exposure, extravagant pride, ambition, &c. Yet such insanity has always been deemed a sufficient excuse for any crime done under its influence.' But although drunkenness is no excuse for crime, a contract made by a person when so drunk as to be unable to understand what he is doing, is invalid, at all events, if the person with whom the contract is made is aware of the fact.—*Gore* v. *Gibson*, 13 *M. & W.* 623.

Dry-cræft, witchcraft; magic. Celt. *dravi*, magician; *draoidheadh*, magic; hence also druid.—*Anc. Inst. Eng.*

Dry exchange [*cambium siccum*, Lat.], a term invented in former times for the disguising and covering of usury; in which something was intended to pass on both sides, whereas nothing passed but on one side, in which respect it was called dry; punished by 3 Hen. VII. c. 5.

Dry-multures, corn paid to the owner of a mill, whether the payers grind or not.—*Scotch Law.*

Dry-rent, a rent reserved without clause of distress. See RENT-SECK.

Duarchy [fr. δύο and ἀρχὴ, Gk.], a form of government where two reign jointly.

Dubash. See BANYAN.

Duces tecum (*you shall bring with you*), *subpœna.* If a person, even if he be a party to a cause, have in his possession any written instrument, &c., which would be evidence at the trial, instead of the common subpœna, he is served with a subpœna *duces tecum*, commanding him to bring it with him and produce it at the trial. Upon being served with a copy of this subpœna, he must attend at the trial with the instrument required, and produce it in evidence, unless he have some lawful or reasonable excuse for withholding it, of the validity of which excuse the court, and not the witness, is to judge. It is no excuse that the legal custody of the instrument belongs to another, if it be in the actual possession of the witness; but if it tend to criminate himself or his client (if the witness be an attorney), or if it be his title-deed, the court will not compel him to produce it. Where these objections do not apply, it seems that the writings in a man's possession are as much liable to the calls of justice as are the faculties of speech and memory. There can be no difference in principle between obliging a man to state his knowledge of a fact, and compelling him to produce a written entry in his possession which proves the same fact. Not only a man's estate, but even his liberty or life, may depend upon written evidence, which is the exclusive property of a stranger.

If the witness, instead of bringing the papers, &c., required, deliver them to the opposite party, by whom they are withheld, the court will allow secondary evidence of the contents of them to be given, without a notice to produce the originals. A witness, producing papers under a subpœna *duces tecum*, need not be sworn unless he be examined.—1 *Chit. Arch. Prac. by Pren.* 353.

No subpœna for the production of an original record shall be issued unless a rule of court or the order of a judge shall be produced to the officer issuing the same, and filed with him, and unless the writ shall be made conformable to the description of the document mentioned in such rule or order.—*Rule* 32, *H. T.* 1853. As to the practice under this writ in Chancery, see *Smi. Ch. Pr.* 421, and *Consol. Ord.* 1860.

Duces tecum licet languidus, a writ directed to the sheriff upon a return that he cannot bring his prisoner without danger of death, he being *adeò languidus*; whereupon the court grants a *habeas corpus* in the nature of a *duces tecum licet languidus.* But this is now out of use; and where the person's life would be endangered by removal, the law will not permit it to be done.

Duchy of Cornwall. As to the limitation of actions and suits by the Duke of Cornwall, see 23 & 24 *Vict.* c. 53. As to leases of the possessions of the duchy, see 25 & 26 *Vict.* c. 50, s. 49, and 26 & 27 *Vict.* c. 49. See STANNARY COURTS.

Duchy Court of Lancaster, a tribunal of special jurisdiction, held before the chancellor of the duchy, or his deputy, concerning all matters of equity relating to lands holden of the Crown in right of the duchy of Lancaster; which is a thing very distinct from the county palatine (that has also its separate chancery, for sealing of writs, and the like), and comprises much territory which lies at a vast distance from it; as particularly a very large district surrounded by the city of Westminster. The proceedings in this court are the same as on the equity side of the Court of Chancery, so that it seems not to be a court of record; and, indeed, it has been holden that the Court of Chancery has a concurrent jurisdiction with the duchy court, and may take cognisance of the same causes.—3 *Bl. Com.* 78. See COUNTY PALATINE.

Ducking-stool. See CASTIGATORY.

Ducroire [Fr.], guaranty; equivalent to DEL CREDERE, which see.

Due [fr. *dû*, Fr.], anything owed. That which one contracts to pay or perform to another; that which law or justice requires to be paid or done. Also that which office, rank, or established rules of right or decorum require to be given or performed.

It should be observed that a debt is said to be *due* the instant that it has existence as a debt; it may be *payable* at a future time.

Duel, in our ancient law, a legal combat between persons in a doubtful case for the trial of the truth, long since disused. In modern times a duel is a combat with weapons between two persons upon some quarrel precedent; wherein, if one of them is killed, the other and the seconds are guilty of murder, whether the seconds fight or not.—*Hawk. Pl.* 47; *Beccaria*, 38 & 39. An unpremedidated sudden fight is a rencontre.

Dues, certain payments; rates or taxes.

Duke [fr. *dux*, Lat.; *duc*, Fr.], the highest title of honor next to the Prince of Wales. His consort is called a duchess. It is a mere title of dignity, without giving any domain, territory, or jurisdiction over the place whence the title is taken.

It was originally a Roman dignity, denominated *à ducendo*, leading or commanding. Accordingly the first dukes (*duces*) were the *ductores exercituum*, commanders of armies. Under the emperors, the governors of provinces in war time were styled *duces*. In aftertimes the same denomination was also given to the governors of provinces in time of peace.—*Encyc. Lond.* In Genesis we read of dukes, but they were heads of families.

Duke of Exeter's Daughter, a rack in the Tower, so called after a minister of Henry VI., who sought to introduce it into this country.

Dulocracy [fr. δοῦλος, Gk., a servant, and κράτος, power], a government where servants and slaves have so much license and privilege that they domineer.

Dum bene se gesserit (*while he shall conduct himself well*).

Dum fuit infra ætatem (*while he was within age*), an abolished writ whereby one who had made a feoffment of his lands while an infant, might, when he came of full age, recover them. Within age, he might enter into the land, and take it back again, and by his entry he was remitted to his ancestor's right.—*F. N. B.* 192.

Dum fuit in prisonâ (*while he was in prison*), an abolished writ of entry that lay to restore a man to lands which he had aliened under duress of imprisonment.—2 *Inst.* 482.

Dum non fuit compos mentis (*while he was not of sound mind*), an abolished writ that lay when a man, not of sound mind, had aliened any lands or tenements to recover them from the alienee.—*F. N. B.* 449.

Dum sola, whilst single or unmarried.

Dumb-bidding. In sales at auctions, when the amount which the owner of the thing sold is willing to take for the article is written, and placed by the owner under a candlestick, or other thing, and it is agreed that no bidding shall avail unless equal to that; this is called dumb-bidding.

Dun, a mountain or high open place; also an importunate creditor.

Duna, a bank of earth thrown out of a ditch.—*Old Records.*

Dungeon [fr. *donjon*, originally the principal building of a district or fortress, which from its position or structure had the command of the rest; fr. *dominio*, *domnio*, Lat. (as *domnus* for *dominus*), *domgio*, *dongeo* (as Fr. *songer* from *somniare*), *donjon*. *Donjon* in fortification is generally taken for a large tower or redoubt of a fortress where the garrison may retreat in case of necessity.—*Bail.* The name of *dungeon* has finally been bequeathed to such an underground prison as was formerly placed in the strongest part of a fortress.—*Wedgw.* The tower in which prisoners were kept, whence all prisons eminently strong were called dungeons], a close prison, dark or subterraneous.

Dunio, a double, a kind of base coin less than a farthing.—*Old Records.*

Dunnage, pieces of wood or other material placed against the sides and bottom of the hold of a vessel, to stow the cargo.

Dunsets, people that dwell on hilly places.—*Old Records.*

Dunum, or **Duna** [fr. *dunnarium*, Lat.], a down or hill.

Duo non possunt in solido unam rem possidere.—*Co. Litt.* 368.—(Two cannot possess one thing in entirety.)

Duo sunt instrumenta ad omnes res aut confirmandas aut impugnandus—ratio et auctoritas.—8 *Co.* 16.—(There are two instruments either to confirm or impugn all things—reason and authority.)

Duodena, a jury of twelve men.

Duodena manu, twelve witnesses to purge a criminal of an offence.

Duplex querela (*a double plaint*), a process ecclesiastical, which is in the nature of an appeal from the ordinary to his next immediate superior, as from a bishop to the archbishop; and if the superior court adjudge the cause of refusal to be insufficient, it will grant institution to the appellant.—1 *Burn*, 160. See DOUBLE COMPLAINT.

Duplicate, second letters-patent, granted by the Lord Chancellor in the same terms as the first when the latter were void; a copy or transcript of a deed, letter, account, or other writing; the ticket given by a pawnbroker to the pawner of a chattel. Duplicates of despatches, and of important letters, are frequently sent by another conveyance as a precaution against the risk of their miscarriage. The copy which first reaches its destination is treated as an original.

Duplicate Will, where a testator executes

two copies of his will, one to keep himself, and the other to be deposited with another person. Upon application for probate of a duplicate will, both copies must be deposited in the registry of the Court of Probate.

Duplicatio, the Roman pleading answering to our rejoinder.

Duplicationem possibilitatis lex non patitur. 1 *R. R.* 321.—(The law does not allow a duplication of possibility.)

Duplicity. See DOUBLE PLEADING.

It is a general rule in equity, that a plea ought not to contain more defences than one, and that a double plea is informal and multifarious, and therefore improper. For if two matters of defence may be thus offered, the same reason will justify the making of any number of defences in the same way by which the ends intended by a plea will not be obtained, and the court will be compelled to give instant judgment upon a variety of defences, with all their circumstances, as alleged by the plea, before they are made out in proof; and, consequently, will decide upon a complicated case, which may not exist. It may then be laid down as a rule, that several facts can never be pleaded in one plea, unless they are all conducive to a single point, on which the defendant means to rest his defence; for, otherwise, it will be open to the charge of duplicity and multifariousness.

The reasoning as to duplicity in a plea does not, perhaps, in its full extent, apply with equal force to the case of two several bars, pleaded as several pleas, though to the same matter; and it may be said that such pleading is admitted at law, and ought, therefore, to be equally so in equity. But it should be considered that a plea is not the only mode of defence in equity; and that, therefore, there is not the same necessity, as at law, for admitting this kind of pleading. But, although the ordinary course of practice in courts of equity does not admit of several pleas, yet, where great inconvenience might otherwise be sustained in a particular case, the court will sometimes, in its discretion, allow several pleas.—*Story's Eq. Plead.* 498.

Durante, during; as *durante bene placito,* during pleasure; *durante minore ætate,* during minority; *durante viduitate,* during widowhood; *durante vitâ,* during life.

Durbar, a court, a hall of audience, a levee.—*Indian.*

Durden, a copse, a thicket in a valley.

Duress [fr. *duresse,* Fr.; *durities,* Lat., constraint], imprisonment, compulsion.

Duress is either by imprisonment or by threats. In order to constitute duress by imprisonment, either the imprisonment or the duress consequent upon it must be tortious and unlawful. Duress by threat has been thus divided:—Through fear (1) of loss of life; (2) of loss of member; (3) of mayhem; (4) of imprisonment.

By the common law, a contract made during duress is not void, but voidable; and the person upon whom it is practised may avail himself of the duress, as a special defence to an action thereupon at any time. But the person who has employed the force cannot allege it as a defence, if the contract be insisted upon by the other.

The rule in equity is, that where a person is not a free agent, and is not able to protect himself, the court will protect him. The maxim of the common law is—*Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum efficitur.*—(What otherwise is good and just, if sought by force or fraud, becomes bad and unjust.) On this account, courts of equity watch with extreme jealousy all contracts made by a person while under imprisonment; and if there is the slightest ground to suspect oppression or imposition in such cases, they will set the contract aside. Circumstances also of extreme necessity and distress of the party, although not accompanied by any direct restraint or duress, may, in like manner, so entirely overcome his free agency as to justify the court in setting aside a contract made by him on account of some oppression or fraudulent advantage, or imposition, attendant upon it.—*Story's Comm. Eq. Jurisp.,* vol. i., p. 201.

Duress by threat (*per minas*) is also an excuse for some crimes, though not all, for although a man be violently assaulted and has no other possible means of escaping death but by killing an innocent person, this fear or force shall not acquit him of murder; for he ought rather to die himself than escape by the murder of an innocent person. But in such a case he is permitted to kill the assailant; for there the law of nature and self-defence, its primary canon, have made him his own protector. It is to be observed, too, that the compulsion which takes away guilt must be the fear of no less than present death, or grievous bodily harm; for the mere apprehension of having houses burned, or goods destroyed or injured, is not sufficient.—*Steph. Com.,* vol. i., p. 145; ii., p. 63; iv., p. 117.

Durham, *County Palatine of.* This jurisdiction, which was vested, until a very recent period, in the Bishop of Durham for the time being, is now taken from him by 6 & 7 Wm. IV. c. 19, which is amended by 21 & 22 Vict. c. 45, and vested as a separate franchise and royalty in the Crown.

Dursley, blows without wounding or bloodshed; dry blows.—*Blount.*

Dustuck, a term used in Hindostan for a

passport, permit, or order, from the English East India Company. It generally meant a permit under their seal, exempting goods from the payment of duties.—*Encyc. Lond.*

Dusty-foot. See PIEPOUDRE.

Dutch Auction, the setting up of property for sale by auction above its value, and gradually lowering the price till some person takes it.

Duty [fr. *debere*, Lat.; *dovere*, Ital.; *deuvre*, O. Fr., of which last the participle at one time was probably *deuté*, corresponding to *dovuto*, Ital., duty, right, equity, and afterwards contracted to *deu* and mod. *du*, *due*.—*Wedgw.*], a tax, an impost, or imposition; also an obligation. See PENSION.

Dwined, dwindled; consumed.

Dying Declarations. See DEATH-BED DECLARATIONS.

Dyke-Reed, or **Dyke-Reve,** an officer who has the care and oversight of the *dykes* and *drains* in fenny countries.

Dynast, a ruler or government.

Dynasty [fr. *δυναστεία*, Gk., power], a race or succession of kings of the same line or family. Such were the dynasties of Egypt, China, &c.

Dysnomy [fr. *δύς*, Gk., and *νομός*, law], the act of making bad laws.

Dyvour (otherwise *Bare-man*), a Scotch term for a person involved in debt, and unable to pay his creditors; synonymous with the word *bankrupt*.

E.

Ea [Sax], the water or river; also the mouth of a river on the shore between high and low watermark.

Eadem causa diversis rationibus coram judicibus ecclesiasticis et secularibus ventilatur.—2 *Inst.* 622.—(The same cause is argued upon different principles before ecclesiastical and secular Judges.)

Eadem mens præsumitur regis quæ est juris et quæ esse debet, præsertim in dubiis.—*Hob.* 154.—(The mind of the sovereign is presumed to be coincident with that of the law, and with that which it ought to be, especially in ambiguous matters.)

Ea est accipienda interpretatio quæ vitio caret.—*Bacon.*—(That interpretation which is free from fault is to be received.)

Ea quæ in curiâ nostrâ ritè acta sunt debitæ executioni demandari debent.—*Co. Litt.* 289.—(Those things which are properly transacted in our court ought to be committed to a due execution.)

Ealder, or **Ealding,** an elder or chief. See ADELING.

Ealderman, or **Ealdorman,** the name of a Saxon magistrate; alderman, analogous to *earl* among the Danes; and *senator* among the Romans. See ALDERMAN.

Ealdor-biscop, an archbishop.

Ealdorburg [Sax.], the metropolis; the chief city. Obsolete.

Ealehus [fr. *eale*, Sax., ale, and *hus*, house], an alehouse.

Ealhorda [Sax.], the privilege of assizing and selling beer. Obsolete.

Earl [fr. *eorl*, Sax.; *eoryl*, Erse; *comes*, Lat.], a title of nobility, formerly the highest in England, now the third, ranking between a marquis and a viscount, and corresponding with the French Comte and the German Graf. The title originated with the Saxons, and is the most ancient of the English peerage. William the Conqueror first made this title hereditary, giving it in fee to his nobles; and allotting them for the support of their state the third penny out of the sheriff's court, issuing out of all pleas of the shire, whence they had their ancient title *shiremen*. At present the title is accompanied by no territory, private or judicial rights, but merely confers nobility and an hereditary seat in the House of Lords. In official instruments they are called by the sovereign, 'trusty and well-beloved cousins,' an appellation as ancient as the reign of Henry IV. For some time after the Norman conquest they were called *counts*, and their wives are still called *countesses*.—*Encyc. Lond.*; 1 *Bl. Com.* 398. *Earl* meant originally a man of noble birth as opposed to *Ceorl*.

Earl Marshal of England, a great officer of state who had anciently several courts under his jurisdiction, as the court of chilvary, and the court of honour. Under him is the herald's office, or college of arms. He was also a judge of the Marshalsea court now abolished. This office is of great antiquity, and has been for several ages hereditary in the family of the Howards.—3 *Bl. Com.* 68, 103; 3 *St. Com.* 459.

Earldom, the seigniory of an earl; the title and dignity of an earl.

Earles-penny, money given in part payment.

Earmark, a note for identification. Money has no earmark.

Earnest [fr. *eornest*, Sax.], the sum paid by the buyer of goods in order to bind the seller to the terms of the agreement. It is enacted by the 17th section of the Statute of Frauds, 29 Ch. ii. c. 3, that 'no contract for the sale of any goods, wares, and merchandizes, for the price of 10*l.* sterling, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of

the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised.'

As to what amount is sufficient earnest, Blackstone lays it down, that 'if any part of the price is paid down, if it be but a penny, or any portion of the goods is delivered by way of earnest, it is binding.' To constitute earnest the thing must be given as a token of ratification of the contract, and it should be expressly stated so by the giver.—3 *Chit. Com Law*, 289.

Ear-witness, one who attests or can attest anything as heard by himself.

Easement, a privilege without profit, which the owner of one neighbouring tenement hath of another, existing in respect of their several tenements by which the one (called the *servient*) tenement is obliged to suffer or not to do, something on his own land for the advantage of the owner of the other (called the *dominant*) tenement, e. g. a right of way, or right of passage of water. It is the *servitus* of the civil law. An easement is an incorporeal hereditament, which from its nature can only be created by grant: hence the origin of all easements may be referred to a grant by the owner of the servient tenement either expressed or implied. In the majority of cases the right is founded upon the implication of a grant, the terms of which can only be ascertained from the actual enjoyment of the easement. Such implication arises in two ways:—1. By the severance of one tenement into two parts; 2. By prescription. See *Gale on Easements by Willes.*

East India Company, a famous association, originally established for prosecuting the trade between England and India, which they acquired a right to carry on exclusively. Since the middle of the last century, however, the company's political affairs had become of more importance than their commerce.

But the act for the better government of India, 21 & 22 Vict. c. 106, after reciting that it is expedient that India should be governed by and in the name of Her Majesty, enacts that the government of the territories in the possession or under the government of the East India Company, and all powers in relation to government vested in or exercised by the said Company in trust for Her Majesty, shall cease to be vested in or exercised by the said Company; and all territories in the possession or under the government of the said Company, and all rights vested in, or which, if this act had not been passed, might have been exercised by the said Company in relation to any territories, shall become vested in Her Majesty, and be exercised in her name; and for the purposes of this act India shall mean the territories vested in Her Majesty as aforesaid, and all territories which may become vested in Her Majesty by virtue of any such rights as aforesaid (s. 1). India shall be governed by and in the name of Her Majesty, and all rights in relation to any territories which might have been exercised by the said Company if this act had not been passed, shall and may be exercised by and in the name of Her Majesty as rights incidental to the government of India; and all the territorial and other revenues of or arising in India, and all tributes and other payments in respect of any territories which would have been receivable by or in the name of the said Company if this act had not been passed, shall be received for or in the name of Her Majesty, and shall be applied and disposed of for the purposes of the government of India alone, subject to the provisions of this act (s. 2). See 22 & 23 *Vict.* c. 41, and 23 & 24 *Vict.* cc. 87, 88 and 130; 24 & 25 *Vict.* c. 67; and *Steph. Com.* vol. i., p. 112; iii. 260.

East Indies is a popular geographical term not very well defined, but generally understood to signify the continents and islands to the east and south of the river Indus, as far as the borders of China, including Timor and the Moluccas, but excluding the Philippine Islands, New Guinea, and New Holland. China and the Philippine Islands were, however, included within the limits of the East India Company's peculiar privileges.

Easter [fr. *Ostern*, Ger., supposed to be derived from the name of the Teutonic goddess *Ostera* (*oster*, to arise), celebrated by the ancient Saxons early in the spring], a feast of the church held in memory of our Saviour's resurrection. The Greeks and Latins call it *pascha*, passover, to which Jewish feast our Easter answers.

This feast has been annually celebrated since the time of the apostles, and is one of the most considerable festivals in the Christian calendar, being that which regulates and determines the times of all the other moveable feasts. The rule for the celebration of Easter, fixed by the council of Nice, in the year 325, is, that it be held on the Sunday which falls upon or next after the full moon which happens next after the 21st March, that is, the Sunday which falls upon or next after the first full moon after the vernal equinox, and as such it stands in the rubric of the Church of England. And if the full moon that comes next after the 21st of March fall upon a Sunday, Easter shall not be that Sunday, but the one after it. The reason of this decree was, that the Christians might avoid celebrating their Easter at the same time with the Jewish passover, which according to the institution of Moses was held the very day of the full moon.

An astronomical Easter is impossible, unless the festival be sometimes kept on one day on

the east of a variable meridian, and on another day on the west; the difference being a week. It might happen, for instance, that those on one side of the meridian of London would have to keep Easter a Sunday after those on the other side: nay, astronomical tables are exact enough to make it possible that a true astronomical Easter should be observed on one Sunday in St. Paul's, and on another in Westminster Abbey; and as astronomy advances, it is perfectly conceivable that the true astronomical Easter should be one Sunday or another in St. Paul's only, according as it is to be solemnised, at one end or other of the building.—*Encyc. Lon.; Wheat. Com. Pr.*

Easter-offerings or **Easter-dues**, small sums of money paid to the parochical clergy by the parishioners at Easter, as a compensation for personal tithes, or the tithe for personal labour.

Easter Term, formerly called a moveable term, but now it is fixed, beginning on the 15th of April, and ending on the 8th of May in every year. See 11 *Geo. IV.* and 1 *Wm. IV.* c. 70, s. 6; 1 *Wm. IV.* c. 3, s. 3. If the whole or any number of the days intervening between the Thursday before and the Wednesday next after Easter-day, fall within Easter Term, there are to be no sittings in banc on any of such intervening days; but the term is, in such case, to be prolonged, and continue for such number of days of business as shall be equal to the number of the intervening days before mentioned, exclusive of Easter-day; and the commencement of the ensuing Trinity Term is in such case to be postponed, and its continuance prolonged for an equal number of days of business. In case the day of the month on which any term is to end shall fall to be on a Sunday, then the Monday next after such day shall be deemed and taken to be the last day of the term; and in case any of the days between the Thursday before and the Wednesday next after Easter shall fall within Easter Term, then such days shall be deemed and taken to be a part of such term, although there shall be no sittings in banc on any of such intervening days. It is a non-issuable term, no assizes following it.

Easterling, a coin struck by Richard II., which is supposed to have given rise to the name of sterling, as applied to English money.

Eastinus, an easterly coast or country.

Eat inde sine die, words used on the acquittal of a defendant, *that he may go thence without a day*, i. e. be dismissed without any further continuance or adjournment.

Eaves-droppers, persons who listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. They are a common nuisance, and presentable at the courtleet, or are indictable at the sessions, and punishable by fine and finding sureties for good behaviour.—2 *Hawk. P. C.* c. x., s. 58.

Eberemorth, Eberemors, Ebere-murder. See ABEREMURDER.

Ecce modo mirum, quod fœmina fert breve regis, non nominando virum conjunctum robore legis.—Co. Litt. 132 *b.*—(Behold, indeed, a wonder! that a woman has the king's writ without naming her husband who by law is united to her).

Ecchymosis [fr. ἐκχύμωσις, Gk., extravasation of blood], an appearance of livid spots on the skin, occasioned by an extravasation of the blood from a vein between the flesh and skin. It is in fact an effusion or spreading of blood into the cellular tissue, produced by violent contusion; it is sometimes extended to a considerable distance beyond the seat of the injury. When the quantity of blood is sufficiently large to produce a tumor or swelling of any magnitude, it is called a *thrombus*. This subcutaneous hæmorrhage may be produced from strictly internal causes, as coughing, vomiting, efforts at stool, &c. There should be a careful discrimination between ecchymosis and *sugillation*, which is applied to those hard spots, of various sizes, which are noticed on the bodies of the dead, after they become rigid and cold, and which is to be ascribed to the effects of gravitation. The blood obeys physical laws, and hence, if a dead body be placed upon its back, it is found in the lowest parts, as the back, and the posterior portions of the lungs. So well is this established, that if a body be reversed and placed with its face downward, the lividity will change places and occupy the front part of the body. A discriminating mark between ecchymosis and sugillation is the following: when the discoloration is the effect of external violence, a congestion of thick *concrete* blood will be found, but in the spontaneous spot, the blood, on incision, will be found *fluid*.

Rieux proposes the question, whether contusions and their consequence, ecchymosis, can be produced on the dead body? The inquiry is important, not only from the possibility that injury may be inflicted on a corpse for the purpose of implicating an innocent person, but also from the rough treatment that bodies brought to the dissecting-room often receive. Upon this subject Dr. Christison makes the following remarks:—'For some hours after death, blows will cause appearances which, in point of colour, do not differ from the effects of blows inflicted recently before death. The discoloration, like lividity or sugillation, generally arises from an effusion of the thinnest possible layer of the fluid part of the blood on the outer surface of the true skin, but sometimes also from an effusion of thin blood into a perceptible stratum of the true skin itself. Dark fluid blood might even be effused into the

subcutaneous cellular tissue in the seat of the discoloration, so as to blacken or redden the membranous partitions of the adipose cells, but this last effusion is seldom extensive.'—Quoted by *Beck. Med. Jurisp.* 534.

Ecclesia, a church, an assembly, a parsonage.

Ecclesia ecclesiæ decimas solvere non debet.—*Cro. El.* 479 —(A church ought not to pay tithes to a church.)

Ecclesia est domus mansionalis Omnipotentis Dei.—2 *Inst.* 164.—(The church is the mansion-house of the Omnipotent God.)

Ecclesia est infra ætatem et in custodiâ domini regis, qui tenetur jura et hæreditates ejusdem manutenere et defendere.—11 *Co.* 49.—(The church is within age, and in the custody of the king, who is bound to uphold and defend its rights and inheritances.)

Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deteriorem nequaquam.—*Co. Litt.* 341.—(The church enjoys the privilege of a minor; it can make its own condition better, but not worse.)

Ecclesia non moritur.—2 *Inst.* 3.—(The church does not die.)

Ecclesiæ magis favendum est quam parsonæ.—*God. Rep. Can.* 172.—(The church is to be more favoured than the parson.)

Ecclesiarch [fr. ἐκκλησία, Gk., church, and ἀρχός, a chief], the ruler of a church.

Ecclesiastic, or **Ecclesiastical**, something belonging to or set apart for the church, as distinguished from *civil* or *secular*, with regard to the world.

Ecclesiastical Authorities, principally the clergy under the sovereign, as temporal head of the church, set apart from the rest of the people or laiety, in order to superintend the public worship of Almighty God and the other ceremonies of religion, and to administer spiritual counsel and instruction.

The several orders of the clergy are—I. Archbishops and bishops. II. Deans and chapters. III. Archdeacons. IV. Rural Deans. V. Parsons (under whom are included appropriators) and vicars. VI. Curates. Churchwardens or sidesmen, and parish clerks and sextons, inasmuch as their duties are connected with the church, may be considered to be a species of Ecclesiastical Authorities.

Ecclesiastical Benefice. See Advowson, Benefice.*

Ecclesiastical Commissioners for England, a body corporate, erected by 6 & 7 Wm. IV. c. 77, empowered to suggest measures conducive to the sufficiency of the established church, to be ratified by orders in council. Church Estates' Commissioners are appointed *ex officio* members of this corporation. See a list of the statutes under Church Building Commissioners' Acts, and 23 & 24 Vict. c. 124.

Ecclesiastical Corporations, corporations created for the furtherance of religion, and for the perpetuation of the rights of the church, the members of which are exclusively spiritual persons. They are of two kinds: corporations sole, viz. bishops, certain deans, parsons and vicars; and corporations aggregate: viz. deans and chapters, and formerly prior and convent, abbot and monks, and the like.

The ordinary is their visitor, by the common law. The pope formerly, and now the Crown as supreme ordinary, is the visitor of the archbishop or metropolitan; the metropolitan has the charge and coercion of all his suffragan bishops, and the bishops in their several dioceses are, in ecclesiastical matters, the visitors of all deans and chapters, of all parsons and vicars, and of all other spiritual corporations.—1 *Bl. Com.* 470.

Ecclesiastical Courts [*curiæ Christianitatis*, Lat.] are the archdeacon's court, the consistory courts, the court of arches, the court of peculiars, the prerogative courts of the two archbishops, the faculty court, and the privy council, which is the appeal court.

Ecclesiastical Division of England is into provinces, dioceses, archdeaconries, rural deaneries, and parishes.

Ecclesiastical Law, the law administered in the ecclesiastical courts; it is derived from the civil and canon law.

Ecdicus [fr. ἔκδικος, Gk., from ἐκ and δίκη, justice], an attorney or proctor of a corporation; a recorder.—*Civ. Law.*

E converso (*on the contrary; on the other hand*).

Edderbreche [Sax.], the offence of hedge-breaking. Obsolete.

Edestia [fr. *ædes*, Lat.], buildings.—*Old Records.*

Edia, ease; aid or help.

Edict [fr. *edictum*, Lat.], a proclamation, command, or prohibition; a law promulgated.

Edictal citation, a summons against a foreigner not within Scotland, but who has a landed estate there, or against a native who is out of Scotland. The citation is published at the market-cross of Edinburgh and pier and shore of Leith, and is authorised partly by necessity, partly by the idea that whoever is possessed of property there, will have left a warrant with some one to attend to his interest in that court where alone any question in relation to it can be tried.—*Scotch Law.*

Edictum Theodorici. This is the first collection of law that was made after the downfall of the Roman power in Italy. It was promulgated by Theodoric, king of the Ostrogoths, at Rome, in the year A.D. 500. It consists of 154 chapters, in which we recognise parts taken from the Code and Novellæ of Theodosius, from the Codices Gregorianus and Hermogenianus,

and the Sententiæ of Paulus. The edict was doubtless drawn up by Roman writers, but the original sources are more disfigured and altered than in any other compilation. This collection of law was intended to apply both to the Goths and the Romans, so far as its provisions went; but when it made no alteration in the Gothic law, that law was still to be in force.—*Savigny, Geschichte des R. R.* &c.

Education. See 7 & 8 Vict. c. 37; 18 & 19 Vict. c. 131; and 19 & 20 Vict. c. 116. Under the Poor Law, see 7 & 8 Vict. c. 101, s. 40 (amended by 11 & 12 Vict. c. 82, and 13 & 14 Vict. cc. 11 & 101), and 18 Vict. c. 34. As to the education of pauper children, see 25 & 26 Vict. c. 43.

Eel-fares, a fry or brood of eels.—25 *Hen. VIII.*

Effects, property, goods, and chattels.

Effectual adjudication, a legal security for a debt on the creditor's estate in Scotland.—33 *Geo. III.* c. 74, s. 11.

Effectus sequitur causam.—*Wing.* 226.—(The effect follows the cause.)

Effeerers. See AFFEERORS.

Effendi, master; a title of respect.—*Turkish word.*

Efforcialiter, forcibly; applied to military force.

Effractor [fr. *ex*, out of, and *frango*, Lat., to break], one that breaks through; a burglar.

Effusio sanguinis, the mulct, fine, or penalty imposed by the old English laws for the shedding of blood, which the king granted to many lords of manors.—*Cartular MSS.*

Efters [Sax.], ways, walks, or hedges.—*Blount.*

E. G. [*exempli gratiâ*], for the sake of an instance or example.

Egistment. See AGISTMENT.

Eia, or **Ey,** an island.

Ei incumbit probatio, qui dicit, non qui negat: cum per rerum naturam factum negantis probatio nulla sit.—(The proof lies upon him who affirms, not upon him who denies: since, by the nature of things, he who denies a fact cannot produce any proof.)

Ei nihil turpe, cui nihil satis.—4 *Inst.* 53. (To whom nothing is sufficient, to him nothing is base.)

Ejecta, a woman ravished or deflowered, or cast forth from the virtuous.

Ejectione custodiæ [*ejectment de garde*, Fr.], a writ that lay against him who had cast out the guardian from any land during the minority of the heir.—*Reg. Orig.* 162. There were two other writs not unlike this; the one termed *ravishment de gard*, and the other *droit de gard.*

Ejectione firmæ (*ejection of a farm*).

Ejectment, the only mixed action at common law, and the creature of Westminster Hall, the whole method of proceeding in which was anomalous, and depended on fictions invented and upheld by the courts for the convenience of justice, in order to escape from the inconveniences which were found to attend the ancient forms of real and mixed actions.

This possessory action is mixed, because it seeks to recover the possession of land (which is real), and damages and costs for the wrongful withholding of the land (which are personal). The title to lands and tenements is tried by this action, whether the title be to an estate in fee, fee-tail, for life, or for years. It is a more comprehensive mode of trying title than by an action of trespass, for in trespass damages alone are recovered, while in ejectment, besides damages, the possession of the land itself can be acquired, as well as the title ascertained, and thus it is better adapted to the ends of substantial justice. And although the damages in ejectment are merely nominal, except in the case of landlord and tenant, under 1 Geo. IV. c. 87, yet actual damages for the injury sustained by the rightful party, in having been kept out of possession of the land by the wrongful party, from the accrual of his title to the recovery of possession, can be obtained by an action of trespass for mesne profits.

Until abolished by the C. L. P. A. 1852, s. 168, this action exhibited the most remarkable string of fictions then recognised by the courts of common law. The original mode of proceeding was this:—The party having the right of entry upon the land entered upon it, and being then in possession, he there upon the land sealed and delivered a lease for years to some third person, who, having entered thereunder, remained in possession until the prior tenant, or he who had the previous possession, entered and ousted him, or until some other person, called the casual ejector, either by accident or previous arrangement, came upon the land and ejected him, whereupon the lessee brought his action against the casual ejector, or the prior tenant. If the action were brought against the casual ejector, and not against the tenant in possession, the courts of law, not suffering the tenant to lose his possession without an opportunity of defending it, promulgated a rule that no plaintiff should proceed in ejectment to recover lands against a casual ejector, without giving notice to the tenant in possession, if there were any, and making him a defendant if he pleased. But during the Protectorate, Lord Chief Justice Rolle, who then presided in the Upper Bench, introduced the fictitious mode of proceeding which formed the practice now abolished. Since much trouble and formality attended the actual making of the lease, entry, and ouster, as above described, no lease was sealed (except in the case of vacant possession), no entry and ouster actually made

(unless to avoid a fine, which, though abolished by 3 & 4 Wm. IV. c. 74, yet an entry must still be made to avoid a fine, commenced before the passing of this act), the plaintiff and defendant were fictitious persons, and all the preliminaries were purely ideal, for the sole purpose of trying the title. The action was commenced by the party claiming title delivering to the party in possession a declaration, in which the plaintiff (John Doe) and the defendant (Richard Roe) were fictitious persons. The declaration stated that a lease of the premises in question for a term of years had been made by the party claiming the title (who was the real plaintiff) to John Doe, who entered upon the land by virtue of such demise, and that afterwards Richard Roe, the casual ejector, entered and ousted John Doe, during the continuance of his term. Appended to this declaration was a notice, signed by Richard Roe, addressed to the tenant in possession (who was the actual defendant) informing him of the action brought by the lessee, and that Richard Roe had no title to the premises, and advising him to appear at a certain time and defend his title, otherwise he, Richard Roe, would suffer judgment by default, by which the actual tenant would be turned out of possession by the sheriff.

The plaintiff, in order to maintain his action at the trial, must have made out these four points: viz. *title*, *lease*, *entry*, and *ouster*. The real defendant, therefore, was admitted to defend upon condition of his entering into a consent rule to confess, at the trial of the cause, the lease of the lessor, the entry of the plaintiff John Doe, and the ouster by Richard Roe. These requisites being fictitious, could not have been proved, and if not confessed a nonsuit would have been the consequence, but by the actual defendant's confession of them, he agreed not to avail himself of the want of such proof, but to rest his defence entirely upon the merits of his title. And to prevent his breaking his engagement, a condition was added, that in such case he should pay the costs of the suit, and should allow judgment to be entered against the casual ejector (Richard Roe).

The title of the action, after the tenant's appearance, stood thus: — Doe (the fictitious lessee), on the demise of ——— (the lessor or person really claiming the title), against ——— (the real defendant, the casual ejector, Richard Roe, having withdrawn).

The plaintiff must have the legal title, for it is a strict rule that the legal title must prevail even over an equitable one. It is a maxim that the plaintiff must recover on the strength of his own title, and not on the weakness of that of his adversary; for his possession gives him a right against every one who cannot establish a good title, and it is sufficient for him if he can show the real title of the land to be out of the plaintiff. It suffices, however, to prove undisturbed possession of an estate by the claimant or his ancestor for twenty years, from which the highest title is to be presumed, until the contrary be proved. The rule that the plaintiff in ejectment must recover on the strength of his own title, is qualified in its application to the case of landlord and tenant, for a tenant who has come in under the plaintiff will not be allowed to controvert his title, although he might show that it had subsequently expired.—*Adams's Eject.* c. iv.

Besides the legal title, the plaintiff must have a right of entry upon the lands. By the 39th sect of 3 & 4 Wm. IV. c. 27, no descent-cast, discontinuance or warrantry, happening after 31st December, 1833, shall defeat a right of entry or action for the recovery of land. All titles are therefore converted into possessory titles, thus making this action of universal application. The 2nd and 3rd sections of the same act do away with the doctrine of non-adverse possession, and a very numerous class of cases connected therewith. The same statute limits the length of time necessary to take away a right of entry, and to bring ejectment, the 2nd section enacting that, after the 31st December, 1833, no person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right, &c., shall have first accrued to the person making or bringing the same. In the construction of this act, this right shall be deemed to have first accrued at the time set forth in the 3rd section, i. e. when the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, and shall, while entitled thereto, have been dispossessed or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was to be received.

And when the person claiming such land or rent shall claim it of some deceased person who shall have continued in such possession or receipt in respect of the same until his death, and shall have been the last person entitled thereto who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at his death.

And when the person claiming, &c., shall claim in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument.

And when the interest claimed shall have been in reversion or remainder or other future estate or interest, and no person shall have obtained the possession or receipt of the profits or rents, then such right shall be deemed to have first accrued at the time at which such interest came into possession.

And when the person claiming, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition was broken.

The 10th, 11th, 12th, 13th, and 14th sections annul the effect of mere entry, continual claim, *possessio fratris*, and other modes of constructive possession, and require a written acknowledgment (not upon a stamp) from the party in possession or in receipt of the profits of the land, to the person entitled, or his agent, as the only equivalent to actual possession, so as to preserve the right of entry, and prevent the statute from running in cases where some other than the person really admitted is in possession or receipt of the profits of the land.

The 15th section reserves a right for five years after the passing of the act, in all cases where the possession was not adverse at the time of its passing.

To persons who are under the disabilities of infancy, coverture, idiocy, lunacy, unsoundness of mind, or absence beyond seas when the right of entry accrues, a right of action is allowed for ten years after the disability ceases, or the person under disability dies, which shall first happen; provided that in such cases the action is brought within forty years after the right of entry accrues, though the disability may have continued the whole of that time. And no further time is to be allowed in case of a succession of disabilities. Provided that lands and rents may be recovered by spiritual and eleemosynary corporations sole, within two incumbencies, and sixty years, or (in case that period should not amount to sixty years) within sixty years.

The 7 Wm. IV. & 1 Vict. c. 28, after reciting that doubts of the effect of the above act had been entertained as to mortgages, declares and enacts that it shall be lawful for any person entitled under any mortgage of land, being land within the definition contained in the 1st section of the said act, to make an entry or bring an action or suit to recover such land within twenty years next after the last payment of any part of the principal money or interest, although more than twenty years may have elapsed since the time at which the right to make such entry, &c., shall have first accrued.

An action of ejectment may be brought by the following persons, provided they have both the legal title, and the right of entry or possession:—

An alien, born out of the allegiance of Great Britain, whose father or grandfather on the father's side, was a natural-born subject (7 Anne, c. 5; 4 Geo. II. c. 21; and 13 Geo. III. c. 21).

Assignees of a bankrupt's estate; all the bankrupt's real and personal property, which he may be possessed of at the time of his bankruptcy, or which he may acquire before obtaining his certificate, vesting in the assignees by virtue of their appointment; except his copyhold or customary tenements, which are disposed of by the court, the vendees compounding for the customary fines (24 & 25 Vict. c. 134, s. 117, and 12 & 13 Vict. c. 106, s. 210), and also the bankrupt's estates-tail (3 & 4 Wm. IV. c. 74, ss. 56–73).

Assignees of an insolvent's estate (1 & 2 Vict. c. 110, s. 51).

Attainted felon before office found; Bargainee under a bankruptcy (1 *Wils.* 276); churchwardens and overseers of the poor for lands belonging to the parish (59 Geo. III. c. 12, s. 17).

Committee of a lunatic (1 Wm. IV. c. 65).

Conusee of a statute-merchant or staple (*Co. Litt.* 42 *a*).

A copyholder or his heir (*Doe* d. *Tressider* v. *Tressider*, 1 *Gale & D.* 70); lessees of copyholders (*Cro. Eliz.* 536); and widows entitled to freebench (*Ambl.* 299).

Corporations, either aggregate or sole (*Doe* d. *The London Dock Company* v. *Knebell*, 2 *Mood & R.* 66).

Devisees and legatees. They may maintain ejectment for a chattel real, either against the executor, or a stranger, but the executor's assent to the bequest must be shown (6 *Barn. & Cres.* 112; *Young* v. *Holmes*, 1 *Stra.* 70).

Grantee of rent-charge, with power to enter and retain until satisfaction (1 *Saun.* 112). Also grantees of lords of manors (*Doe* d. *Cosh* v. *Loveless*, 2 *Barn. & Ald.* 453).

Guardians in socage—also called guardians by the common law. It only arises when the infant is entitled to some estate in lands, and

then the guardianship devolves upon his next of kin to whom the inheritance cannot possibly descend, as where the estate descended from his father, in this case his uncle by the mother's side cannot inherit, and therefore shall be guardian (*Litt.* 123; 2 *Roll. Abr.* 41); and testamentary guardians (12 Car. II. c. 24, s. 8), but not a guardian for nurture, for he has nothing to do with the land as such.

Infants, upon giving security for costs (2 *T. R.* 159.)

Lay Impropriators for tithes.

Lords of manors (*Adams's Eject.* 44).

Mortgagee. Where the premises have been let for years, and afterwards mortgaged, the tenant cannot be ejected by the mortgagee, and it is doubtful whether he could recover, even if he had given notice to the tenant, that it was not intended to disturb his possession, but only to require the rent to be paid to him, and not to the mortgagor. But where the lease has been made subsequently to the mortgage, without the mortgagee's privity, he may recover against the tenant, without giving such notice, because the mortgagor has no power to lease, not subject to every circumstance of the mortgage; and therefore such a tenant is a trespasser, and may be ejected by the mortgagee without notice to quit (8 *T. R.* 2; 1 *Dougl.* 21). The mortgagee may immediately proceed to eject the mortgagor, after default, without notice of demand of possession, unless the mortgage-deed operate as a redemise of the premises to the mortgagor until default —*Adams's Eject.* 42.

Personal representatives (29 Car. II. c. 3, s. 12; 1 Vict. c. 16, s. 6).

Persons having adverse and uninterrupted possession for twenty years (3 & 4 Wm. IV. c. 27, ss. 16, 17); and persons claiming under an award (13 *East*, 15).

Rectors or vicars for tithes against persons claiming title thereto, but not for refusing to set them out, nor where there is a composition, nor after sequestration (*Dyer*, 116 *b*; 3 *Campb.* 447).

Reversioners and assignees of the reversion upon a right of re-entry for condition broken (32 Hen. VIII. c. 34).

Tenants, whether for life, for years, in tail, or in fee, and whether joint, in common, or coparcenary (3 & 4 Wm. IV. c. 17, s. 12); and also by *elegit* and *fi. fa.* (*Bull. N. P.* 104).

Trustees of real estates (*Adam's Eject.* 60).

This action is maintainable for anything, whether corporeal or incorporeal, upon which an entry can be made, or the sheriff can give possession; and if it be brought to recover water (as ponds or streams), it must be described as so many acres of land covered with water.—*Run. Eject.* 126; *Ad. Eject.* c. ii.

A notice by a landlord to his tenant to quit is only necessary where the time of quitting is not agreed upon between the parties; for, where a lease is determinable on a certain event or at a fixed time, it is not necessary to give such notice, both parties being apprised of the determination of the term (1 *T. R.* 54, 162). A notice is not necessary, where the possession is adverse, or where the relation of landlord and tenant does not subsist; as if the tenant had attorned to another person, or done some act disclaiming the landlord's title. But if the acts done by the tenant do not amount to a disavowal of the landlord's title, he has a right to have notice (*Bull. N. P.* 96). A notice to quit is generally necessary in order to determine a tenancy from year to year; and a tenancy at will, in consequence of its inconveniences, is construed by the courts as a tenancy from year to year, if they can find any foundation for so construing it (4 *Taunt.* 128). This notice must end with the year of the tenancy, and must be given at least half a year (182 days) previously; but if the rent be payable on the usual quarterly feast-days, a notice to quit on the next but one is sufficient. When the landlord intends to enforce his claim for double value, if the tenant hold over, it is necessary that the notice to quit be in writing (4 Geo. II. c. 28, s. 1); but for the purpose of an ejectment, a parol notice is sufficient, unless the notice is required to be in writing by express agreement between the parties (5 *Esp.* 196). But it is the general practice to give written notices, and it is a precaution which should always, when possible, be observed, as it prevents mistake, and renders the evidence certain and correct.

Payment of rent as for a year's rent up to a particular day is *primâ facie* evidence of the commencement of the tenancy at that day (5 *Esp.* p. 173). The notice should be served personally upon the tenant in possession; but if personal service cannot be effected, it will be sufficient to leave it with the wife or servant, at the tenant's usual place of residence, explaining its nature and contents (4 *T. R.* 464).

If a landlord receive rent, accrued due, after the expiration of a notice to quit, it is a waiver of the notice, provided the rent be received *qua* rent, and this is a question for a jury (6 *T. R.* 219; 9 *East.* 314 n). So if he distrain for such rent (1 *H. B.* 311).—*Ad. Eject.* 73–117.

As to the practical proceedings, they may be thus epitomised:—

1st. In ordinary cases, where there is a tenant in possession, the action is commenced by a writ of ejectment, which is in force for three months. In it the property sought to be recovered must be described with reasonable certainty. The defendant has sixteen days to appear. A person not named in the writ may obtain an order to appear, upon an affidavit showing that he is in possession of the land either by himself or his tenant. A defendant

may defend for a part only of the property, on giving four days' notice of it after appearance. There are not any pleadings, but an issue is made up and tried before a jury. A special case may be stated for the opinion of the court, by consent and by leave of a judge. The trial of the issue may be ordered to take place in any county. The jury may find a special verdict, or either party may tender a bill of exceptions. Judgment, either for the claimant or defendant, may be signed and execution issued (which is either a *fi. fa.*, *elegit*, or *habere facias loquelam*) on the fifth day in term after the verdict, or within fourteen days after the verdict, whichever shall first happen, unless otherwise ordered. The death of a party shall not abate the action, but there are given modes of procedure under special circumstances. A defendant may confess the action, and a claimant may discontinue. Error may be brought upon the judgment, the defendant giving bail.

If a tenant do not forthwith give notice to his landlord of an ejectment having been brought against him, he forfeits three years' rack rent of the premises, recoverable by action (15 & 16 Vict. c. 76, ss. 168–221; *Gen. R.* 112–114). A plaintiff in a second ejectment for the same premises against the same defendant, may be ordered to give security for costs after the appearance (17 & 18 Vict. c. 125, s. 93).

2nd. As to proceedings in ejectment upon a vacant possession, see the C. L. P. A. 1852 (15 & 16 Vict. c. 76), s. 170.

The person who has the right of entry may, if the premises be unoccupied and vacant, peaceably and without force, enter and take possession of them, without bringing an ejectment; though it is better to proceed by ejectment, more especially where he claims adversely to the person last in possession. What is a vacant possession? It is a nice question. A distinction must here be made between actual abandonment of possession and discontinuance to occupy, still retaining the virtual possession. Locking up the premises and quitting is an instance of actual abandonment; leaving anything, such as hay in a barn, will be an instance of discontinuance of possession. In the former case the landlord must proceed in the ejectment as upon a vacant possession; in the latter in the ordinary way.

The 11 Geo. II. c. 19, s. 16, and 57 Geo. III. c. 52, give power to two justices of the peace, when premises are deserted by a tenant, and no sufficient distress is to be found upon them to answer the arrears of rent, to give possession of them to the landlord.

3rd. Proceedings in ejectment by landlord, for forfeiture by non-payment of rent:—

And, first, where there is a sufficient distress upon the premises, the proceeding must be at Common Law; but before the ejectment is brought (the proceedings of which have been previously described, according as the tenant is in possession, or the possession is vacant), a demand of the rent must be made, unless there is an express agreement dispensing with such demand. And inasmuch as the Common Law does not favour forfeitures, great strictness is required in this respect. The landlord, or another person under a formal power, must go in person, upon some notorious place on the land, as before the front door of the dwelling-house (unless the lease specify a place for payment of rent, and then, upon the place pointed out), on the last day on which the rent can be paid, to save a forfeiture, at sunset, and demand the precise sum due, although, in fact, nobody is present upon the part of the tenant to answer; if the rent be not then paid, the landlord is entitled to bring his ejectment. This proceeding is seldom practised, both on account of the nicety of the demand, and because the tenant, by filing a bill in equity, may obtain an injunction staying proceedings, upon paying the arrears of rent.

Secondly, where there is *not* a sufficient distress upon the premises, the ejectment is then regulated by the C. L. P. A. 1852, ss. 210–212, which enacts, that where a half-year's rent shall be in arrear, and a right of re-entry has been reserved by the express terms of the lease, and no sufficient distress can be found on the premises to countervail the arrears of rent, the landlord or lessor may, without any demand or re-entry, serve a writ in ejectment; but the tenant, by paying the rent and costs, can obtain relief at law or in equity. The proceedings are the same as in ordinary cases, *mutatis mutandis*.

4th. The proceedings in ejectment upon the determination of a tenancy are regulated by the C. L. P. A. 1852, ss. 213–215.

5th. Possession can be obtained by summary proceedings before two justices, under 1 & 2 Vict. c. 74, where the term exceeds not seven years, and the rent is not more than 20*l.*, no fine being reserved; and in a county court where neither the value of the premises nor the rent payable in respect thereof exceeds 50*l.* a year, and where no fine or premium shall have been paid.—19 & 20 *Vict.* c. 8, s. 50.

6th. As to proceedings in ejectment by a landlord whose right of entry accrues after Hilary or Trinity Terms, see the C. L. P. A. 1852, ss. 217, 218.

7th. As to ejectment by mortgagee, see the C. L. P. A. 1852, ss. 219, 220.

The resulting action of trespass for mesne profits, i. e. the amount of the yearly value of the premises, may be brought as soon as actual possession is obtained (*except* in the case of landlord and tenant, under 1 Geo. IV. c. 87, when these *actual* damages are given, as already shown). It should be brought in the name of the plaintiff who has recovered in the

ejectment, against the person who had judgment against him in the ejectment, or against the executors or administrators, for the profits received within six calendar months before the death of the testator or intestate; the action must then be brought within six months after they have taken upon themselves the administration of the estate.

The Statute of Limitations, as to all the profits, excepting those which may have accrued within the last six years, will be a defence. The damages may be beyond the mere rent or annual value of the premises, as compensation for the plaintiff's trouble, &c.; but ground-rent paid by the defendant will be deducted by the jury from the damages; and if less than 40*s.* damages be recovered, unless the judge certify, the plaintiff shall have no more costs than damages. If the action is brought pending error, execution will be stayed until the error is determined. In other respects the action is the same as in ordinary proceedings.—2 *Selw. Nisi Prius*, tit. 'Ejectment;' *Adams on Ejectment*; 2 *Chit. Arch. Prac.* by *Pren.* 1005; *Woodf. Land. and Tenant*, b. 3, c. vi.; *Runn. Hist. Princ. and Prac. of Ejectment.*

Ejectum, jet, jetsom, wreck, &c.

Ejectus, a whoremonger.—*Blount.*

Eigné [fr. *aîné*, Fr.], eldest, or first-born. See BASTARD EIGNÉ.

Eik *to a reversion*, an additional loan to a mortgagor, who is the reversioner of the mortgaged estate; also *to a testament*, an addition to an inventory made up by an executor.—*Scotch term.*

Einecia, eldership. See ESNECY.

Eire, or **Eyre** [fr. *iter*, Lat.], the court of justices itinerant, and justices in eyre. They were, anciently, sent with a general commission into divers counties to hear such causes as are termed pleas of the Crown; and this was done for the ease of the people, who must else have been brought to the Queen's Bench, if the cause were too high for the county court: it is said they were sent but once in seven years. The *eyre of the forest* is the justice-seat, which, by an ancient custom, was held every three years by the justices of the forest journeying up and down for that purpose.—*Bract.* l. 3, c. xi.

Ejuration, renouncing or resigning one's place.—*Encyc. Lond.*

Ejus est periculum cujus est dominium aut commodum.—(He who has the dominion or advantage has to risk.)

Ejusdem generis (*of the same kind or nature*).

Electio est interna, libera, et spontanea separatio unius rei ab aliâ, sine compulsione, consistens in animo et voluntate.—Dyer, 281.—(Election is an internal, free, and spontaneous separation of one thing from another, without compulsion, consisting in intention and will.)

Electio semel facta, et placitum testatum, non patitur regressum.—Co. Litt. 146.—(Election once made, and plea witnessed, suffers not a recall.)

Election, the act of selecting one or more from a greater number for an office; also the exercise of his choice by a man left to his own free will to take or to do one thing or another.

The doctrine of election, strictly so called, is derived from the civil law, and is the obligation imposed upon a person to choose between two inconsistent or alternative rights or claims, in cases where there is a clear intention of the person from whom he derives one, that he should not enjoy both. Every case of election, therefore, presupposes a plurality of gifts or rights, with an intention, expressed or implied, of the person who has a right to control one or both, that one should be a substitute for the other. The person who is to take has a choice, but he cannot enjoy the benefits of both. It has been said that the doctrine constitutes a rule of law, as well as of equity; and that the reason why courts of equity are more frequently called upon to consider the subject, is, that in consequence of the forms of proceeding at law, the person cannot be put to elect.—2 *Story's Equity Jurisp.* c. xxx.

As to a defendant in equity compelling a plaintiff to elect between two proceedings, it is ordered by the Consol. Ord. 1860, xlii. 5 & 6, that 'A defendant whose answer is not excepted to or set down for hearing on former exceptions, alleging that the plaintiff is prosecuting him in this court and also at law for the same matter, may, upon the expiration of eight days after his answer or further answer is filed, obtain, as of course, on motion or petition, the usual order for the plaintiff to make his election in which court he will proceed. And that a defendant whose answer is excepted to, alleging that the plaintiff is prosecuting him in this court and also at law for the same matter, may by notice in writing require the plaintiff to set down the exceptions within four days from the service of the notice. And if the plaintiff does not do so, such defendant is entitled as of course, on motion or petition, to obtain the usual order for the plaintiff to make his election in which court he will proceed.'

But though it is a general rule that when a party is suing in equity he shall not be allowed to sue at law for the same thing, yet the case of a mortgagee forms an exception, he having a right to proceed in equity and at law at the same time, nor will the court stay the proceedings at law, unless the defendant bring in the money.—*Rees* v. *Parkinson*, 2 *Anst.* 497.

As to the election of members of Parliament, see *Rogers on Elections.* The manner of proceeding on election petitions is regulated by 11 & 12 Vict. c. 98, and 17 & 18 Vict. c. 102, s. 36; and see as to Ireland 25 & 26 *Vict.* c. 92.

Election-Auditors, officers annually appointed, to whom is committed the duty of taking and publishing the account of all expenses incurred at parliamentary elections. See 17 & 18 *Vict.* c. 102, ss. 18, 26-28.

Electiones fiant ritè et liberè sine interruptione aliquâ.—2 *Inst.* 169.—(Let elections be made rightly and freely, without any interruption.)

Elector, he that has a vote in the choice of any officer; a constituent; also the title of certain German princes who formerly had a voice in the election of the Emperor of Germany.

Electric Telegraphs, establishment of. See 7 & 8 *Vict.* c. 85, ss. 13, 14.

Elects, officers of the College of Physicians.

Eleemosyna, alms.

Eleemosyna Regis, and **Eleemosyna Aratri,** or **Carucarum,** a penny which King Ethelred ordered to be paid for every plough in England towards the support of the poor.—*Leg. Ethel.* c. i.

Eleemosynæ, possessions belonging to the church.—*Blount.*

Eleemosynaria, the place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor.

Eleemosynarius, the almoner or peculiar officer who received the rents and gifts, and in due method distributed them to pious and charitable uses.

Eleemosynary Corporations, artificial bodies, constituted for the perpetual distribution of the free alms or bounty of the founder of them. Of this kind are all hospitals for the maintenance of the poor, sick, and impotent, and all colleges both in our universities and out of them, which are founded for the promotion of piety and learning by proper regulations and ordinances, and for imparting assistance to the members of those bodies, in order to enable them to prosecute their devotions and studies with greater care and assiduity. These eleemosynary corporations, though in some things partaking of the nature of ecclesiastical bodies, are, strictly speaking, lay, and not ecclesiastical, even though composed of ecclesiastical persons: and, accordingly they are not subject to the jurisdiction of the ecclesiastical courts, or to the visitations of the ordinary or diocesan in their spiritual characters.—3 *Step. Com.* 132, 148 & 149.

Elegit (*he has chosen*), a judicial writ of execution founded on the Statute of Westminster II. (13 Edw. I. c. 18) issuing out of the court where the record or other proceeding is upon which it is grounded, and addressed to the sheriff, who, by virtue of it, gives to the judgment-creditor the lands and tenements of the judgment-debtor, to be occupied and enjoyed until the money due on such judgment is fully paid; during the time he so holds them he is called tenant by *elegit*, whose interest is denominated an estate of freehold, defeasible upon a condition subsequent. His interest, however, is really a chattel, and passes to the executor.

The writ of *elegit* now extends to all the debtor's lands, instead of a moiety as before; and also the debtor's customary and copyhold lands, subject to the rights of the lord of the manor; and also lands over which the debtor has any disposing power, which he may, without the assent of any other person, exercise for his own benefit; and also trust estates, estates in reversion, or leases for lives or years, rent-charges, lands in ancient demesne, the wife's lands which the husband has during coverture, lands of a bishop, and terms for years. But the following property cannot be extended: an advowson in gross, because it cannot be valued at any certain rent towards payment of the debt; the glebe belonging to an ecclesiastical benefice; or the churchyard, because these are each *solum Deo consecratum*; a rent-seck, for it cannot be delivered *ut liberum tenementum*; and any tenement that cannot be granted over; also an estate vested in a purchaser or mortgagee.—18 & 19 *Vict.* c. 15, s. 11.

If judgment be obtained against two, and one of them die before execution, the judgment survives as to the personalty, but not as to the realty; that is, the judgment binds the goods of the survivor only, but it binds the lands both of the survivor and the deceased.

Upon the receipt of the *elegit*, the sheriff must impannel a jury, who are to inquire of all the goods and chattels of the debtor, and appraise the same, and also to inquire as to his lands and tenements, and their value; upon such inquisition had, the sheriff is to deliver to the execution-creditor all the goods and chattels of the debtor (except his oxen and beasts of the plough) at the value set upon them by the jury; and if the goods be sufficient to satisfy the debt, the lands cannot be extended. If, however, the goods be insufficient, the sheriff is to proceed to make and deliver execution to the execution-creditor of all the lands, &c., of the debtor, and must return the writ, in order that the inquisition may be recorded in the court out of which the *elegit* issued. The 5 & 6 Vict. c. 98, abolished poundage on this writ.

If no land be extended upon an *elegit*, the plaintiff may, of course, have an *elegit* into another county; or even if lands be extended upon the first *elegit* the plaintiff, on a suggestion that the defendant has more lands, either in the same or in another county, may have another *elegit*. But where land is

extended under an *elegit*, no other writ of execution but an *elegit* can be sued out against the defendant, unless the plaintiff be evicted from the lands extended, or the *elegit* be ineffective or void.

The sheriff delivers only legal possession of the lands, or rather a right of entry, and not actual possession; if, therefore, the execution-creditor cannot enter without force, he should proceed by ejectment. As soon as the plaintiff shall have fully satisfied his judgment out of the extended value of the land, the defendant may recover his land, either by ejectment, *scire facias ad rehabendam terram*, bill in equity, or reference to one of the masters of the court to ascertain the amount of the rents and profits received, and order that, if it appear that the debt, damages, and costs are satisfied, possession shall be delivered to the defendant.—1 *Chit. Arch. Prac. by Pren.* 670. As to an *elegit* in Equity, see *Sm. Eq. Pr.* 157.

Elimination, the act of banishing or turning out of doors; rejection.

Elinguation, the punishment of cutting out the tongue.

Elisors, electors; chosen persons. In cases of challenge to the sheriff and coroners for partiality, &c., the jury process is directed to two clerks of the court, on two persons of the county named by the court, and sworn. Then these *elisors* indifferently name or choose the jury, and their return is final, no challenge being allowed to the array.—*Co. Litt.* 158.

Eloigne, or **Eloine** [fr. *éloigner*, Fr.], to put at a distance; to remove one far from another.

Eloignment, removal; sending to a distant place.

Elongata, a return made by a sheriff in replevin, that cattle, &c., are not to be found, or are removed, so that he cannot make deliverance, &c.

Elongatus, a return to a writ *de homine replegiando*, that the man is out of the sheriff's jurisdiction, whereupon a process is issued, called a *capias in withernam*, to imprison the defendant himself without bail or main-prize, until he produces him.

Elopement, the voluntary departure of a wife from her husband, to live with an adulterer in breach of her matrimonial vow.

Elul, the twelfth month of the Jewish civil year, and the sixth of the ecclesiastical. It consisted of only twenty-nine days, and answered nearly to our August.

Ely [perhaps fr. ἕλος, Gk., a marsh, or *helig*, C. Br., a willow], the ancient city and metropolis of the county of Cambridge.

The Isle of Ely was never a county palatine but it was a royal franchise, which, however, by 6 & 7 Wm. IV. c. 87, was taken away from the bishop, whose secular authority is now vested in the Crown.

Emancipatio. A solemn act by which a *paterfamilias* divests himself of his power over his *filius-familias*, so that the *filius-familias* may become *sui juris*. There are three forms of *emancipatio*. (1) The old emancipation, which was by several *mancipationes*, followed by several enfranchisements. The *mancipatio*, or solemn sale, destroyed the *patria potestas* and put the *filius-familias* in *mancipio*, which was a kind of slavery. The enfranchisement by the purchaser made the *filius-familias sui juris*. As the enfranchiser acquired all rights of patronage, the father, on occasion of the last *mancipatio*, added the trust-clause (*fiducia contracta*), i. e. an express condition that the purchaser should remancipate the *filius-familias* to the *paterfamilias*, so that having ceased to be a *paterfamilias*, and being only an ordinary purchaser, he might himself enfranchise his child, and so acquire the rights of patronage.

(2) The *Anastasian* emancipation, introduced by Anastasius. It consisted in obtaining an imperial rescript, authorising the emancipation which was to be registered with the proper officer. In this way a *filius-familias* might be emancipated in his absence, which could not be done by the old form *per æs et libram*, since the purchaser had to lay hold of the thing.

(3) The *Justinian* emancipation, a mere declaration of the *paterfamilias* before the magistrate, no leave being required for the purpose (*recta via*).—*Cum. C. L.* 36.

Embargo [fr. *embargar*, Sp., a prohibition to pass], a stop, arrest, or detention of ships; a prohibition imposed in time of war by a belligerent state upon merchant ships against their leaving port for a time specified.

Embassador. See AMBASSADOR.

Embassage, or **Embassy,** the message or commission given by a sovereign or state to a minister, called an ambassador, empowered to treat or communicate with another sovereign or state; also the establishment of an ambassador.

Embezzlement, the appropriation to his own use by a servant or clerk of money or chattels received by him for and on account of his master or employer. Embezzlement differs from larceny in this, that in the former the property misappropriated is not at the time in the actual or legal possession of the owner, whilst in the latter it is. The distinctions between larceny and embezzlement are often extremely nice and subtle; and it is sometimes difficult to say under which head the offence ranges. Unless the offender is a clerk or a servant, whose business it is to receive money for his master, he is not guilty of embezzlement. But if he have been employed to receive it in a single instance, he need not be a general servant. And where a servant is sent to do a particular thing, for which he is

to receive a specified sum and not less, and he is paid a less sum, and appropriates it, this is not an embezzlement, for he does not receive the money by virtue of his employment.—4 *C. & P.* 390.

Embezzlement by a clerk, or servant, or person employed as such, of any chattel, money, or valuable security, is a felony punishable by penal servitude for a term not exceeding fourteen and not less than three years, or by imprisonment not exceeding two years, and in the case of a male under the age of sixteen by whipping in addition to imprisonment (24 & 25 Vict. c. 96, s. 68). Embezzlement by persons in the service of her Majesty, or by a constable or other person employed in the police is a felony punishable in the same manner, with the exception of whipping (s. 70). Embezzlement by any officer or servant of the Bank of England or Bank of Ireland is a felony punishable by penal servitude for life, or not less than three years, or imprisonment not exceeding two years (s. 73).

In the same indictment any number of distinct acts of embezzlement, not exceeding three, committed against Her Majesty, or the same master, or employer, may be charged if committed within the space of six months from the first to the last act. In an indictment for embezzling money or any valuable security, it is sufficient to allege the embezzlement to be of money without specifying the particular coin or valuable security; such an allegation shall be sustained if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved, or if he shall be proved to have embezzled any piece of coin or any valuable security, or any portion of the value thereof, although such piece of coin or security may have been delivered to him in order that part of the value thereof should be returned to the party delivering the same, or to some other person, and such part shall have been returned accordingly (s. 71).

If upon the trial of any person indicted for embezzlement, &c., it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement, &c., but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, &c., as the case may be, and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if upon the trial of any person indicted for larceny it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement, &c., he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict, that such person is not guilty of larceny, but is guilty of embezzlement, &c., and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement, &c.; and no person so tried for embezzlement, &c., or larceny as aforesaid shall be liable to be afterwards prosecuted for larceny, &c., or embezzlement upon the same facts.—24 & 25 *Vict.* c. 96, s. 72. As to the fraudulent misappropriation of property by bankers, merchants, brokers, attornies, or agents, see 24 & 25 *Vict.* c. 96, ss. 75, 76, 77, 78, 79, 86; by trustees, ss. 80 & 86; by directors, members, or public officers of bodies corporate or public companies, ss. 81, 86. See *Arch. Crim. Consol. Stat.* 275, *et seq.*

Emblements [fr. *emblavance de bled*, Fr., corn sprung or put above ground], the growing crops of those vegetable productions of the soil which are annually produced by the labor of the cultivator. They are deemed personal property, and pass as such to the executor or administrator of the occupier, whether he were the owner in fee, or for life, or for years, if he die before he has actually cut, reaped or gathered the same; and this, although being affixed to the soil, they might for some purposes be considered, whilst growing, as part of the realty.

If a tenant for life or *pur auter vie* die, his executor or administrator is entitled to emblements, for the estate was determined by the act of God; and it is a maxim in the law that *actus Dei nemini facit injuriam.* The advantages of emblements are extended to parochial clergy by 28 Hen. VIII. c. 11, but a parson who resigns his living, or forfeits it by his own act, is not entitled to emblements, although his lessee is. By devise, the devisee may, without express words, be entitled to the growing crops. But a legatee of the goods, stock, and moveables on a farm, is entitled to growing corn in preference as well as to the devisee of the land as to the executor. So, a tenant at will or sufferance, the duration of whose tenancy is uncertain, is, if the lessor suddenly determine the tenancy, entitled to emblements. And, at common law, *fructus industriales*, as growing corn and other annual produce, which would go to the executor upon death, may be taken in execution; but the appraisement and sale thereof are regulated by statute; and, by statute, growing crops may be distrained upon, and sold when ripe. But a crop of *natural* grass growing at the time of the death of a tenant for

life or in fee, and although fit to cut for hay, does not belong to his executor, but goes to the remainderman. A landlord is entitled to emblements on growing crops, in case of forfeiture by the tenant's own acts, and so is a mortgagee.—1 *Chit. Gen. Prac.* 91.

Where the lease or tenancy of any farm or lands held by a tenant at rackrent shall determine by the death or cesser of the estate of any landlord entitled for his life, or for any other uncertain interest, instead of claims to emblements, the tenant shall continue to hold and occupy such farm or lands until the expiration of the then current year of his tenancy, and shall then quit upon the terms of his lease or holding in the same manner, as if such lease or tenancy were then determined by effluxion of time or other lawful means, during the continuance of his landlord's estate; and the succeeding landlord or owner shall be entitled to recover and receive of the tenant in the same manner as his predecessor or such tenant's lessor could have done if he had been living, or had continued the landlord or lessor, a fair proportion of the rent for the period which may have elapsed from the day of the death or cesser of the estate of such predecessor or lessor to the time of the tenant so quitting; and the succeeding landlord or owner and the tenant respectively shall, as between themselves and as against each other, be entitled to all the benefits and advantages and be subject to the terms, conditions, and restrictions, to which the preceding landlord or lessor and such tenant respectively would have been entitled and subject in case the lease or tenancy had determined in manner aforesaid at the expiration of such current year. Provided always that no notice to quit shall be necessary or required by or from either party to determine any such holding and occupation as aforesaid.—14 & 15 *Vict.* c. 25, s. 1.

Emblers de gentz [Fr.], a stealing from the people. The phrase occurs in our old rolls of Parliament:—Whereas divers murders, *emblers de gentz*, and robberies are committed, &c.—*Rot. Parl.* 21 *Edw. III.* n. 62.

Embraceor [fr. *embrasour*, Fr.], he that, when a matter is in trial between party and party, comes to the bar with one of the parties, having received some reward so to do, and speaks in the case; or privately labours the jury, or stands in the court to survey and overlook them, whereby they are awed or influenced, or put in fear or doubt of the matter.—19 *Hen. VII.* c. 13. But counsel, attornies, &c., may speak in the case for their clients and not be embraceors.

Embracery, an attempt to influence a jury corruptly in favour of one party in a trial, by promises, persuasions, entreaties, money, entertainments, and the like. The punishment for this misdemeanor in the person embracing and the juror embraced is by the common law, and also by statute 6 Geo. IV. c. 50, s. 61, fine and imprisonment.

Embring days [fr. *embers*, *cineres*, Lat., because our ancestors, when they fasted, sat in ashes, or strewed them on their heads], those days which the ancient fathers called *quatuor tempora jejunii*, are of great antiquity in the church; they are observed on Wednesday, Friday and Saturday next after Quadragesima Sunday, or the first Sunday in Lent, after Whitsuntide, Holyrood-day in September, and St. Lucy's-day, about the middle of December. *Brit.* c. liii. Our almanacs call the weeks in which they fall the Ember-weeks, and they are now chiefly noticed on account of the ordination of priests and deacons; because the canon appoints the Sundays next after the Ember-weeks for the solemn times of ordination; though the bishops, if they please, may ordain on any Sunday or holiday.—*Encyc. Lon.; Wheat. Com. Pr.*

Emendals, an old word still made use of in the accounts of the society of the Inner Temple; where so much in *emendals* at the foot of an account on the balance thereof, signifies so much money in the bank or stock of the houses, for reparation of losses, or other emergent occasions.—*Spelm.*

Emendare, to make amends for any crime or trespass committed. And a capital crime, not to be atoned by fine, was said to be *inemendabile.*—*Leg. Canut.* 2.

Emendatio, the power of amending and correcting abuses, according to stated rules and measures.

Emergent year, the epoch or date whence any people begin to compute their time. Our emergent year is sometimes the year of the creation, but more usually the year of the birth of Christ. See CALENDAR.

Emigration Commissioners. See 18 & 19 *Vict.* c. 119, s. 6.

Emigration of Paupers. See 4 & 5 *Wm. IV.* c. 76, s. 62; 7 & 8 *Vict.* c. 101, s. 29; 11 & 12 *Vict.* c. 110, s. 5; 12 & 13 *Vict.* c. 103, s. 20; 13 & 14 *Vict.* c. 101, s. 4.

Eminence, an honorary title given to cardinals. They were called *illustrissimi* and *reverendissimi* until the pontificate of Urban VIII.

Eminent domain, the right which a government retains over the estates of individuals to resume them for public use.

Emissary, a person sent upon a mission as the agent of another; also a secret agent sent to ascertain the sentiments and designs of others, and to propagate opinions favourable to his employer.

Empalement, a mode of inflicting punishment, by thrusting a sharp pole up the fundament.—*Encyc. Lon.*

Empannel [fr. *panne*, Fr.], the writing or

entering by the sheriff, on a parchment schedule or roll of paper, the names of a jury summoned by him.—*Cowel.*

Emparlance. See IMPARLANCE.

Emperor [fr. *empereur*, Fr., *imperator*, Lat.], a sovereign prince who bears rule over large kingdoms and territories; a monarch of title and dignity superior to a king. The title imperator was by the early Romans conferred on renowned and victorious generals who acquired great power and dominion, and was by degrees extended to signify a commander-in-chief sent upon important military service. After the time of the Antonines the term was applied to the sovereign ruler of the Roman Empire, and after the fall of the Western Empire, the title was assumed by Charlemagne, the founder of the second or German Empire. When the German branch of the Carlovingian family became extinct, the imperial crown became elective, and so continued until the last century. The title of Emperor of Germany was given up by Francis II., who, in lieu of it, assumed the title of Emperor of Austria. The title of Emperor of the French was assumed by Napoleon I., and has been again assumed by Napoleon III. The sovereign of Russia is also styled emperor. King Edgar, in an old charter, styles himself *Imperator*.

Emphyteusis, the *jus emphyteuticarium*, or as it is more generally called *emphyteusis*, was the right of enjoying all the fruits, and disposing at pleasure of the property of another, subject to the payment of a yearly rent (*pensio* or *canon*) to the owner. Formerly the lands of the Roman municipalities, or of the college of priests, used to be let for different terms of years, sometimes for a short term, such as that of five years, sometimes for a term amounting almost to a perpetuity, under the name of *agri vectigales* (Gai. iii. 145). Afterwards the lands of private individuals were let in a similar manner, and were also comprehended under the term *agri vectigales*. The emperors let their patrimonial lands in a similar way, and these lands so let were termed *emphyteuticarii* (C. xi. 58, 61), a name arising from there being a new ownership, or what almost amounted to an ownership, engrafted (ἐν, φυτεύω) on the real *dominium*. Either shortly before or in the time of Justinian, the two rights, that of the *ager vectigales*, and that of *emphyteusis*, were united under the common name of *emphyteusis*, and subjected to particular regulations. Both lands and buildings could be subject to *emphyteusis* (Nov. vii. 3, 1, 2). The *emphyteuta*, as the person who enjoyed the right was termed, besides enjoying all the rights of usufructuary, could dispose of the thing or rather of his rights over it in any way he pleased (Nov. vii. 3, 2); he could create a servitude over it or mortgage it (D. xiii. 7, 16, 2); he had a real action (which, however, was said to be a *utilis vindicatio*, because he was not the owner, but only in the place of one) to defend or assert his rights; and at his death his rights were transmitted to his heirs (Nov. vii. 3).

He was obliged to pay his *pensio* under any circumstances, whether he actually benefitted by his *emphyteusis* or not, because the payment of rent was an acknowledgment of the title of the *dominus*. He was also bound to use the thing over which his right extended, so that it was not deteriorated in value at the time his right expired (Nov. vii. 3, 2).—*Sand. Just.* 226.

Empire, the dominion or jurisdiction of an emperor; the region over which the dominion of an emperor extends; imperial power; supreme dominion; sovereign command.

Emplead, to indict; to prefer a charge against; to accuse.

Emporium [fr. ἐμπόριον, Gk., a trading-place], a place for wholesale trade in commodities carried by sea. The name is sometimes applied to a seaport town, but it properly signifies only a particular place in such a town. The word is derived from ἔμπορος, which signifies in Homer a person who sails as a passenger in a ship belonging to another person (*Od.* ii. 319; xxiv. 300); but in later writers it signifies the merchant or wholesale dealer, and differs from κάπηλος, the retail dealer, in that it is applied to the merchant who carries on commerce with foreign countries, while the κάπηλος purchases his goods from the ἔμπορος, and retails them in the market-place.—*Smith's Dict. of Antiq.*

Emption, the act of buying; a purchase.

Emptor, a buyer or purchaser.

Empture, bought, hired.—*Scott.*

Enabling statute, 32 Hen. VIII. c. 28, A.D. 1540. By the common law, all persons may make leases to endure so long as their interest in the land continues, but no longer. This statute enabled first a tenant-in-tail to make a lease for three lives, or twenty-one years, to bind his issue. Secondly, a husband seised in right of his wife in fee-simple or fee-tail, to make a similar lease to bind his wife and her heirs, provided she join therein. Thirdly, ecclesiastical persons seised of an estate of fee-simple in right of their churches (not parsons or vicars who are seised for life only), to make leases to bind their successors. But certain requisites must be observed in making those leases.—2 *Bl. Com.* 219. This act is repealed by 19 & 20 Vict. c. 120, s. 35, except so far as relates to leases made by persons having an estate in the right of their churches. There are other enabling statutes, by which ecclesiastical lands may be leased. See *Platt on Leases*, 238–312; and *Woodf. L. & T.* 22, *et seq.* A consolidation of these acts would be very desirable.

Enach, the satisfaction for a crime; the recompense for a fault.—*Scotch term.*

Enact, to act, perform, or effect; to establish by law; to decree.

Enbrever, to write down in short.—*Brit.* 56.

Encaustum. See INCAUSTUM.

Enceinte, pregnant, big with child.

Encheason [old law Fr.], cause; occasion. *Skin.; Cowel; Bailey.*

Endenize, or **Endenizen,** to make free; to enfranchise.

Endite. See INDITE.

Endorsement, superscription; writing on the back; ratification.

Endowed. The Endowed Schools Act, 1860, 23 Vict. c. 11.

Endowment, wealth applied to any person or use. The assuring dower to a woman; the setting forth a sufficient portion for a vicar towards his perpetual maintenance, when the benefice is appropriated.—*Cowel.*

En eschange il covient que les estates soient égales.—Co. Litt. 50.—(In an exchange it is necessary that the estates be equal.)

Enfeoffment, the act of investing with any dignity or possession; also the instrument or deed by which a person is invested with possessions.

Enfranchise, to make free, or incorporate a person in a society, &c.

Enfranchisement, investiture of the privileges of a denizen; also the act of incorporating a person into a society.

As to enfranchisement of copyholds, see COPYHOLD.

England [fr. *eng,* Teut., narrow, strait, a nook]. Verstegan, in p. 147 of his *Restitution of Decayed Intelligence in Antiquities,* quaintly observes as follows:—'To come now unto the cause of the general calling of our ancestors by the name of Englishmen, and our country consequently by the name of England, it is to be noted, that the seven petty kingdoms of Kent, South Saxons, East English, West Saxons, East Saxons, Northumbers, and Mercians came in fine one after another, by means of the West Saxons, who subdued and got the sovereignty of all the rest, to be all brought under one monarchy under King Egbert, King of the said West Saxons. This king, then, considering that so many different names as the distinct kingdoms before had caused were no more necessary, and that as the people were all originally of one nation, so was it fit they should again be brought under one name; and although they had had the general name of Saxons, as unto this day (1605) they are of the Welsh and Irish called, yet did he rather choose and ordain that they should be all called *Englishmen,* as but a part of them before was called, and that the country should be called *England.* To the affectation of which name of Englishmen, it should seem he was chiefly moved in respect of Pope Gregory, his alluding the name of *Engelisce* unto *Angellyke.* The name of *Engel* is yet at this present in all the Teutonic tongues, to wit, the high and low Duitsh, &c., as much to say as *Angel,* and if a Dutchman be asked how he would in his language call an *Angellykeman,* he would answer *ein Engelsch-man,* and being asked how in his own language he would or doth call an Englishman, he can give no other name for him, but even the very same that he gave before for an *Angellykeman,* that is, as before is said, *ein Engelsch-man*; *Engel* being in their tongue an *Angel;* and *English,* which they write *Engelsche, Angellyke.* And such reason and consideration may have moved our former kings, upon their best coin of pure and fine gold, to set the image of an angel, which may be supposed has as well been used before the Roman conquest as since.

'Thus the name generally of Saxons was by the ordinance of noble King Egbert, about the year of our Lord 800, brought into the general name of Englishmen, which being a name of such glory, as the derivation showeth it, ever may they with all increase of honor therein continue.

'The country was accordingly called *Engaland,* and by abbreviation *England,* a name which well accords unto two significations, for first it seems to have had it by reason of the English people, whose land it now was; and secondly, in regard of the form or fashion thereof, for that it grows unto a narrowness both towards the north and towards the west: the name of the first, or old England, whereof before I have spoken, having risen (as most apparently it seemeth) for like cause and reason of the straightness or narrowness thereof.'

Englecery, or **Englescherie,** or **Englishery** [fr. *Engleceria,* Lat.], the being an Englishman.—14 *Edw. III.* st. 1, c. 4.

Engrosser, he that purchases large quantities of any commodity, in order to sell it at a high price.—7 & 8 *Vict.* c. 24.

Enicia pars. See ESNECY.

Enitia pars semper præferenda est propter privilegium ætatis.—Co. Litt. 166.—(The part of the elder sister is always to be preferred, on account of the privilege of age.)

Enlarger l'estate, a species of release which enures by way of enlarging an estate, and consists of a conveyance of the ulterior interest to the particular tenant; as if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee.—1 *Step. Com.* 527.

Enlarging Statutes. See ACT OF PARLIAMENT.

Enpleet, anciently used for implead.

Enquets. See INQUEST.

Enquiry. See INQUIRY.

Enrolment, register, record; writing in which anything is recorded.

By the Statute of Enrolments, 27 Hen. VIII. c. 16, every bargain and sale of a freehold interest is to be enrolled in Chancery within six [lunar] months after its date.

No assurance by a tenant-in-tail, under the 3 & 4 Wm. IV. c. 74, will have any operation unless it be enrolled in the Court of Chancery within six calendar months after its execution, which enrolment will be sufficient of itself, even where the conveyance is by bargain and sale, within the Statute of Enrolments. This provision does not extend to copyholds, the enrolment then being on the court-rolls of the manor.

If a party to a suit in equity, who has obtained a decree or order, is desirous of preventing a rehearing of the cause before the judge pronouncing the same, or of preventing an appeal to the Lord Chancellor, or Lords Justices of Appeal, it must be enrolled. So also where a decree is pronounced either by the Master of the Rolls, or one of the Vice-Chancellors, and the party, instead of appealing to the Lord Chancellor, or Lords Justices of Appeal, is desirous of appealing at once to the House of Lords, the decree must first be enrolled. The effect of enrolling a decree of the Lord Chancellor is to prevent its being reheard by him. After a decree is enrolled, it can only be reversed or altered either by appeal to the House of Lords or by bill of review. It may be enrolled immediately after it has been passed and entered, unless a *caveat* have been entered, and then, if the party entering it does not present his petition of appeal or rehearing within twenty-eight days, the enrolment may be perfected. By Consol. Ord. 1860, xxiii. r. 24, the expenses of enrolment of decrees and orders are diminished: and by Ord. xxii. r. 16, the defendant has power to vacate the enrolment under certain circumstances. The enrolment may be vacated generally where the merits have not been gone into, or the decree was obtained and enrolled through the neglect of the opposite solicitor, or where it was obtained by surprise.

Ens, being, or existence.

Enschedule, to insert in a list, account, or writing.

Ensient, or **Enseint,** pregnancy.

Entail [fr. *feudum talliatum*, Lat.; *entaillé*, Fr., from *tailler*, to cut], an estate settled with regard to the rule of its descent. See TAIL.

Entailed Money, money directed to be invested in realty to be entailed. 3 & 4 Wm. IV. c. 74, ss. 70, 71, 72. See TAIL.

Entendment. See INTENDMENT.

Entering short. When bills not due are paid into a bank by a customer, it is the custom of some bankers not to carry the amount of the bills directly to his credit, but to 'enter them short' as it is called, i. e. to note down the receipt of the bills, their amounts, and the times when they become due in a previous column of the page, and the amounts when received are carried forward into the usual cash column. See *Giles* v. *Perkins*, 9 *East*, p. 13. Sometimes instead of entering such bills short, bankers credit the customer directly with the amount of the bills as cash, charging interest on any advances they may make on their account, and allow him at once to draw upon them to that amount. If the banker becomes bankrupt, the property in bills entered short does not pass to his assignees, but the customer is entitled to them if they remain in his hands, or to their proceeds, if received, subject to any lien the banker may have upon them.

Enterpleader. See INTERPLEADER.

Entierty [fr. *entier*, Fr.], the whole.

Entire Tenancy, a sole possession by one person, called severalty, which is contrary to several tenancy where a joint or common possession is in one or more.

Entireties, *Tenancy by.* Where an estate is conveyed or devised to a man and his wife *during coverture*, they are said to be tenants by entireties, that is, each is said to be seised of the *whole estate*, and neither of a part. The consequence is, that the husband's conveyance alone will not have any effect against his wife's surviving. The husband being seised of the whole estate during coverture, either in his own right or *jure uxoris*, can of course part with that interest; but to make a complete conveyance of all the interests held in entirety, the wife must concur. Tenants by entireties are seised *per tout*, and not *per my et per tout*. This species of tenancy seems to be an exception to the rule that the husband and wife are one person in law; if they are to be considered as one person, the husband should be able to convey alone, which in this case he cannot do.—*Watk. Conv.* 170.

Entirety, the whole; completeness.

Entrepôt [Fr.], a warehouse or magazine for the deposit of goods.

Entry, the depositing of a document in the proper office or place; actual entry on land is necessary to constitute a seisin in deed, and is necessary in certain cases, as, e. g. to perfect a common law lease.

When a person without any right has taken possession of land, the party entitled may make a formal but peaceable entry, which is quite an extrajudicial and summary remedy, on such lands, declaring that thereby he takes possession, which notorious act of ownership is equivalent to a feodal investiture by the lord; or he may enter on any part of it in the same county, declaring it to be in the name of the whole; but if it lie in different counties, he must make different entries for the notoriety of

such entry and claim. This remedy by entry takes place in three only of the five species of ouster—viz. abatement, intrusion, and disseissin; for as in these the original entry of the wrongdoer was unlawful, they may therefore be remedied by the mere entry of him who has right. But upon a discontinuance or deforcement, the owner of the estate cannot enter, but is driven to his action; for herein the original entry being lawful, and thereby an apparent right of possession being gained, the law will not suffer that right to be overthrown by the mere act or entry of the claimant.—1 *Inst.* 57.

An action must be brought within twenty years next after a right of entry first accrued, ten years being allowed after the determination of disabilities, provided it be not more than forty years in the whole. No continual or other claim upon or near any land shall preserve any right of making any entry or distress, or of bringing an action. No descent-cast which may happen or be made after the 31st of December, 1833, shall toll or defeat any right of entry or action for the recovery of land. All writs of entry and real actions by which lands might have been formerly recovered, except dower, dower *unde nihil habet*, and *quare impedit*, are abolished.—3 & 4 *Wm. IV.* c. 27.

In Scotch law, it refers to the acknowledgment of the title of the heir, &c., to be admitted by the superior.

As to a burglarious entry, see BURGLARY.

In commerce, the act of setting down in an account-book the particulars of business transacted. Bookkeeping is performed either by single or double entry.

Entry, Bill of. See BILL OF ENTRY.

Enumerators, persons appointed by the Superintendent Registrars to collect census-papers or schedules.

Enure, to take place or to be available.

Envoy, a diplomatic agent sent by one state to another.

Eodem modo quo quid constituitur, eodem modo destruitur.—6 *Co.* 53.—(In the same way in which anything is constituted, in that way is it destroyed.)

Eodorbrice [fr. *eoder*, Sax., a hedge, and *brice*, broken], hedge-breaking.—*Leg. Alf.* c. 45.

Eorl [its etymon is unknown, one deriving it fr. *ár*, O. N., minister, satellite; another fr. *jara*, battle. See *B. Hald.* voce *Jarl*, and the gloss. to *Sæmund's Edda*, t. i., p. 597]. This title, which seems to have been introduced by the Jutes of Kent, occurs frequently in the laws of the kings of that district, the first mention of it being in Ethb. 13. Its more general use among us dates from the later Scandinavian invasions; and though originally only a title of honor, it became in later times one of office, nearly supplanting the older and more Saxon one of 'ealdorman.'—*Anc. Inst. Eng.*

Eoth, an oath.

Epimenia, expenses or gifts.—*Blount.*

Epiphany [fr. τὰ ἐπιφάνια, Gk.], a Christian festival, otherwise called the Manifestation of Christ to the Gentiles, observed on the 6th of January, in honor of the appearance of the star to the three magi, or wise men, who came to adore the Messiah, and bring him presents. It is commonly called Twelfth-day.—*Encyc. Lond.*

Episcopacy [fr. ἐπίσκοπος, Gk.], the office of overlooking or overseeing; the office of a bishop who is to overlook and oversee the concerns of the church. A form of church government by diocesan bishops.

Episcopal and Capitular Estates Management. See 14 & 15 *Vict.* c. 104, continued, explained and amended by 16 & 17 *Vict.* c. 57, ss. 1, 4, &c.; 17 & 18 *Vict.* c. 116; 19 & 20 *Vict.* c. 74; 20 & 21 *Vict.* c. 74; 22 & 23 *Vict.* c. 46; and 23 & 24 *Vict.* c. 124.

Episcopalia, or **Onera Episcopalia,** synodals or other customary payments from the clergy to their bishop or diocesan, which were formerly collected by the rural deans, and by them transmitted to the bishop.—*Mon. Ang.* t. iii. p. 61.

Episcopate, a bishopric.

Episcopus alterius mandato quam regis non tenetur obtemperare.—*Co. Litt.* 134.—(A bishop needs not obey any mandate save the king's.)

Episcopus teneat placitum, in curiâ Christianitatis, de iis quæ merè sunt spiritualia.—12 *Co.* 44.—(A bishop may hold plea in a court Christian, of things merely spiritual.)

Episcopus puerorum. It was an old custom that upon certain feasts some lay person should plait his hair, and put on the garments of a bishop, and in them pretend to exercise episcopal jurisdiction, and do several ludicrous actions, for which reason he was called *bishop of the boys*; and this custom obtained here long after several constitutions were made to abolish it.—*Blount.* Such an officer is mentioned in the statutes of some of the cathedrals of the old foundation in England

Epoch, or **Epocha** [fr. ἐποχή, Gk., a pause], the time at which a new computation is begun; the time whence dates are numbered.—*Encyc. Lond.*

Equerry, an officer of state under the master of the horse.

Equitable Defences at Common Law. 'The Common Law Procedure Act, 1854' (ss. 83–86), enables any defendant, or plaintiff in replevin, to plead the facts which would entitle him, if judgment were obtained against him, to relief in equity from such judgment on equitable ground, by way of defence; such a plea to begin with the words, 'For defence on equitable grounds,' or words to the like effect. Should such equitable defence arise after the

period during which it could be pleaded, it may then be set up by way of *auditâ querelâ*. The plaintiff is allowed to avoid such defence by a replication upon equitable grounds, commencing with the words, 'For replication on equitable grounds,' or words to the like effect. There is a right reserved to the court of law, or any judge of it, to strike out upon discretionary terms any equitable plea or replication which cannot be dealt with at law so as to do justice between the parties. Under these circumstances, it is presumed that a litigant will be remitted to the Court of Chancery for the purpose of vindicating his equitable rights.

The effect of this statutory jurisdiction is not to bring Chancery suits into the Common Law Courts, but simply to enable defendants in actions to set up what would be absolute defences in equity.

Equitable Estates, one of the three kinds of property in lands and tenements; the other two being legal property and customary property.

That is properly an equitable estate or interest, for which a court of equity affords the only remedy: and of this nature especially, is the benefit of every trust, express or implied, which is not converted into a legal estate by the Statute of Uses. The rest are equities of redemption, constructive trusts, and all equitable charges.—*Burton's Comp.* c. viii.

Equitable Lien. See LIEN.

Equitable Mortgage. The following mortgages are equitable:

(1) Where the subject of a mortgage is trust property, which security is effected either by a formal deed or a written memorandum, notice being given to the trustees in order to preserve the priority.

(2) Where it is an equity of redemption, which is merely a right to file a bill or claim in equity to redeem the estate.

(3) Where there is a written agreement only to make a mortgage, which creates an equitable lien on the land.

(4) Where a debtor deposits the title-deeds of his estate with his creditor or some person on his behalf, without even a verbal communication. The deposit itself is deemed evidence of an executed agreement or contract for a mortgage for such estate.

This transaction, which appears to be a judicial repeal of the Statute of Frauds, 29 Car. II. c. 3, s. 4, is extensively resorted to, and is known in practice as an equitable mortgage by deposit of title-deeds. The title-deeds may be deposited at different times, if it be in pursuance of the original contract, and, perhaps, a deposit of the conveyance to the mortgagor will alone constitute an equitable mortgage. A deposit of a material portion of the title-deeds to an estate is a sufficient equitable mortgage of such property.—*Lacon* v. *Allen*, 4 *W. R.* 693 (1856). When it is proposed to effect an equitable mortgage of joint-stock shares, the shareholder and depositary should give notice to the company's officer that the former has agreed to make the deeds of his shares a security for a sum of money which the latter is advancing on them, as this converts the officer into a trustee of the deeds for the lender. The shareholder should sign an agreement to execute a formal mortgage whenever required; and it would be proper, in order to denude himself of every symbol of possession, to hand over the certificates, though this does not appear to be absolutely essential.

The deposit will extend to and cover subsequent advances, upon proof that they were made upon the faith of such security, or that the deposit was originally made as a security, as well for the first as for any subsequent advance, or that the original deposit was continued with an agreement for a further advance. Where a deposit of deeds has been made with a firm, if it is the intention of the parties that the deposit should be for the benefit of any of its future members, such intention should either be expressly stated in the memorandum made on the deposit, or be proved by parol evidence; but dealings with the new firm may afford sufficient evidence of a new agreement with them, so as to give them the benefit of the deposit.

A deposit of title-deeds is good against the Crown, if made before their depositor became its debtor, either by record or specialty, and also against the creditors of their bankrupt-depositor, unless it is plainly a fraudulent preference. An equitable mortgagee, who advanced his money *bonâ fide*, may protect his equitable estate, and gain priority, by obtaining the legal estate from his debtor, even in contemplation of his bankruptcy.—*Hiern* v. *Mill*, 13 *Ves.* 122 (1806). Such a depositary retains his right in equity, to enforce his security against the title of a creditor under a subsequent judgment, although the latter may have acquired the legal seisin and possession of the land under an *elegit*, without notice of the equitable mortgage.—*Whitworth* v. *Gaugain*, 3 *Hare* 416 (1844), affirmed by Lord Lyndhurst, 1 *Ph.* 728. A depositee of title-deeds is entitled to priority over a subsequent legal mortgagee or purchaser, who lent or paid his money with notice of the deposit, but not in the absence of such notice; for then the equities of these parties being equal, the law must prevail.

A deposit in the hands of one person will not secure an advance made by another person, unless the former person be merely a trustee, who has not lent any money upon it.

An equitable mortgage being a contract for

a mortgage, the mortgagee may file a bill or claim in Equity, either for a legal mortgage, a foreclosure and conveyance, or a sale.

Where an equitable mortgagor is a trader liable to bankruptcy, the deposit should be accompanied by a written memorandum; because then, in case of bankruptcy, the mortgagee will be entitled to the costs of his petition to the court for the sale of the property. These he will not be entitled to in the absence of such a memorandum. See *Lord Loughborough's General Order in Bankruptcy, of the 8th March* 1794, and the *Rules in Bankruptcy*, 55–58.

Where an equitable mortgagee is satisfied upon a bankruptcy, no release from him is necessary, nor will the expense of it, if taken, be allowed in the solicitor's bill.

A mere depositary of a lease cannot be compelled to take a legal assignment so as to enable the lessor to sue him at law on the covenants in the lease, nor is he liable to them until he has made himself legal assignee.

For further information on this subject, consult 1 *White & Tudor's Lead Cas.* 440–450.

Equitable Waste. See WASTE.

Equity [fr. *æquitas*, Lat.] There seems to be some confusion with regard to the meaning of Equity, as a scheme of jurisprudence, distinct from the common and ecclesiastical laws. This confusion would appear to be a result of not sufficiently distinguishing before defining. 'Equity' is obviously an equivocal term: the difficulty then lies in drawing dividing lines between the several senses in which it is used. Its three leading senses, however, are distinguishable in this way:—

(1) Taken broadly and philosophically, Equity means to do to all men as we would they should do unto us, compendiously enjoined in the Justinian Pandects, *honeste vivere, alterum non lædere, suum cuique tribuere.* This is *Natural* Equity, which, being derived from the principles of universal truth and justice, prescribes piety and reverence towards GOD, the Maker and Disposer of us all; honesty and benevolence to one another, by doing good and eschewing evil; and chastity and temperance in our own life and actions. It is clear, that human tribunals cannot cope with so wide a range of duties as Natural Equity comprehends; not only on account of the difficulty of framing laws to enforce them, but also from the impracticability of compelling such obligations as piety, gratitude, charity, and kindness, which are binding in conscience only; not to say anything of the doubtful policy (even if it were practicable) of reducing moral motives to legal compulsions.

(2) Taken, however, in a less universal sense, Equity is used in contradistinction to strict law. This is *Moral* Equity, which should be the genius of every kind of human jurisprudence; since it expounds and limits the language of the positive laws, and construes them not according to their strict letter, but rather in their reasonable and benignant spirit.

Aristotle, in his discussion concerning Moral Equity, *Ethics, B. V.* c. x., calls it the correction of mere law, which (being altogether universal, and it not being possible to treat a subject exhaustively, when speaking universally) takes the most obvious case, from an impossibility of providing for every possible predicament in express words. Now, this fault is not in the law, nor the legislature, but in the nature of the thing itself; for the subject-matter of human conduct is altogether of this description. When, therefore, the law speaks universally, and a matter happens somewhat differing from the case provided for, then it is proper that where the legislator falls short, and has erred from speaking generally, to fill up the deficiency, as the legislator would himself direct if he were present, or as he would have included in the law, if he had anticipated the matter. This, then, is the nature of Moral Equity, that it is a rectification or correction of justice, where it is deficient from speaking universally, for this is the reason why all things are not directed by positive law, that on every casual subject it is impossible to forecast a law. And Lord Bacon has said, 'there is no law under Heaven which is not supplied with Equity; for *summum jus, summa injuria*; or as some have it *summa lex, summa crux*.' If thou take all that the words of the law giveth thee, thou shalt sometimes do against the law! From the application of Moral Equity to 'fetch out the sense of the legislator,' spring the several rules for the interpretation of law, and the guidance of that judgment which, unfettered by the mere letter, decides a controversy in accordance with the spirit of the given provision.

Ratio legis est anima legis. So that Moral Equity, being the sound and judicial exposition of a law, is, or ought to be, the active principle at work in every court of justice. *In omnibus, maxime tamen in jure, æquitas spectanda est.*

(3) But it is in neither of these senses that Equity is to be understood as the substantial justice which is expounded by our courts of Chancery. It is here accepted in a more limited and technical sense, and may be called *Municipal* Equity, and described as the system of supplemental law administered in Chancery, and founded upon defined rules, recorded precedents, and established principles, to which it closely adheres; the judges, however, liberally expounding and developing them, in order to meet novel exigencies. While it aims to assist the defects of the common law, by extending relief to those rights of property which the strict law does not recognise, and by giving more ample and distributive redress than the ordinary tribunals afford, it by no means either

controls, mitigates, or supersedes the common law, but rather guides itself by its analogies, and does not assume any power to subvert its doctrines. This is amply shown by two well-known maxims of the Court of Chancery, viz. *Æquitas sequitur legem*, and *Where the Equities are equal the Common Law must prevail.*

The grand characteristic of Municipal Equity is displayed in the nature and extent of its redress. Not content, as the Common Law generally is, to adjudicate strictly and absolutely *in rem*, i. e. upon the transaction itself, as it is presented by the litigants; Equity insists upon the conscientious obligations of the suitors, and by adjudicating *in personam*, compels an actual completion of the matter intended to be accomplished by the parties, adjusting, qualifying, and restraining their several and sometimes conflicting rights, duties, and interests. It also grapples with anticipated injuries, by preventing the perpetration of meditated or threatened mischief; a very wholesome prerogative, since an interdictive power is more valuable and frequently of much greater efficacy than a merely compensative or punitory function.

An Equity Judge pronounces his decision upon the proofs, arguments, and merits presented to him without the assistance of a jury; yet, if a serious doubt be entertained as to a question of fact, the court may direct an issue upon it to be tried by a judge and jury at common law, and may now itself impannel a jury to award damages to an injured party either in addition to or in substitution for an injunction or specific performance, pursuant to 'The Chancery Amendment Act, 1858,' 21 & 22 Vict. c. 27. The mode of taking evidence has lately undergone considerable alteration by the 15 & 16 Vict. c. 86, s. 28, which abolished the system of examining witnesses upon written interrogatories, unless specially ordered by the court; and enacted by its sections 30, 31, and 32, that allegations shall be verified by affidavit, unless either party elect to have the evidence taken orally either by an examiner, in town, or one specially appointed in the country, who then records it in the form of a narrative, the witnesses being subjected to examination-in-chief, cross-examination, and re-examination in the presence of the suitors, their counsel, and solicitors; the public, however, or a short-hand writer, not being admitted unless allowed by such examiner. See 15 & 16 *Vict.* c. 86, ss. 28–41, and *Orders* of the 7th of August, 1852, pl. 31–39, and of 13th Jan. 1855. Also *Wright* v. *Wilkin*, 6 *W. R.* (V. C. K.) 643 (1858).

Any attempt to trace the origin and growth of Equity Jurisprudence can only excite curiosity, without satisfying inquiry; for, although less ancient than the common law, yet, like many a venerable institution, its birth is hidden among the disruptions of systems during our elder time, and its progress shrouded amidst the haze and palpable obscure of our mediæval history; so that authenticity is unattainable, and all that is left to an antiquary, examining the sparse and disjected materials, is at best the moulding of an ingenious theory, or the construction of a plausible myth.—See 4 *Reeves*, 368; 5 *Ibid.* 158.

The jurisdiction of Chancery is fourfold:—

1st. The Common Law or Ordinary jurisdiction, by which the Lord Chancellor is a privy councillor, and prolocutor of the House of Lords. The writs for a new parliament issue out of this department; but in case of a vacancy during the session, the Speaker, on the motion of a member, directs the Clerk of the Crown, by warrant, to issue a new writ. The Petty Bag Office is in this jurisdiction; it is a Court of Common Law and of Record; pleas of *scire facias* to repeal letters-patent are here exhibited, together with many other matters, and all original writs issue hereout.

2nd. The Statutory jurisdiction. Here the Lord Chancellor exercises his power under the celebrated Habeas Corpus Act, inquires into charitable uses, and hears appeals in bankruptcy. Under this jurisdiction the judges in Chancery are entrusted with numerous authorities which are conferred upon them wholly and solely by acts of parliament. The statutes which regulate or enlarge the Equity jurisdiction are not to be classed under this division.

3rd. The Specially Delegated jurisdiction. Under this head the Lord Chancellor and the Lords Justices of Appeal have exclusive authority over the persons and property of idiots and lunatics.

4th. The Equity or Extraordinary jurisdiction. It has been suggested, and with great propriety, that the usual arrangement of Equity principles is by no means analytical or clear, and that the particulars of such jurisdiction would have been better arranged under two principal branches—as, *first*, in favor of creditors or claimants who seek to *establish* some claim; and, *secondly*, on behalf of parties who seek to *resist* some present or future claim. Such an arrangement would, no doubt, be more lucid and philosophical; but inasmuch as the best treatises have adopted the usual divisions of the subject, I will follow them, rather than this more preferable system, because, from being more known, they will be less confusing.

The Equity or Extraordinary jurisdiction of the Court of Chancery, then, is distributable into three subdivisions, namely:—

(I.) The Assistant, being auxiliary to the Common Law, under which range matters of—

(*a*) Discovery for the promotion of substantive justice at Common Law.

(*b*) Preservation of testimony relating to a question at law, from persons not being the litigants.

(*c*) Removal of improper impediments, and prevention of unconscientious defences, at Common Law.

(*d*) Giving effect to, and relieving from the consequences of, Common Law judgments.

(II.) The Concurrent with the Common Law, comprehending—

(*a*) The remedial correction of fraud.

(*b*) The prevention of fraud by injunction.

(*c*) Accident.

(*d*) Mistake.

(*e*) Account.

(*f*) Dower.

(*g*) Interpleader.

(*h*) The delivery up of documents and specific chattels.

(*i*) The specific performance of agreements.

And

(III.) The Exclusive, relating to

(*a*) Trusts.

(*b*) Infancy.

(*c*) The equitable rights of wives.

(*d*) Legal and equitable mortgages.

(*e*) The assignment of choses en action.

(*f*) Partition.

(*g*) The appointment of receivers.

(*h*) Charities or Public Trusts.

Equity Courts. See CHANCERY.

Equity of Redemption. There is no clearer instance of the beneficent interposition of municipal equity to supply the deficiencies of a strict common law than its operation on the conscience of a mortgagee, who, although he has become absolute owner of the legal estate in the pledged property (no matter how much its value might exceed the loan), on account of the breach of the condition for repayment of the loan within the strict time, yet is compelled to reconvey the legal estate to the mortgagor, who applies to equity to redeem it before foreclosure, and within 20 years of the last written acknowledgment (3 & 4 Wm. IV. c. 27, s. 28), on payment of the principal, interest and costs, equity treating the breach of the condition as a penalty which it abhors; and the retention for the mortgagee's own benefit of that which was intended simply as a pledge, as contrary to the soul and spirit of substantial justice.

This right or equity of redemption is, in the contemplation of the Court of Chancery, the ancient estate in the property without change of ownership. It is therefore subject to all the limitations to which other equitable estates are liable. It is treated as an equitable asset. While an equity of redemption of a mortgage in fee is liable to forfeiture for treason only, the equity of redemption of a mortgage by demise is forfeitable for felony as well as treason.

An equity of redemption may be mortgaged *toties quoties*, until it is barred by a decree in equity, and each incumbrancer of it has preference according to his priority in time.

The following dangers and disadvantages attend this species of security:—

That a prior mortgagee may be postponed to a subsequent mortgagee, who, having advanced the loan without notice of such prior mortgagee, afterwards acquires the legal estate.

That the first mortgagee may, either before or after the mortgage of the equity of redemption, in the absence of any notice of it, make further advances and tack them to his first security, to the displacement of the mesne mortgage. In order to guard against this disparagement, the mortgagee of an equity of redemption should not only inquire of the first mortgagee the amount of his loan, but must give him express notice of his own advance. And notice of it should be put on the principal title-deed, in order to avoid the chance of the mortgagor redeeming the first mortgage, and conveying the legal estate to a person without notice of the mesne mortgage, who would thus gain a preference to such unintimated equitable mortgage.

That the mortgagor may have secretly effected a prior charge on the equity of redemption. And although the perpetration of so gross a fraud would forfeit his equity of redemption pursuant to 4 & 5 Wm. III. c. 16, yet this will be small consolation to such a mortgagee.

That such a mortgagee has not any legal remedy, so as to affect the estate itself, but only equitable relief.

Equity of a Statute, the reason and spirit of a statute, and not its mere letter.

Equity to a Wife's Settlement. While our common law permits a husband to possess himself absolutely of the whole of his wife's personal property and the profits of her realty, and affords him every facility to enforce his right thereto, in consideration of the obligation which, upon marriage, he contracts of maintaining her and his children by her; yet, inasmuch as the common law is defective in not possessing any means of insuring the performance of the duty imposed upon the husband, since, in many cases, he might have it in his power to alien all the property to which he is entitled *jure mariti*, or upon his becoming bankrupt or insolvent it would vest in his assignees for the benefit of his creditors, and thus his wife, however great may have been her fortune, might, with her children, be left utterly destitute; equity exercises its parental care, and compels him, whenever he or any person claiming in his right is obliged to sue for the recovery of the wife's property in Chancery, to make a settlement of some portion of it, which is entirely in the discretion of the court (unless

it be under 200*l.* or 10*l.* in annual payments, and the husband is not insolvent), on his wife (provided her conduct have been proper and virtuous, and she is otherwise unprovided for, or inadequately provided for), as its condition for giving him assistance, since 'he who asks equity must do equity;' and the court will enforce this right, whether the wife be a plaintiff or defendant in the proceedings. The general rule is to settle one-half, but the whole will be settled if the husband be insolvent or have deserted his wife, or there has been a dissolution of marriage on the ground of his adultery.—*Barrow* v. *Barrow*, 3 *Eq. Rep.* 149 (1854); *Morgan* v. *Morgan*, 2 *Eq. Rep.* 1270 (1854).

The court will not, at the present day, in judging of the wife's right to a settlement, take into account what the husband has already received. Recent decisions have quite overturned this notion, which was once entertained. And the wife of a man who is domiciled in a country according to the law of which he is absolutely entitled to all her personal property, of whatever nature, has not equity to a settlement out of an equitable *chose en action* in England. The court will not settle the reversionary interest of a married woman, but a supplemental bill must be filed when the interest falls into possession.

Should he refuse to make the settlement directed, the court will preserve the capital of the property for the wife and children, and order the interest to be accumulated for her benefit, should he have had a large portion through the wife, which he has spent, unless indeed he be actually starving for want of a maintenance. If the husband desert his wife, and leave her destitute, equity will not allow him to touch either the principal or income of the property, but will direct a maintenance from it for the wife and children (if any). And maintenance will sometimes be given to the wife where she has been obliged to leave her husband on account of his cruelty.

Equity will also direct a settlement to be made on the wife out of her equitable estate, upon her own application, through her next friend, against her husband, or those claiming under him. If, however, before any proceeding in Chancery be commenced, the property be paid or transferred to the husband, it will then be too late to apply to the court for its aid to insist upon a settlement out of it on the wife and children. But a settlement cannot be thus avoided after proceedings have been initiated. If the wife be of full age, and had not been a ward of court, married without its consent, she can waive her equity, and that of her children, to a settlement, and consent that the whole property be given up to her husband.

If a wife wish to waive her equity to a settlement, her consent to her husband having her property must be formally taken upon her examination in court, or under a commission issuing from the court. Where the wife waives her equity to a settlement, and consents to her husband having her property, an affidavit must be made by the husband and wife, either that there was no settlement upon their marriage, or if there was a settlement, it should be produced, and an affidavit made by the husband and wife that there was no other settlement, and that the settlement itself does not affect the property which the wife consents to her husband having.

The settlement directed by the court usually extends to the children; but the equity to a settlement is strictly personal to the wife. If, therefore, she die before asserting her right, her children cannot insist upon a settlement. When the wife has entered into a contract, or has obtained a decree for a settlement, the interests of the children will not then be defeated if she die without waiving it. The court will not render any assistance to a wife who leaves her husband without adequate cause, or who has been guilty of adultery.

If the husband, prior to the marriage, settle property upon his wife, either expressly or impliedly, in consideration of the fortune she then is, or may afterwards become, entitled to, the wife being a party to such settlement, she will not be entitled to any settlement out of her equitable property, whether her husband's settlement be adequate or not, for he has then become the purchaser of his wife's property; but if his settlement be made after marriage in consideration of his wife's equitable property, then, if it be not adequate, the court will allow the wife a further settlement out of such equitable estate.—*Lady Elibank* v. *Montolieu*, 5 *Ves.* 737 (1801), and *Murray* v. *Lord Elibank*, 10 *Ves.* 84 (1804), and 13 *Ves.* 1 (1806), and 1 *White and Tudor's Lead. Cases*, 285–323. It is becoming the practice, when the property is small, to order it into court, and the dividends to be paid to the wife during her life; this saves the costs of a settlement.

Equuleus, a kind of rack for extorting confessions, at first chiefly practised on criminals, but afterwards made use of against the Christians. It was made of wood, having holes at certain distances, with a screw, by which a criminal was stretched to the third, sometimes to the fourth or fifth hole, his arms and legs being fastened on the equuleus with cords; and thus was hoisted aloft, and extended in such a manner, that all his bones were dislocated. In this state, red-hot plates were applied to his body, and he was goaded in the sides with an instrument called *ungula*.—*Encyc. Lond.*

Era. See ÆRA.

Eregimus (*we have erected*).

Eriach [Irish], recompence for murder.—*Spenser's Ireland.*

Ern [*locus secretus*, Lat.], the names of places ending in *ern* are said to imply a melancholy situation.

Erotomania [fr. ἔρως, love, and μανία, frenzy], sometimes also called *Erotico-mania*, a disease of the brain characterised by a morbid condition of mind, and frequently by delusion, on sexual subjects. The distinction between it and *Nymphomania* is that in the latter, although the condition of mind is similar, the disease is caused by a local disorder of the sexual organs reacting on the brain.

Errant [itinerant], applied to justices on circuit, and bailiffs at large, &c. See EYRE.

Erraticum, a waif or stray.

Error. Error must be brought within six years after judgment, signed or entered of record, or if the person entitled to bring error be then under any of the disabilities of infancy, coverture, lunacy, or absence beyond seas, within six years after the removal of the disability. If the opposite party be at the time judgment is signed or entered of record beyond the seas, then within six years after his return. The writ of error is abolished, and a memorandum of the error in law delivered to the master is in lieu of it; the master files it, and gives a note of its receipt, a copy of which, with a statement of the grounds of error, being served on the opposite party or his attorney, supersedes the execution, upon proper bail being given within four clear days after lodging the memorandum alleging error. The assignment of and joinder in error in law are not necessary; but a suggestion to the effect that error is alleged by the one party, and denied by the other, is entered on the judgment-roll in the form prescribed by the act. If the defendant in error, however, intend to rely upon the proceeding in error being barred by lapse of time, or by release of error, or other like matter of fact, he may give four days' written notice to the plaintiff in error, to assign error as heretofore, instead of entering the suggestion; and he must, within eight days, plead thereto the bar by lapse of time, or release of error, or other like matter of fact; and thereupon such proceedings may be had as heretofore. The roll is made up, and the suggestion entered by the plaintiff in error within ten days after the service of the note, otherwise the defendant may sign judgment of *non pros.* The judgment-roll is now brought into court instead of a transcript. Either party alleging error in fact may deliver to one of the masters a memorandum in the form prescribed by the act, intituled in the court and cause, and signed by the party or his attorney, alleging that there is error in fact in the proceedings, together with an affidavit of the matter of fact in which the alleged error consists; the master files them, and delivers to the party lodging them a note of their receipt, a copy of which note and affidavit is served on the opposite party or his attorney; and such service has the same effect, and the same proceedings may be had thereafter as were heretofore had after the service of the rule for allowance of a writ of error in fact. Plaintiff may discontinue his proceedings in error upon giving notice, and a defendant may confess the error, and consent to a reversal of the judgment.

Neither death nor marriage abates the proceedings.—15 & 16 *Vict.* c. 76, s. 146–167; *Gen. R.* 64–69.

Error in law lies from the Queen's Bench, Common Pleas, and Exchequer of Pleas, to the Exchequer Chamber, and thence to the House of Lords, after affirmance or reversal in the Exchequer Chamber.

Error will also lie from inferior courts of record, where the proceedings are according to the course established by the common law, to the Court of Queen's Bench, and then to the House of Lords after judgment of inferior court affirmed or reversed in Queen's Bench.

Where there is any error in the process, or the error is in fact, and not in law, error lies to the same court to examine its own record and rectify the error. For the practice, see 1 *Chit. Arch. Prac. by Pren.* 546, *et seq.*

As to error in criminal cases:—

After a judgment given against a prisoner, either at sessions or the assizes, if there be a substantial defect in the indictment, or error apparent on the record, such judgment may be reversed by the Queen's Bench. But it is necessary previously to obtain the Attorney-General's *fiat*, which, in misdemeanors, on sufficient cause shown, is granted as a matter of course; but in felonies, it is granted only *ex merâ gratiâ.* See 8 & 9 *Vict.* c. 68; 11 & 12 *Vict.* c. 78; and 16 & 17 *Vict.* c. 32.

Error fucatus nudâ veritate in multis est probabilior; et sæpenumero rationibus vincit veritatem error.—2 *Co.* 73.—(Varnished error is in many things more probable than naked truth; and very frequently error conquers truth by reasoning.)

Error, qui non resistitur, approbatur.—*Doct. and Stud.* c. 70.—(An error, which is not resisted, is approved.)

Errores ad sua principia referre, est refellere. 3 *Inst.* 15.—(To refer errors to their principles, is to refute them.)

Errores scribentis nocere non debet.—*Jenk. Cent.* 324.—(The mistakes of one writing ought not to harm.)

Errors excepted, a phrase appended to an account stated, in order to excuse slight mistakes.

Erthmiotum, a meeting of the neighbourhood to compromise differences amongst themselves; a court held on the boundary of two lands.—*Leg. Hen. I.* c. 57.

Erubescit lex filios castigare parentes.—8 *Co.* 116.—(The law blushes when children correct their parents.)

Esbrancatura, cutting off branches or boughs in forests, &c.—*Hov.* 784.

Escaldare, to scald. It is said that to *scald hogs* was one of our ancient tenures in serjeanty.—*Lib. Rub. Scaccar' MS.* 137.

Escambio [fr. *cambier*, Span., to change], a license granted to make over bills of exchange to another beyond the sea. Abolished by 59 Geo. III. c. 49, s. 11.

Escape [fr. *échapper*, Fr., to fly from], a violent or private evasion out of some lawful restraint; as where a man is arrested or imprisoned, and gets away before he is delivered by due course of law. Escapes are either in civil or criminal cases.

(1) *Civil.* They are either *voluntary*, by the express consent of the keeper, after which he never can take his prisoner again (though the plaintiff may retake him at any time), but the sheriff must answer for the debt, and he has no remedy over against the person escaping; or, *negligent*, where a prisoner escapes without his keeper's knowledge or consent, and then upon fresh pursuit the defendant may be retaken, even on a Sunday, and the sheriff shall be excused, if he have him again, before any action brought against himself for the escape. If the sheriff carry a defendant in his custody out of the county, except in conveying him by the most convenient route to the county gaol, he will be guilty of suffering an escape, and might even be liable to an action by the defendant for a false imprisonment.—3 *Bl. Com.* 415.

(2) *Criminal.* An escape of a person lawfully arrested for felony or misdemeanor is an offence against public justice, and punishable by fine or imprisonment. Officers and others negligently permitting a felon to escape are punishable by fine, but voluntarily permitting an escape amounts to the same kind of offence and is punishable in the same degree as the offence of which the prisoner is guilty, and for which he is in custody, whether treason, felony, or trespass; although, before the conviction of the principal party, the officer thus neglecting his duty may be fined and imprisoned for a misdemeanor.—4 *Step. Com.* 294.

Escape-warrant, a process addressed to all sheriffs, &c., throughout England, to retake an escaped prisoner, even on a Sunday, and commit him to proper custody.—1 *Anne*, c. 6.

Escapio quietus, delivered from that punishment which, by the laws of the forest, lies upon those whose beasts are found upon forbidden land.

Escapium, that which comes by chance or accident.—*Cowel.*

Esceppa, a measure of corn.

Escheat [*eschet* or *échet* formed from the word *eschoir* or *échoir*, Fr., to happen], a species of reversion: it is a sort of caducary inheritance, and a fruit of seignory, the lord of the fee, from whom or from whose ancestor the estate was originally derived, taking it as *ultimus hæres* upon the failure, natural or legal, of the intestate tenant's family.

An escheat is partly in the nature of a purchase as well as of a descent; it is a purchase so far as it is necessary for the lord to enter on the reverted property, in order to complete his full ownership of it; and it is a descent, because the escheated estate follows the seignory, and is inherited along with it, by the lord's heir-at-law. The lord, on the escheat, takes the estate by a title paramount to the tenant, since he is in of an estate, out of which the tenant's interest was originally derived or carved. It is then a mixed title, being neither a pure purchase nor a pure descent, but in some measure compounded of both.

It differs from a forfeiture, in that the latter is a penalty for a crime personal to the offender, of which the Crown is entitled to take advantage by virtue of its prerogative; while an escheat results from tenure only, and arises from an obstruction in the course of descent; it originated in feudalism, and respects the intestate's succession. So, while forfeiture affects the rents and profits only, escheat operates on the inheritance.

Escheat arises, then, where there is not any heir-at-law, which may be either by defect of lineage, whereby the descent is at an end (*ob defectum sanguinis*, or *tenentis* in the case of an alien); or by the commission of treason or felony (*pro delicto tenentis.*)

It arises from default of heirs, when the tenant dies without any lawful and natural-born relations on the part of any of his ancestors, or when he dies without any lawful and natural-born relations on the part of those ancestors from whom the estate descended, or where the intestate tenant, having been a bastard or denizen, does not leave any lineal descendants, since he cannot have any collateral descendants.

It arises from corruption of blood, when the tenant has been attainted of treason or murder.

The following estates escheat, viz.: a fee-simple; an estate-tail, where the tenant-in-tail has in himself the reversion in fee, otherwise the estate would pass to the reversioner; and a copyhold estate.

The following interests do not escheat, viz.: gavelkind, *propter delictum tenentis*; a rent-charge; a right of common, free warren, or indeed any kind of inheritance which does

not lie in tenure, because they rather become extinct; a trust estate, for where the beneficiary dies without heirs, the trustee shall retain the land for his own benefit; an estate given to a corporation and their successors, for it reverts to the donor on the corporation being dissolved, unless perhaps it had been granted over to another before the dissolution; an equity of redemption; and money to be laid out in land.

The lord by escheat may distrain for rent as incident to the reversion; but he cannot take advantage of a condition for re-entry, because he is not heir to the lessor; he is also entitled to outstanding terms, and to all the charters, &c., yet he is liable to the incumbrances of the last tenant, because they are annexed to the possession of the land, without regard to any privity; he is, however, not bound to execute a trust.

Since the lord's right to an escheat arises solely from the want of a tenant, it follows that an alienation either by deed or will, by the tenant, will bar the escheat. If an infant make a feoffment in person, and then die heirless, the estate will not escheat; but if the livery of seisin be made by attorney, that will not prevent the estate from escheating *propter defectum sanguinis*, neither will a mere contract for sale bar the lord.

The statute-law has made an exception to the general law of escheat in the case of a trustee or mortgagee dying intestate and heirless, for the protection of the beneficiaries or mortgagor. See 13 & 14 *Vict.* c. 60, ss. 14, 15, 16, 19, 46, 47.

A descent can be traced through an attainted ancestor.

The law of escheat is seldom called into action in modern times, and when its application is required the Crown usually waives its prerogative by making a grant, in order to restore the estate to the family of the attainted person, or to effectuate any disposition of it, which the former tenant may have contemplated.—7 *Ves.* 71.

Eschaeta derivatur à verbo Gallico eschoir, *quod est accidere, quia accidit domino ex eventu et ex insperato.—Co. Litt.* 93.—(Escheat is derived from the French word *eschoir*, which signifies to happen, because it falls to the lord from an event and from an unforeseen circumstance.)

Eschaetæ vulgò dicuntur quæ decidentibus iis quæ de rege tenent, cum non existit ratione sanguinis hæres, ad fiscum relabuntur.—Co. Litt. 13.—(Those things are commonly called escheats which revert to the exchequer from a failure of issue in those who hold of the king, when there does not exist any heir by consanguinity.)

Escheator [fr. *escaetor*, Lat.], an officer anciently appointed by the lord treasurer, &c., in every county, to make inquests of titles by escheat, which inquests were to be taken by good and lawful men of the county, impannelled by the sheriff.—4 *Inst.* 225.

Escheccum, a jury or inquisition.

Eschipare, to build or equip.

Escot [Fr.], a tax formerly paid in boroughs and corporations towards the support of the community, which is called *scot* and *lot.*

Escrow, a writing under seal delivered to a third person, to be delivered by him to the person whom it purports to benefit, upon some condition. Upon the performance of the condition it becomes an absolute deed; but if the condition be not performed it never becomes a deed. It is not delivered as a deed, but as an escrow, i. e. a scrowl or writing which is not to take effect as a deed till the condition be performed.—*Co. Litt.* 36 *a*; 2 *Bl. Com.* 307. See Delivery of Deed.

Escuage [fr. *escu*, Fr., a shield], a pecuniary instead of a military service. This kind of feudal tenure was called *scutagium* in Latin, or *servitium scuti* (the service of the shield), *scutum* being then a well-known denomination for money.—*Co. Litt.* 68 *b.*

Escurare, to scour or cleanse.

Esglise, a church.

Esketores, robbers or destroyers of other men's lands and fortunes.

Eskippamentum, skippage; tackle or ship furniture.

Eskipper, to ship.

Eskippeson, shipping or passage by sea.

Eslisors. See Elisors.

Esne, a hireling of servile condition.

Esnecy [fr. *æsnesia*, Lat.], a private prerogative allowed to the eldest coparcener, where an estate descends to daughters for want of an heir male, to choose after the inheritance is divided.—*Fleta*, l. 5, c. x.

Esplees [fr. *expetiæ*, Lat.], the products of land; as the hay of meadows, herbage of pasture, corn of arable land, rents, services, &c.; also the lands, &c., themselves.—*Termes de la Ley.*

Espousals [fr. *sponsalia*, Lat.; *espouse*, Fr.], the act of contracting or affiancing a man and woman to each other; the ceremony of betrothing.

Esquire [fr. *escuyer*, Fr.; *scutum*, Lat.; *σκῦτος*, Gk., an hide of which shields were made and afterwards covered], he who attended a knight in time of war, and carried his shield; whence he was called *escuyer* in French, and *scutifer* or *armiger*, i. e. armour-bearer, in Latin. No estate, however large, confers this rank upon its owner.

Esquires may be divided into five classes: he who does not belong to one or other of

them may or may not be a gentleman, but is no esquire.

(I.) The younger sons of peers and their eldest sons.

(II.) The eldest sons of knights and their eldest sons.

(III.) The chiefs of ancient families are esquires by prescription.

(IV.) Esquires by creation or office. Such are the heralds and serjeants-at-arms, and some others, who are constituted esquires by receiving a collar of S. S. Judges and other officers of state, justices of the peace, and the higher naval and military officers are designated esquires in their patents and commissions. Doctors in the several faculties, and barristers-at-law, are considered as esquires, or equal to esquires. None of these offices convey gentility to the posterity of the holders.

(V.) The last kind of esquires are those of Knights of the Bath, each of whom appoints two to attend upon him at his installation, and at coronations.

Essartum, woodlands turned into tillage by uprooting the trees and removing the underwood.—*Old Records.*

Essendi quietum de tolonio, a writ to be quit of toll; it lies for citizens and burgesses of any city or town, who, by charter or prescription, ought to be exempted from toll, where the same is exacted of them.—*Reg. Orig.* 258.

Essoin, Essoigne, Assoign [fr. *essonium*, Lat.; *essoine*, Fr.; *ex* priv., and *soing*, cura; *ab angustiâ*, *curâ*, *vel labore liberare*, which is a more probable derivation than *ἐξομνύσθαι*, Gk.; though it signifies to excuse by means of an oath which is the precise nature of an essoin. See *Spelman*, voc. '*Essoiniare*'], an excuse for him who is summoned to appear and answer to an action, or to perform suit to a court-baron, &c., by reason of sickness or infirmity, or other just cause of absence.

The causes of excuse called *essoins* allowed in the king's court were many. The principal essoin was that *de infirmitate*, which was of two kinds: 1. *De infirmitate veniendi.* 2. *De infirmitate resiantiæ*, of which the first was afterwards called *de malo veniendi*; the latter *de malo lecti.* See 1 *Reeves*, 115 and 405 for other essoins.

Formerly the first general return day of the term was called the essoign day, because the court sat to receive essoigns; but when essoigns were no longer allowed to be cast, i. e. obtained, in personal actions, the court discontinued such sittings. Still it was considered the essoign day for many purposes, until the 11 Geo. IV. and 1 Wm. IV. c. 70, s. 6, did away with the essoign day for all purposes, as part of the term.—1 *Chit. Arch. Prac. by Pren.* 157.

Essoiniator, a person who made an essoin.

Essoins, *Statute of,* 12 Edw. II. st. 2. See 2. *Reeves*, 303.

Est aliquid quod non oportet etiam si licet; quicquid verò non licet certè non oportet.—*Hob.* 159.—(There is that which is not proper, even though permitted: but whatever is not permitted, is certainly not proper.)

Est boni judicis ampliare jurisdictionem.—*Gilb.* 14.—(It is the duty of a good Judge to amplify jurisdiction.)

Est ipsorum legislatorum tanquam viva vox; rebus et non verbis legem imponimus.—10 *Co.* 101. (It is the characteristic of legislators themselves, as though they were a living voice; we impress law by actions not by words.)

Est quiddam perfectius in rebus licitis.—*Hob.* 159.—(There is something more perfect in things allowed.)

Estache [fr. *estacher*, Fr., to fasten], a bridge or stank of stone or timber.—*Cowel.*

Estandard, Estendart, or **Standard,** an ensign for horsemen in war.

Estanques, wears or kiddles in rivers.

Estate [fr. *status*, Lat.; *état.* Fr.], the condition and circumstance in which an owner stands with regard to his property. It is used in two senses: (1) technically, as the quantity of interest in realty owned by a person; and (2) popularly, as the realty itself. It is either legal, customary, or equitable.

Blackstone considers legal estates in a threefold view, thus:—

(1) The quantity of interest or duration, divided into

(A) Freeholds of inheritance, which are subdivided into:—

(α) Absolute, or fee-simple.

(β) Limited fees; which are (a) qualified or base fees, and (b) fees conditional at the common law, afterwards called fees-tail, in consequence of the Statute *de Donis*, which may be (i.) general or special, (ii.) male or female, (iii.) given in frank-marriage.

(B) Freeholds not of inheritance, subdivided into:—

(α) Conventional, or created by the act of the parties: they are (a) estates for one's own life, (b) estates *pur auter vie*, (c) general grant, without expressing any term at all.

(β) Legal, or created by operation of law: they are (a) tenancy in tail after possibility of issue extinct, (b) tenancy by the courtesy of England, (c) tenancy in dower.

(C) Estates less than freehold, subdivided into:—

(α) Estates for years.

(β) Estates at will.

(γ) Estates at sufferance.

(D) Estates upon condition, subdivided into:—

(α) Estates upon condition implied.

(ϐ) Estates upon condition expressed, and these are either precedent or subsequent: (a) precedent, which must be performed before an estate can vest or be enlarged; (b) subsequent, by the failure or non performance of which an estate already vested is defeated; such are (i.) estates held *in vadio*, gage, or pledge, which are of two kinds, *vivum vadium*, or living pledge or vifgage, and *mortuum vadium*, dead pledge or mortgage; (ii.) estates by statute merchant or statute staple; (iii.) estates by *elegit*.

(2) The time of enjoyment either

(A) In possession, or

(B) In expectancy, subdivided into:—

(*a*) Remainders created by convention of parties, and are (a) vested, (b) contingent or executory, (c) cross.

(ϐ) Reversions arising by operation of law.

(3) The number and connection of the tenants: either

(A) Severalty,

(B) Joint-tenancy,

(C) Coparcenary,

(D) Common,

(E) Entireties.—2 *Bl. Com.* cc. vii.–xii.

Estate ad remanentiam, an estate in fee simple.—*Glanv.* l. 7, c. i.

Estates of the Realm, the three branches of the Legislature—the Lords Spiritual, the Lords Temporal, and the Commons. A notion is entertained by many that the three estates of the realm are the King, the Lords, and the Commons. This, however, is an error. *Hallam*, in his 'Middle Ages,' vol. iii. c. viii., part 3, p. 105, note *b*, says: 'A notion is entertained by many people, and not without the authority of some very respectable names, that the King is one of the three estates of the realm, the Lords Spiritual and Temporal together forming the second, as the Commons in Parliament do the third. This is contradicted by the general tenor of our ancient records and law books; and indeed the analogy of other governments ought to have the greatest weight, even if more reason for doubt appeared upon the face of our own authorities. But the instances where the three estates are declared or implied to be the nobility, clergy, and commons, or at least their representatives in Parliament, are too numerous for insertion.' See also 2 *Step. Com.* 390, 4 *Inst.* 1.

Estoppel [fr. *estoupir*, Fr., i. e. *oppilare*, *obstipare*, Lat.], a conclusive admission, which cannot be denied, or controverted. It is of three kinds:—

(1) By matter of record, which imports such absolute and incontrovertible verity, that no person against whom it is producible shall be permitted to aver against it. A record generally concludes the parties thereto, and their privies, whether in blood, in law, or by estate.

(2) By deed. No person can be allowed to dispute his own solemn deed, which is therefore conclusive against him, and those claiming under him, even as to the facts recited in it. The general rule is that an indenture estops all who are parties to it, while a deed-poll only estops the party who executes it, since it is his sole language and act.—*Shep. Touch.* 53.

(3) In *pais*, as that a tenant cannot dispute his landlord's title. See 2 *Smi. L. C.* 585–665.

Estoveria sunt ardendi, arandi, construendi, et claudendi.—13 *Co.* 68.—(Estovers are of firebote, ploughbote, housebote, and hedgebote.)

Estoveriis habendis, a writ for a wife judicially separated to recover her alimony or estovers. Obsolete.

Estovers, or **Estouviers** [fr. *estoffer*, Fr., to furnish, or *estover*, Fr., i. e. *fovere*, Lat., to keep warm, cherish, sustain, or defend]. Bote, any kind of sustenance; also a wife's alimony. See COMMON.

Estrays, such valuable animals as are found wandering in a manor or lordship, the owner whereof is not known; in which case the law gives them to the sovereign, and they now most commonly belong to the lord of the manor by special grant from the Crown. But they must be proclaimed in the church, and two market towns next adjoining to the place where they are found; and then, if no person claim them, after proclamation and a year and a day passed, they belong to the sovereign or his substitute, without redemption, even though the owner were a minor, or under any other legal incapacity. The doctrine of estrays is only applicable to animals *domitæ naturæ*.—2 *Step. Com.* 568.

Estreat, the true extract, copy, or note of some original writing or record, and especially of recognizances, fines, amercements, &c. entered on the rolls of a court to be levied by the bailiff or other officer.—*F. N. B.* 57; 3 & 4 *Wm. IV.* c. 99, and 22 & 23 *Vict.* c. 21, s. 28.

Estreciatus, streightened, applied to roads.

Estrepe, to make spoils in lands to the damage of another.

Estrepement [fr. *estropier*, Fr., to lame, *extirpare*, Lat.], any spoil or waste made by tenant for life, upon any lands or woods, to the prejudice of him in reversion; also making land barren by continual ploughing. The writ of estrepement was abolished by 3 & 4 Wm. IV. c. 27.

Ethanim, the seventh month of the Jewish sacred year, and the first of their civil; it answered partly to September and partly to October. After the captivity it was called *Tizri*.—*Brown's Dict. of Bible.*

Ethelling, or **Ætheling**. See ADELING.

Et non, a phrase that might have been used

in pleading, instead of *absque hoc*, in the negative part of a special traverse. See ABSQUE HOC.

Evasion, the act of escaping by means of artifice; a trick or subterfuge.

Eventus est qui ex causâ sequitur; et dicitur eventus quia ex causis evenit.—9 *Co.* 81.—(An event is that which follows from the cause and is called an event because it arises from causes.)

Eventus varios res nova semper habet.—*Co. Litt.* 379.—(A new matter always produces various events.)

Eves-droppers. See EAVES-DROPPERS.

Eviction [fr. *evinco*, Lat., to overcome], dispossession; also a recovery of land, &c. by form of law.

Evidence, proof, either written or unwritten, of allegations in issue between parties.

The leading rules of evidence are the following:—

(1) The sole object and end of evidence is, to ascertain the truth of the several disputed facts or points in issue; and no evidence ought to be admitted which is not relevant to the issues.

(2) The point in issue is to be proved by the party who asserts the affirmative; according to the maxim *affirmanti non neganti incumbit probatio*. But where one person charges another with a culpable omission or breach of duty, this rule will not apply, for the person who makes the charge is bound to prove it, though it may involve a negative, since it is one of the first principles of justice, not to presume that a person has acted illegally, till the contrary is proved.

(3) It will be sufficient to prove the substance of the issue.

(4) The best evidence must be given of which the nature of the thing is capable. The exceptions to this rule are: (*a*) where it is necessary to prove an entry in a public book, the original need not to be shown; but from a principle of general convenience, an examined copy will be admitted; (*b*) in the case of all peace-officers, justices of the peace, constables, &c. it is sufficient to prove that they acted in these characters, without producing their appointments; (*c*) an admission of a fact by a party to a suit has, in many cases, been considered sufficient to dispense with strict and regular proof, which would otherwise have been necessary.

(5) Hearsay evidence of a fact is not admissible. The following cases are clearly distinguishable from hearsay evidence:—The testimony of a deceased witness, who has been examined upon oath, on the trial of a former action between the same parties, and where the point at issue is the same as in the second action, is admissible on the trial of the second action, and may be proved by one who heard him give evidence; for such evidence on the former trial was not given in an extrajudicial matter, but upon oath; the parties to the action were the same, the point in issue was the same, and an opportunity was given for cross-examination. Hearsay is often admitted in evidence as part of the transaction which becomes the subject of inquiry; the meaning of which seems to be, that where it is necessary in the course of a cause to inquire into the nature of a particular act, or the intention of the person who did the act, proof of what the person said at the time of doing it is admissible in evidence, for the purpose of showing its true character. The exceptions to the rule excluding hearsay evidence are the following:—Death-bed declarations (*which see*); hearsay evidence in questions of pedigree, public right, custom, boundaries, &c.; also, old leases, rent-rolls, surveys, &c. have been received in favor of persons claiming under the lessors; declarations against interest; rectors' and vicars' books as to the receipt of ecclesiastical dues in favor of their successors; also entries in the books of a tradesman by his deceased shopman, who therein supplies proof of a charge against himself, have been admitted as a proof of the delivery of goods, or of other matter therein stated within his own knowledge. But the 7 Jac. I. c. 12, enacts, that the shop-book of a tradesman shall not be evidence, in any action for wares delivered, or work done, above one year before the bringing of the action, except the tradesman or his executor shall have obtained a bill of debt or obligation of the debtor for the said debt, or shall have brought against him some action within a year next after the delivery of the wares, or the work done. See PAROL EVIDENCE; and SECONDARY EVIDENCE.—*Phil. Evid.* c. 7. ss. 3–7; 3 & 4 *Wm. IV.* c. 42, ss. 15, 26, 27; 6 & 7 *Vict.* c. 85; 8 & 9 *Vict.* c. 113; 14 & 15 *Vict.* c. 99; 16 & 17 *Vict.* c. 83; 17 & 18 *Vict.* c. 125, ss. 20–31, 46–57; 19 & 20 *Vict.* c. 113; 22 *Vict.* c. 20; 22 & 23 *Vict.* c. 61, s. 6.

The rules of evidence are the same in civil and in criminal courts, for a fact must be established by the same evidence, whether it be followed by a civil or a criminal consequence. *Lord Melville's case*, 29 *How. St. Tr.* 76 *b.*

Eundo, morando, et redeundo (*in going, remaining, and returning*).

Eunomy [fr. *εὐνομία*, Gk.], a constitution of good laws.

Evocation, withdrawing a case from the cognizance of an inferior court.—*Fr. Law.*

Ewage [fr. *eau*, Fr., water], toll paid for water-passage. See AQUAGE.

Ewbrice [fr. *ew*, Sax., marriage, and *bryce*, breaking], adultery.

Ewe [fr. *euva*], law.

Ewry, an office in the royal household where the table linen, &c. is taken care of.

Ex abundanti cautelâ (*from abundant care*).

Ex antecedentibus et consequentibus fit optima interpretatio.—2 *Inst.* 317.—(The best interpretation is made from the context.)

Exaction, a wrong done by an officer, or one in pretended authority, by taking a reward or fee for that which the law allows not, whereas *extortion* is where an officer takes more than is due, when something is due to him. The punishment is fine and imprisonment.—*Co. Litt.* 368.

Exactor regis, the king's collector of taxes; also a sheriff.

Ex æquo et bono (*in equity and good conscience*).

Examination, the act of eliciting by questions a person's knowledge of facts or science. A witness undergoes three examinations; (1) *Examination-in-chief*, which is made by the party calling him; (2) *Cross-examination by* the opposite party; and (3) *Re-examination*, by the party who called the witness, which is confined to matters arising out of the cross-examination, and supports the examination-in-chief.

Examination of Articled Clerks. See Appendix to *Wharton's Manual for Articled Clerks.*

Examiners in Chancery. There are two appointed to examine witnesses in town in causes depending in the court. Special examiners are appointed for the country.—*Smi. Eq. Pr.* 419.

Exannual Roll, the old way of exhibiting sheriff's accounts. Illeviable and desperate debts were transcribed into this roll, which was yearly read, to see what might be recovered.

Ex assensu patris, *dower*, a species of dower *ad ostium ecclesiæ*, during the life of the father of the husband, the son, by the father's consent expressly given, endowing his wife with parcel of his father's lands. Abolished by 3 & 4 Wm. IV. c. 105, s. 13.

Excambiator, a broker, one employed to exchange lands.

Excambium, an exchange; a place where merchants meet to transact their business; also an equivalent in recompense; a recompense in lieu of dower *ad ostium ecclesiæ*.—1 *Reeve*, pp. 101 & 103.

Exceptio, the designation for the defendant's plea.—*Civil Law.*

Exceptio ejus rei cujus petitur dissolutio nulla est.—*Jenk. Cent.* 37.—(There is no exception of that thing of which the dissolution is sought.)

Exceptio falsi omnium ultima.—(A plea denying a fact is the last of all.)

Exceptio nulla est versus actionem quæ exceptionem perimit.—*Jenk. Cent.* 106.—(There is no exception against an action which entirely destroys an exception.)

Exceptio probat regulam de rebus non exceptis.—11 *Co.* 41.—(An exception proves the rule concerning things not excepted.)

Exceptio quæ firmat legem, exponit legem.—2 *Buls.* 189.—(An exception which confirms the law, expounds the law.)

Exceptio rei judicatæ, a defence in the Scotch law that the matter has been adjudged in another court or country, and the judgment carried into effect.

Exceptio semper ultima ponenda est.—9 *Co.* 53.—(An exception is always to be put last.)

Exception, exclusion of anything or person; a stop or stay to an action; also the particular point of law stated in the margin of a demurrer. In Chancery, exceptions may be taken to pleadings if scandalous, and if a defendant's answer be insufficient, the plaintiff may file exceptions to it.—*Smi. Ch. Pr.* 344, 786.

In the Scotch law *exception* is synonymous with *defence.*

Exceptions to Evidence. See Bill of Exceptions.

Excessivum in jure reprobatur. Excessus in re qualibet jure reprobatur communi.—*Co.* 44.—(Excess in law is reprehended. Excess in any thing is reprehended at common law.)

Exchange [*cambium, permutatio*, Lat.], often contracted into *change*, a building or other place in considerable trading cities, where merchants, agents, bankers, brokers, and other persons concerned in commerce, meet at certain times to confer and treat together of matters relating to exchanges, remittances, payments, adventures, assurances, freights, and other mercantile negotiations, both by sea and land.

Also used to designate that species of mercantile transactions by which the debts of individuals residing at a distance from their creditors are satisfied without the transmission of money.

Par of exchange. The *par* of the currency of any two countries means, among merchants, the equivalency of a certain amount of the currency of the one in the currency of the other, supposing the currencies of both to be of the precise weight and purity fixed by their respective mints. Thus, according to the mint regulations of Great Britain and France, 1*l.* sterling is equal to 25 fr. 20 c., which is said to be the par between London and Paris. And the exchange between the two countries is said to be at par when bills are negotiated on this footing; that is, for example, when a bill for 100*l.* drawn in London is worth 2,520 fr. in Paris, and conversely. When 1*l.* in London buys a bill on Paris for more than 25 fr. 20 c. the exchange is said to be in favor of London, and against Paris; and when, on the other hand, 1*l.* in London will not buy a bill on Paris for 25 fr. 20 c. the exchange is against London and in favor of Paris.

Circumstances which determine the course of exchange. The exchange is affected, or made to diverge from par, by two classes of circumstances:—*first*, by any discrepancy between the actual weight and fineness of the coins, or of the bullion for which the substitutes used in their place will exchange, and their weight or fineness, as fixed by the mint regulations; and, *secondly*, by any sudden increase or diminution of the bills drawn in one country upon another.—*McCull. Comm. Dict.*

Exchange, *Bill of.* See BILL OF EXCHANGE.

Exchange [fr. *excambium*, Lat.], *Deed of*, an original common law conveyance, for the reciprocal transfer of interests, *ejusdem generis*, as fee-simple for fee-simple, legal estate for legal estate, copyhold for copyhold of the same manor, and the like, the one in consideration of the other. It takes place between two distinct contracting parties only, although several persons may compose each party. The operative and indispensable verb is 'exchange,' which no longer implies a general warranty or right of re-entry (8 & 9 Vict. c. 106, s. 4). An actual entry upon the property exchanged by the parties themselves to the deed is essential. The exchange is void if either party dies before entry, for, under such circumstances, the parties have no freehold in them, for the heir cannot enter and take as a purchaser, because he takes, under the deed, only by way of limitation in course of descent.

In consequence of the inconvenience arising from the implied warranty and re-entry, exchange fell into disuse, and mutual conveyances, the one in consideration of the other, were resorted to; but the abolition of this implied condition in law may tend to revive common law exchanges. See 1 *Steph. Com.* 269, 524, 664 n.

The General Inclosure Act (8 & 9 Vict. c. 118, s. 92) provides for the allotment and award of any land to be inclosed in exchange for any other land within the parish in which the land to be inclosed shall be situate, and enables the Commissioners to effect exchanges of lands upon the written application of the persons interested in the lands proposed to be exchanged by directing inquiries whether the proposed exchange would be beneficial to the owners, and, if so, by framing under their hands and seals an order of exchange, with a map or plan of the lands to be given and taken in exchange, and such order is not to be impeached by reason of any infirmity of estate or defect of title of the persons on whose application it shall be made. The land taken in exchange remains and enures to the same uses, trusts, intents and purposes, and is subject to the same charges as the land given in exchange (s. 147). The act provides for the division of intermixed lands, and for the exchange of inconvenient allotments for public purposes for more convenient land, upon giving certain notices, and also empowers the Commissioners to apportion the expenses (ss. 148, 151); and see 9 & 10 *Vict.* c. 70; 10 & 11 *Vict.* c. 111; 11 & 12 *Vict.* c. 99; 12 & 13 *Vict.* c. 83 (s. 7 extends exchange and partition to rights, easements, and rent-charges); 14 & 15 *Vict.* c. 53; 15 & 16 *Vict.* c. 79; 16 & 17 *Vict.* c. 124; 17 & 18 *Vict.* c. 97; 18 & 19 *Vict.* c. 52; and 20 & 21 *Vict.* c. 31, which severally amend and explain the General Inclosure Act.

Exchange of Livings, effected by resigning them into the bishop's hands, and each party being inducted into the other's benefice; if either die before both are inducted, the exchange is void.—31 *Eliz.* c. 6, s. 8.

Excheat. See ESCHEAT.

Exchequer Bills, bills of credit issued by authority of Parliament. They are for various sums, and bear interest (generally from $1\frac{1}{2}d.$ to $2\frac{1}{2}d.$ per diem, per 100*l.*) according to the usual rate at the time. The advances of the Bank to Government are made upon Exchequer Bills; and the daily transactions between the Bank and Government are principally carried on through their intervention.

Notice at the time at which outstanding Exchequer Bills are to be paid off is given by public advertisement. Bankers prefer vesting in Exchequer Bills to any other species of stock, even though the interest be for the most part comparatively low; because the capital may be received at the Treasury at the rate originally paid for it, the holders being exempted from any risk of fluctuation. Exchequer Bills were first issued in 1696, and have been annually issued ever since.—*McCull. Comm. Dict.*; 2 *Steph. Com.* 596; 24 *Vict.* c. 5; 25 *Vict.* cc. 3 & 13. As to the punishment for the forgery of Exchequer Bills, see 24 & 25 *Vict.* c. 98, s. 8.

Exchequer [fr. *eschequier*, Nor.-Fr.; *scaccarium*, low Lat.; *schatz*, Germ., a treasure] **Chamber,** *Court of*, a tribunal of appeal to correct the errors of other jurisdictions.

First, it exists as a court of mere debate, such causes from the other courts being sometimes adjourned into it as the judges, upon argument, find to be of great weight and difficulty, before any judgment is given upon them in the court below. It then consists of all the judges of the three superior courts of common law, and now and then the Lord Chancellor also.

Second, it exists as a court of error, where the judgments of each of the superior courts of common law, in all actions whatever, are subject to revision by the judges of the other two sitting collectively. The composition of this court consequently admits of three different combinations, consisting of any two of the courts below which were not parties to the

judgment appealed against.—11 *Geo. IV.* and 1 *Wm. IV.* c. 70, s. 8.

The 40 Geo. III., c. 39, established a Court of Exchequer Chamber in Ireland.

Exchequer, *Court of,* consists of two divisions, a court of revenue and a court of common law. It was established by William the Conqueror. Its equitable jurisdiction, except when it sits as a Court of Revenue, was transferred to the Court of Chancery by 5 Vict. c. 5. See *A. G.* v. *Halling* 15 M. & W. 687. As a court of revenue, it ascertains and enforces, by proceedings appropriate to the case, the proprietary rights of the Crown against the subjects of the realm. To proceed against a person in this department of the court is called to *exchequer* him. The practice and procedure on the revenue side of this court was amended by 22 & 23 Vict. c. 21, s. 9, *et seq.* As a court of common law, it administers redress between subject and subject in all actions whatever, except real actions. It is a court of record, and its judges are five in number, consisting of one chief and four *puisné* barons.—3 *Step. Com.* 402.

The 6 Anne, c. 26, established a court of Exchequer in Scotland.

Excise [fr. *acciis*, Dut.; *excisum*, Lat.], the name given to the duties or taxes laid on certain articles produced and consumed at home; but, exclusive of these, the duties on licenses, auctioneers, and post-horses, are included in the excise duties.

Excise duties were introduced into England by the Long Parliament in 1643, being then laid on the makers and vendors of ale, beer, cider and perry. The royalists soon after followed the example of the republicans, both sides declaring that the excise should be continued no longer than the termination of the war. But it was found too productive a source of revenue to be again relinquished; and when the nation had become accustomed to it for a few years, the Parliament declared, in 1649, that 'the impost of excise was the most easy and indifferent levy that could be laid upon the people.' It was placed on a new footing at the Restoration; and, notwithstanding Mr. Justice Blackstone says, that 'from its first original to the present time, its very name has been odious to the people of England,' it has continued progressively to gain ground, and is at this moment imposed on various important articles, and furnishes a large share of the public revenue of the kingdom. The management of the excise is placed in the Board of Customs.—*McCull. Comm. Dict.*

Dr. Johnson's description of the excise is this:—'A hateful tax levied upon commodities, and adjudged, not by the common judges of property, but wretches hired by those to whom excise is paid.' See 6 *Geo. IV.* c. 81; 7 & 8 *Geo. IV.* c. 53; 9 *Geo. IV.* c. 47; 2 *Wm. IV.* c. 16; 4 & 5 *Wm. IV.* cc. 51, 75; 6 & 7 *Wm. IV.* cc. 52, 72; 7 *Wm. IV.* and 1 *Vict.* c. 49; 1 & 2 *Vict.* c. 44; 2 & 3 *Vict.* cc. 23, 24, 25, 32, 63; 3 & 4 *Vict.* cc. 18, 22, 49; 4 & 5 *Vict.* c. 20; 5 & 6 *Vict.* cc. 16, 25, 93; 6 & 7 *Vict.* c. 49; 7 & 8 *Vict.* c. 51; 8 & 9 *Vict.* c. 15; 10 & 11 *Vict.* cc. 41, 42; 11 & 12 *Vict.* c. 100; 12 & 13 *Vict.* c. 40; 13 & 14 *Vict.* cc. 9, 67; 14 & 15 *Vict.* c. 59; 16 & 17 *Vict.* cc. 37, 39, 127; 17 & 18 *Vict.* cc. 27, 30; 18 & 19 *Vict.* cc. 22, 38, 94; 19 & 20 *Vict.* cc. 34, 51, 82, s. 3; 20 *Vict.* c. 16; and 20 & 21 *Vict.* c. 61. As to its general management, see 6 *Geo. IV.* c. 81; 7 & 8 *Geo. IV.* c. 53; 4 & 5 *Wm. IV.* c. 51; 4 & 5 *Vict.* c. 20; 10 & 11 *Vict.* c. 42; 11 & 12 *Vict.* c. 121; 12 & 13 *Vict.* c. 1; 15 & 16 *Vict.* c. 61; 18 & 19 *Vict.* c. 94; 23 & 24 *Vict.* c. 113; and 25 & 26 *Vict.* c. 84.

Exclusa, Exclusagium, a sluice to carry off water; the payment to the lord for the benefit of such a sluice.

Excommencement, excommunication.—*Law French.*

Excommunication, an ecclesiastical interdict or censure, divided into the greater and the lesser; by the former a person was excluded from the communion of the church and the company of the faithful, and was rendered incapable of any legal act; by the latter he was merely debarred from the services of the church.

Excommunication was formerly the process by which the decrees and orders of the Ecclesiastical courts were enforced; but in all cases of contempt of court it has now been abolished, and in lieu thereof, where a lawful citation or sentence has not been obeyed, the judge shall have power, after a certain period, to pronounce such person contumacious and in contempt, and to signify the same to the Court of Chancery: whereupon a writ *de contumace capiendo* shall issue from that court, which shall have the same force and effect as formerly belonged, in case of contempt, to a writ *de excommmunicato capiendo.*—53 *Geo. III.* c. 127, s. 2.

Excommunicatio minor *est, per quam quis à sacramentorum participatione conscientiâ vel sententiâ arceatur*; major *est, quæ non solum à sacramentorum verum etiam fidelium communione excludit, et ab omni actu legitimo separat aut dividit.—Co. Litt.* 133.—(The *lesser* excommunication is that by which a man, either by conscience or sentence, is expelled from participation in the sacraments; the *greater* is where he is not only excluded from participation in the sacraments, but from all community with the faithful, and from every legitimate act.)

Excommunicato capiendo. See EXCOMMUNICATION.

Excommunicato deliberando, a writ to the sheriff for delivery of an excommunicated person out of prison, upon certificate from the ordinary of his conformity to the ecclesiastical jurisdiction.—*F. N. B.* 63.

Excommunicato interdicitur omnis actus legitimus, ita quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri.—*Co. Litt.* 133.—(Every legitimate act is forbidden an excommunicated person, so that he cannot act, nor sue any person; but he may be sued by others.)

Excommunicato recipiendo, or **recapiendo,** a writ commanding that persons excommunicated, who for their obstinacy had been committed to prison, but were unlawfully set free before they had given caution to obey the authority of the church, should be sought after, retaken, and imprisoned again.—*Reg. Orig.* 67.

Ex contractu (*from a contract*). One of the great classes of obligation from which a right of action accrues. The actions are (1) account; (2) *assumpsit*, or promises; (3) covenant; (4) debt; (5) detinue; (6) *scire facias*, or revivor.

Excript, a copy; a writing copied from another.

Exculpation, *letters of*, the warrant to an offender indicted for citing witnesses in his own defence.—*Scotch Law.*

Excusable homicide is of two sorts, either *per infortunium*, by misadventure, or *se defendendo*, upon a sudden affray.

Homicide, *per infortunium*, is where a man, doing a lawful act, without any intention of hurt, unfortunately kills another; but if death ensue from any unlawful act, the offence is manslaughter, and not misadventure.

Homicide, *se defendendo*, is where a man kills another upon a sudden affray, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling.—4 *Bl. Com.* 178.

Excusat aut extenuat delictum in capitalibus quod non operatur idem in civilibus.—*Bac. Max.* r. 15.—(That may excuse or palliate a wrongful act in capital cases which would not have the same effect in civil injuries.) See *Broome, Maxims*, 291.

Excusatur quis quod clameum non apposuerit, ut si toto tempore litigii fuit ultra mare quacunque occasione.—*Co. Litt.* 260.—(He is excused who does not bring his claim, if, during the whole period in which it ought to have been brought, he has been beyond sea on any occasion.) But see 19 & 20 *Vict.* c. 97, s. 10.

Excuss, to seize and detain by law.

Excussion, seizure by law.

Ex delicto (*from a tort or offence*). The actions which arise from torts are: (1) case, (2) trespass, (3) trover, (4) replevin.

Ex delicto non ex supplicio emergit infamia.—(Infamy arises from the crime, not from the punishment.)

Ex diuturnitate temporis omnia præsumuntur esse solemniter acta.—*Jenk. Cent.* 185.—(From lapse of time, all things are presumed to have been done properly.)

Ex dolo malo non oritur actio.—*Cowp.* 343. (From a fraud an action does not arise.)

Ex donationibus autem feoda militaria vel magnam serjeantiam non continentibus oritur nobis quoddam nomen generale, quod est socagium.—*Co. Litt.* 16.—(From grants not containing military fees or grand serjeanty, a kind of general name is used by us, which is socage.)

Exeat, a permission which a bishop grants to a priest to go out of his diocese; also, leave to go out generally.

Executed, something done or completed.

Executed consideration, a consideration which is executed before the promise upon which it is founded is made, where A. bails a man's servant, and the master afterwards promises to indemnify A.; but if a man promise to indemnify A. in the event of his bailing his servant, the consideration is then executory. With respect to an executed consideration, the rule is, that if it were not at the precedent request of the promiser, but a merely voluntary courtesy, it will not suffice to support a promise; therefore, in the first example, the promise would not be binding, unless the bailing were at the master's precedent request.—2 *Step. Com.* 60; *Smith on Contracts*; and *Notes to Lampleigh* v. *Braithwait*, 1 *Smith*, L. C.

Executed contract, where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made, as where an article is sold and delivered, and payment therefor is made on the spot. A contract is said to be executory where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time.—*Story on Contracts*, 8.

Executed estates, estates in possession.

Executed fine, the fine *sur cognizance de droit, come ceo que il ad de son done*; or a fine upon acknowledgment of the right of the cognizee, as that which he has of the gift of the cognizor. Abolished by 3 & 4 Wm. IV. c. 74.

Executed remainder. A vested remainder, *which see.*

Executed trust. When an estate is conveyed to the use of A. and his heirs, with a simple declaration of the trust for B. and his heirs, or the heirs of his body, the trust is perfect; and it is said to be executed, because no further act is necessary to be done by the trustee to raise and give effect to it; because there is no ground for the interference of a court of

equity to affix a meaning to the words declaratory of the trust, which they do not legally import.—1 *Sand. Uses and Trusts*, 335.

As all trusts are executory in this sense, that the trustee is bound to dispose of the estate according to the tenor of his trust, whether active or passive, it would be more accurate and precise to substitute the terms *perfect* and *imperfect* for *executed* and *executory* trusts.—1 *Hayes's Conv.* 85.

Executed use, the first use in a conveyance upon which the Statute of Uses operates by bringing the possession to it, the combination of which, i. e. the use and the possession, form the legal estate, and thus the statute is said to execute the use.

Executio est finis et fructus legis.—Co. Litt. 289.—(Execution is the end and fruit of the law.)

Executio juris non habet injuriam.—2 Rol. Rep. 301.—(The execution of law does no injury.)

Executio est executio juris secundum judicium. 3 *Inst.* 212.—(Execution is the execution of the law according to the judgment.)

Execution, the last stage of a suit giving possession of anything recovered at law or in equity, and also the final sentence inflicted upon criminals. It is styled *final process*.

At common law, writs of execution are judicial processes, issuing out of the court where the record or other proceeding is, upon which they are grounded; and therefore, when the record or transcript of the proceedings is removed into any of the courts at Westminster from a county palatine, or from an inferior court under 19 Geo. III. c. 70, s. 4, or 33 Geo. III. c. 68, s. 1, or from an inferior court under 1 & 2 Vict. c. 110, s. 21, the execution is issued out of the superior court.—4 & 5 *Wm. IV.* c. 62, s. 31; 6 & 7 *Wm. IV.* c. 106, s. 11. A writ of execution may be sued out at any time within six years after judgment actually signed by the master, in cases where a revivor or *scire facias* is not required, or where execution is not stayed by error, injunction, agreement, or the like. It is in force for one year. In promises, covenant, case, trespass, and replevin, the writ of execution for the plaintiff is for damages and costs; in debt, for the debt, damages, and costs; in detinue, for the goods or their value, with damages and costs. For the defendant in all cases, except replevin, the execution is for the costs only, but in replevin it is for a return of the goods also. The ordinary writs of execution are *capias ad satisfaciendum; fieri facias; elegit; levari facias; habere facias possessionem; de retorno habendo;* and *capias in withernam.*

The writ of execution must strictly pursue the judgment in the amount, in the number and names of the parties, and in the subject-matter. It is tested on the day on which it is issued, and is made returnable immediately on the execution thereof. By 29 Car. II. c. 3, s. 16, 'no writ of *fieri facias*, or other writ of execution, shall bind the property of the *goods* of the party against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, or coroners to be executed; and for the better manifestation of the said time, the sheriff, under-sheriff, and coroners, their deputies and agents, shall upon the receipt of any such writ (without fee for doing the same), endorse upon the back thereof the day of the month or year whereon he or they received the same.' If two writs of execution against the same person are delivered to the sheriff, he must execute that first which was first delivered to him, even where both were delivered upon the same day; and he must set about executing the writ within a reasonable time after he receives it for execution; and if he omit doing so, and any damage arise to the party from his negligence, an action on the case may be supported against him. The sheriff cannot break open any outer door of the party's dwelling-house, in order to enforce a writ of execution; unless in the case of a writ of seisin, or *habere facias possessionem.* Writs of execution are seldom returned in practice, except the *elegit* and inquisition. Either party may, however, rule the sheriff to return the writ, even after he goes out of office, provided it be within six lunar months after the expiration of his term of office. If execution be sued out against two or more persons, and the whole amount be levied upon one, in actions *ex contractu* (unless upon a contract made with the defendants as partners in trade), the party upon whom the whole is levied may maintain an action against the others, and oblige them to contribute their respective shares; but in most cases in actions *ex delicto* he cannot thus compel a contribution, and he is, in general, altogether without remedy. An irregular execution will be set aside on motion, and usually with costs. The 7 & 8 Vict. c. 96, s. 57, abolished arrest for debts under 20*l.*—1 *Chit. Arch. Prac. by Pren.* 587, *et seq.*

In Chancery, for the purpose of enforcing compliance with a decree or order, the court not only commits the parties neglecting to comply therewith, but also sequesters their personal estate, and by a writ of assistance will order the delivery up of the estate itself, and may likewise compel a conveyance of lands; besides which, where money or costs are ordered to be paid the party may issue a *fieri facias* or an *elegit* for the purpose of enforcing payment. See 1 & 2 *Vict.* c. 110, s. 20, and *Consol. Ord.* 1860, ords. xxix., xxx.

The execution of a criminal is a species of justifiable homicide, provided it be in strict

conformity with his sentence. It must be performed by the legal officer—the sheriff or his deputy.—4 *Bl. Com.* c. xxxii.

By 6 & 7 Wm. IV. c. 30, execution is not to be carried into effect until some days after conviction. See 7 *Wm. IV.* and 1 *Vict.* c. 77.

Among the Romans the execution of offenders was delayed, by decree of the senate, for ten days. *Potest enim pœna dilata exigi, non potest exacta revocari.—Senec. De vitâ et spiritu hominis laturam sententiam diu multumque cunctari oportere, nec præcipiti studio, ubi irrevocabile sit factum, agitari.—Amm. Marcell.* But this humane sentiment was anticipated by the Grecian legislator: *νόμος ἄλλος περὶ θανάτου, μὴ μίαν μόνον ἡμέραν κρίνειν ἀλλὰ πολλάς.—Plat. Ap. Socr.*

Execution of decree. Sometimes, from the neglect of parties, or some other cause, it becomes impossible to carry a decree into execution without the further decree of the court upon a bill filed for that purpose. This happens generally in cases where parties having neglected to proceed upon the decree, their rights under it become so embarrassed by a variety of subsequent events that it is necessary to have the decree of the court to settle and ascertain them. Such a bill may also be brought to carry into execution the judgment of an inferior court of equity, if the jurisdiction of that court is not equal to the purpose; as in the case of a decree in Wales, which the defendant has avoided by fleeing into England.

This species of bill is, generally, partly an original bill, and partly a bill in the nature of an original bill, though not strictly original.—*Story's Eq. Plead.* 342.

Execution of deeds, the signing, sealing and delivery of them by the parties, as their own acts and deeds, in the presence of witnesses. See DEED. As to compulsory executions, the 1 Wm. IV. c. 36, s. 15, rule 15, enacts, that when any person shall have been directed by any decree or order in Chancery, to execute any deed or other instrument, or make a surrender or transfer, and shall have refused or neglected to execute, make, or transfer the same, and shall have been committed to prison under process for such contempt, or being confined in prison for any other cause, shall have been charged with or detained under process for such contempt, and shall remain in such prison, the court may, upon motion or petition, and upon affidavit that such person has, after the expiration of two calendar months from the time of his being committed under, or charged with or detained under such process, again refused to execute such deed or instrument, or make such surrender or transfer, order or appoint one of the chief clerks, or if the act is to be done out of London, then, if necessary, one of the commissioners for taking affidavits, to execute such deed or other instruments, or to make such surrender or transfer, for and in the name of such person, and the execution of the said deed or other instrument, and the surrender or transfer made by the said chief clerk, &c. shall, in all respects, have the same force and validity as if the same had been executed or made by the party himself; and within ten days after the execution or making of any such deed or other instrument, or surrender, or transfer, notice thereof shall be given by the adverse solicitor to the party in whose name the same is executed or made, and such party, as soon as the deed or other instrument, or surrender, or transfer, shall be executed or made, shall be considered as having cleared his contempt, except as far as regards the payment of the costs of the contempt, and shall be entitled to be discharged therefrom, under any of the provisions of this act applicable to his case; and the court shall make such order as shall be just, touching the payment of the costs of or attending any such deed, surrender, instrument, or transfer.

As to execution by an attorney. It may be observed that a purchaser may insist upon the vendor's personal execution, and cannot be compelled to accept the conveyance executed under a power of attorney, unless an actual necessity appear for it; or he may be bound by condition or stipulation so to accept it. When, however, a conveyance is so executed, the attorney should enter into a declaration of trust that he will stand possessed of the purchase-money in trust for the purchaser, until it appear by satisfactory evidence that the vendor was alive at the time of such execution, or if he shall be dead, until the estate is duly conveyed to the purchaser.

The attorney to execute the deed must be appointed by a sealed writing. An appointee cannot generally delegate this act, nor can a party whose authority is strictly personal, as that of consent or discretion.

The attorney should sign the deed in the name of his appointor (*Wilks* v. *Back*, 2 *East.* 142 (1802), and 3 *Pres. Abr.* 68), thus—'A. B. (*principal*), by C. D. his attorney, duly authorised in that behalf by a letter of attorney, bearing date the —— day of ——.' It should also be delivered in the name and as the act of the principal, and the receipt-clause should be signed in a similar manner.

This letter or power of attorney, being a muniment of title, should accompany the deed, of which it authorises the execution, or be covenanted to be produced if it relate to other property, and an attested copy of it furnished.

Execution of wills. A will must be in writing (except in the case of soldiers and sailors in active service) and signed at the foot or end thereof by the testator, or by some other

person in his presence and by his direction; and such signature must be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses must attest and subscribe the will in the presence of the testator, and, though this is not essentially requisite, also in the presence of each other; but no form of attestation is necessary, although it is prudent in practice to embody in an attestation-clause all the statutory requirements. Appointments by will are to be executed like other wills, and will be valid although other required solemnities are not observed (7 Wm. IV. and 1 Vict. c. 26, ss. 9, 10, 11, 12). Every will, so far only as regards the position of the signature of the testator, or of the person signing for him, is valid, if such signature be so placed at, or after, or following, or under, or beside, or opposite to, the end of the will, that it is apparent on the face of the will that the testator intended to give effect, by such his signature, to the writing signed as his will. No such will is to be affected by the circumstance that the signature may not follow or be immediately after the foot or end of the will; or by the circumstance that a blank space may intervene between the concluding word of the will and the signature; or by the circumstance that the signature may be placed among the words of the testimonium clause, or of the clause of attestation, either with or without a blank space intervening, or may follow, or be after, or under, or beside, the names, or one of the names, of the subscribing witnesses; or by the circumstance that the signature may be on a side, or page, or other portion of the paper or papers containing the will, whereon no clause, or paragraph, or disposing part of the will may be written above the signature; or by the circumstance that there may appear to be sufficient space on or at the bottom of the preceding side, or page, or other portion of the same paper on which the will is written, to contain the signature; and the enumeration of the above circumstances is not to restrict the generality of the enactment. But no signature is to be operative to give effect to any disposition or direction which is underneath, or which follows it; nor to give effect to any disposition or direction inserted after the signature is made (15 & 16 Vict. c. 24, s. 1; the second section gives the act a retroactive efficacy).

No obliteration, interlineation, or other alteration made in any will after its execution, is to be valid, or have any effect, except so far as the words or effect of the will, before such alteration, may not be apparent, unless such alteration be executed in like manner as is required for the execution of the will. But the will, with such alteration or part thereof, is to be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses be made in the margin, or in some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.—7 *Wm. IV.* and 1 *Vict.* c. 26, s. 21. See *Jarman on Wills* and *Williams on Executors.*

Execution, *Writ of.* This process, the service of which was a preliminary step to enforcing obedience to a decree or order in Chancery, is abolished.—*Consol. Ord.* 1860, xxx., r. 4. See also Writs of Execution.

Executione facienda, a writ commanding execution of a judgment. Obsolete.

Executione facienda in withernamium, a writ that lay for taking cattle of one who has conveyed the cattle of another out of the county, so that the sheriff cannot replevy them. *Reg. Orig.* 82.

Executione judicii, a writ directed to the judge of an inferior court to do execution upon a judgment therein, or to return some reasonable cause wherefore he delays the execution.—*F. N. B.* 20.

Executioner, he that inflicts capital punishment; he that puts to death according to the sentence of the law.

Executive, that branch of the government which puts the laws into execution, as distinguished from the *legislative* and *judicial* branches. The body that deliberates and enacts laws is legislative; the body that judges and applies the laws in particular cases is judicial; and the body that carries the laws into effect, or superintends the enforcement of them, is executive. The executive authority, in all monarchies, is vested in the sovereign.

Executor [fr. *exécuteur*, Fr.], a person appointed by a testator to carry out the directions and requests in his will, and to dispose of the property according to his testamentary provisions after his decease.

The leading duties and responsibilities of an executor may be thus classed:—

(1) He will not be allowed, as against creditors, funeral expenses exceeding 20*l.* if the testator died insolvent; and if he neglects to secure the property, and loss ensue, he will be personally liable for a devastavit.

(2) Before probate of the will, an executor may effectually do most of the acts that he could do afterwards, because by the very appointment the testator has evinced personal confidence in his nominee, and, therefore, the interest of an executor arises not from the probate, but from the will; and for the same reason it has been held, that he may release a debt or assign a term for years before probate. Also, he may collect and secure assets, receive debts, and give effectual receipts, assent to a legacy, present bills or notes for payment, give notices

of dishonor, or take proceedings in bankruptcy; so he may issue a writ of summons at common law. He may also file a bill in equity, but he must obtain probate before the hearing, though, strictly, an executor should not file a bill until he has obtained probate. He may be sued before probate, if he has acted. It is said that a person who is entitled to administration can, before obtaining letters of administration, do no act whatever; but it has been considered that he might file a bill in Chancery, although he may not be able to commence an action at law, and he may collect, secure, and ascertain the value of the property, so as to enable him to make affidavit that it does not exceed a certain value, as required by the statute.

(3) Instead of an inventory and valuation of the testator's personal property on stamped paper, it is now usual, in order to be safe, to have an accurate inventory made by any competent person, distinguishing such debts due to the estate as are sperate or good from those which are doubtful or desperate, and then obtain the written consent of all persons interested in the assets, or at least of the legatees or residuary legatee, so as to save the expense of a valuation. It is a usual and proper precaution, in cases of the least doubt, shortly after the funeral, to publish an advertisement in the principal newspapers for debtors to pay their debts, and for claimants to send in the particulars of their claims to a named person; and this is essential before the speedy payment of simple contract creditors, and still more before the payment of legacies; for if, without such advertisement, and without suit, an executor or administrator should hastily pay a simple contract creditor, and afterwards specialty debts should appear, he may be liable to the consequences of a misapplication of assets and devastavit.

(4) Probate should be obtained within six calendar months after death of testator, and if delayed after that time, a penalty of 100*l.* and 10*l.* per cent. on the property would be incurred. If there be a suit or dispute relative to the will or administration, the probate or letters of administration should be obtained within two calendar months after it has been ended (55 Geo. III. c. 184, s. 37). The probate should be obtained to the extent of the sum really expected to be received. An administrator, after obtaining letters of administration, stands in many respects in the same situation as an executor, and the cases relating to one in general equally apply to the other.

(5) It is the duty of the executor or administrator to collect and speedily reduce into money the personal assets, when not otherwise directed, especially if they be of a perishable nature. If executors be directed by the will to carry on the testator's business or trade, they should do so under the protection of the Court of Chancery. The 3 & 4 Wm. IV. c. 42, s. 2, enables executors or administrators to recover for any injuries to the real or personal estate of the deceased, committed within six months before his death. Actions against executors or administrators may be supported for any wrong committed by the deceased to the real or personal property of another, provided they be brought within six months after the death of the deceased. Sec. 31 subjects executors or administrators personally to costs, when nonsuited or having a verdict against them, unless the Court or Judge otherwise order. But they will be allowed such costs out of the assets, unless they have been guilty of misconduct or fraud. If an executor be hastily pressed by one or more creditors, in case of any reasonable doubt, he should either act with the concurrence of the legatees and next of kin, or file a bill, or get a friendly creditor to file a bill, compelling all the creditors to come in and receive payment under a decree of a court of equity. Submissions to arbitration should restrict the arbitrator from awarding against the executor personally, and should be made with the consent of creditors, legatees, and next of kin.

(6) As an executor or administrator cannot sue himself, the law allows him, when he has been legally invested with his representative character, to retain out of any assets that may have come to his hands, to the extent of all funeral and testamentary expenses and debts legally paid by him out of his own pocket, and also any debt due to himself, before he pays any other creditor, in equal degree, and he may retain his own debt, notwithstanding a decree has been made in a suit by other creditors for administration of assets equally, and notwithstanding assets out of which he seeks to retain his debt came to his hands after decree, and even if the debt be barred by the Statute of Limitations. Where there are joint executors or joint administrators, they must, *inter se*, retain their debts rateably, and in proportion to the assets.

(7) It has long been settled that, amongst creditors in equal degree, an executor may, even after action commenced by an adverse creditor, and at any time before judgment therein, confess a judgment, and give a preference to any other favored creditor in the same or a higher degree, thereby postponing the party first suing; and unless assets should afterwards come to hand sufficient to pay both, the first suitor will be totally deprived of the benefit of his prior action, and this, although it be done for the express purpose of depriving the plaintiff of the debt. But a court of equity will, to a certain extent, by a decree, but not before, control and prevent the preference, upon

bill filed by any creditor, on behalf of himself and all other creditors, against the executor or administrator, requiring him to account and distribute equally, upon which a proper division and distribution will be decreed, and this is considered in the nature of a judgment in favor of all the creditors.

(8) In general, legacies ought not to be paid within a year after the death of the testator, and not even then without an indemnity, if there be the least reason to apprehend that there are debts or claims outstanding. This year is allowed for the payment of legacies in analogy to the Statute of Distributions, which enacts, 'that no distribution of the goods of any person dying intestate be made till after one year after the intestate's death;' and in order that the executor may have full opportunity to obtain information of the state of the property, and within that period, an executor cannot be compelled to pay a legacy, even in a case where the testator directed it to be discharged within six months after his death. An executor cannot give himself or any other legatee (except in the case of specific legacies) any preference over other legatees, as he may in the case of debts, nor can he retain so as to pay himself; and in case of insufficiency of assets to pay the whole, all general legatees are to abate alike and in proportion to the amount of their respective legacies; and a legatee will be compelled to refund when the estate proves insufficient, whether security has been given by him for such purpose or not.

(9) An executor is not entitled to any remuneration for his own personal trouble or loss of time, unless it be expressed in the will; on which account it was that the law formerly gave to the executor the whole undisposed-of residue, unless, by some expression, to be collected from the will, as by a bequest to the executor for his trouble, a contrary intention was to be collected. But now the next of kin, and not the executor, is entitled to the unbequeathed residue.—11 *Geo. IV.* and 1 *Wm. IV.* c. 40, ss. 1, 2.

(10) All the executors should join in suing as well in equity as at law, otherwise the defendant may plead in abatement or defeat the proceeding, unless those who have not proved have formally renounced. Consult *Toller*, *Wentworth*, or *Williams on Executors and Administrators*.

The 22 & 23 Vict. c. 38, has enacted as follows:—

Where an executor or administrator, liable as such to the rents, covenants, or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate, whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease, as may have accrued due and been claimed up to the time of the assignment hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to the purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased, to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed (s. 27).

In like manner, where an executor or administrator liable as such to the rent, covenants, or agreements, contained in any conveyance on chief rent, or rent charged (whether any such rent be by limitation of use, grant, or reservation), or agreement for such conveyance, granted or assigned to, or made and entered into with the testator or intestate, whose estate is being administered, shall have satisfied all such liabilities under the said conveyance, or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum, covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased, to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part (as the case may be) of the personal estate of the deceased, to meet any future liability under the said conveyance, or agreement for a conveyance; and the

executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance, or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed (s. 28).

Where an executor or administrator shall have given such or the like notices as, in the opinion of the court in which such executor or administrator is sought to be charged, would have been given by the Court of Chancery in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall at the expiration of the time named in the said notices, or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in the present act contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, into the hands of the person or persons who may have received the same respectively (s. 29).

Executor de son tort. If a stranger take upon himself to act as executor, without any just authority, as by intermeddling with the goods of the deceased, or doing any other act pertaining to the office of an executor, he is called an executor *de son tort*, i. e. of his own wrong, and is liable to all the trouble of his usurped office, without any of the profits or advantages; but the performance of acts of necessity or humanity, as locking-up the goods, or burying the deceased, will not amount to such an intermeddling as will charge a person as executor of his own wrong.—1 *Wm. Exs.* 225.

Executor of an Executor. The interest in a testator's estate and effects, vested in his executor, at the decease of the executor devolves upon such executor's executor; but, in the case of the decease of an administrator, a fresh administration must be granted; for this reason, that, whereas an executor is appointed by the testator, an administrator merely derives his authority from the Court of Probate.

Executor lucratus. An executor who has assets of his testator who in his lifetime made himself liable by a wrongful interference with the property of another.—*Davidson* v. *Tullock* (*Dom. Proc.*), 6 *Jurist* (n. s.), 543.

Executory, performing official duties; contingent; also personal estate of a deceased; whatever may be executed.

Executory consideration. See CONSIDERATION.

Executory contract. See CONTRACT.

Executory devise. Mr. Fearne (*Cont. Rem.* 386) defines an executory devise to be strictly, such a limitation of a future estate or interest in lands or chattels (though in the case of chattels personal, it is more properly an executory bequest) as the law admits in the case of a will, though contrary to the rules of limitation in conveyances at common law. It is only an indulgence allowed to a man's last will and testament, where otherwise the words of the will would be void; for wherever a future interest is so limited by devise as to fall within the rules laid down for the limitation of contingent remainders, such an interest is not an executory devise, but a contingent remainder.

If a particular estate of freehold is first devised, capable in its own nature of supporting a remainder, followed by a limitation, which is not immediately connected with or does not immediately commence from the expiration of the particular estate of freehold, the latter limitation is incapable of taking effect as a remainder, but may operate as an executory devise if confined to the requisite limits of time, as provided by the rule of perpetuity.

Thus, if land be devised to one for life, and after his decease to B. in fee, the limitation to B. is immediately connected with and immediately commences on the expiration of the estate limited to A. during his life, and is, therefore, a remainder; but, if the land be limited to A. for life, and after the decease of A. and one year after his decease, to B. in fee, the interval of the year prevents the limitation to B. and his heirs from being immediately connected with and from immediately commencing at the expiration of A.'s life estate, and cannot therefore operate as a remainder, but operates as an executory devise. In the same manner, if land be limited to A. for life, and after his decease to B. and his heirs, with a proviso, that if B. shall survive A., and afterwards depart this life without leaving issue of his body living at the time of his decease, the land shall devolve to C. and his heirs; the limitation to B. and his heirs prevents the immediate connection of the estate limited to C. with the life estate of A., and prevents its immediate commencement on

the expiration of A.'s life estate, and therefore makes it operate by way of executory devise.—*Butler's Note* (*c*) *to Fearne*, p. 397.

Three kinds of executory devises have been laid down, viz. :—

(1) Where a testator devises his whole fee-simple, but upon some contingency qualifies such devise, and limits an estate on the contingency: e. g. a devise of land to the testator's wife for life, remainder to C., his second son in fee, provided if D., his third son, should, within three months after the wife's death, pay 500*l.* to C. or his executors, then to D. and his heirs. D. has an executory devise.

(2) Where a testator, without disposing of the immediate fee, gives the future estate to arise either upon a contingency or at a period certain, unpreceded by, or not having the requisite connection with, any immediate freehold, to give it effect as a remainder.

The case of a devise to one, to take effect six months after the testator's decease, is an instance of the first class in this description.

And the case of a limitation to one for life, and from and after the expiration of one day (or any other period, not exceeding twenty-one years, we may suppose) next ensuing his decease, then over to another, may be adduced as an instance of the latter part of this description.

(3) The third sort of executory devises, comprising all that relates to chattels, is where a term or any personal estate is bequeathed to one for life, or otherwise, and after the decease of the devisee or legatee for life, or some other contingency or period, is given over to another person.

It is to be remarked that a remainder can only be limited in freehold estates. In personal property, under which both chattels real and chattels personal are included, there cannot be a remainder in the strict sense of that word; and therefore every future bequest of personal property, whether it be preceded or not preceded by a prior bequest, or limited on a certain or an uncertain event, is an executory bequest, and falls under the rules by which that mode of limitation is regulated.

The principal differences between an executory devise and a contingent remainder, are—

1st. That a contingent remainder may be limited in conveyances at common law; an executory devise is admitted only in last wills and testaments.

2ndly. That a contingent remainder relates only to lands, tenements, and hereditaments; an executory devise respects personal estates as well as real.

3rdly. That a contingent remainder requires a freehold to precede and support it; an executory devise requires no preceding estate to support it.

4thly. That a contingent remainder must vest, at farthest, at the instant the preceding estate determines; but in respect to an executory devise, if there be any preceding estate, it is not necessary that the executory devise should vest when such preceding estate determines.

And 5thly. That the great and essential difference between the nature of a contingent remainder and that of an executory devise consists in this, that the first may be barred and destroyed or prevented from taking effect by several different means; but it is a rule, that an executory devise cannot be prevented or destroyed by any alteration whatsoever in the estate out of which or after which it is limited.

If the executory devise be limited to take effect on an estate-tail, then the tenant in tail may by a deed of disposition in conformity with the stat. 3 & 4 Wm. IV. c. 74, bar the entail, and all remainders, executory devises, and conditional limitations dependent thereupon. If the executory devise is expectant on an estate in fee, then, as the position intimates, there are no means of preventing it taking effect, if the event happen on which it is to arise.

Executory estates, interests which depend for their enjoyment upon some subsequent event or contingency.

Executory fines, the fines *sur cognizance de droit tantum; sur concessit;* and *sur done, grant et render.* Abolished by 3 & 4 Wm. IV. c. 74.

Executory remainder, a contingent remainder, because no present interest passes.

Executory trusts. In the case of articles of agreement, made in contemplation of marriage, and which are consequently preparatory to a settlement; and in the case of those wills which are merely directory of a subsequent conveyance, the trusts declared by them are said to be executory or imperfect, because they require an ulterior act to raise and perfect them. They are rather considered as instructions for settlements than as instruments in themselves complete; and the Court of Chancery, in order to promote the presumed views of the parties in the one case, and to support the manifest intention of the testator in the other, will attach to the words expressive of the trusts a more liberal and enlarged construction than they would admit, if applied either to the limitation of a legal estate or a trust executed.—1 *Sand. Uses and Trusts*, 237.

Executory uses, springing uses, which confer a legal title answering to an executory devise, as when a limitation to the use of A. in fee, is defeasable by a limitation to the use of B., to arise at a future period, or on a given event.

Executrix, a woman appointed by a testator to perform his will.

Exempla illustrant, non restringunt, legem.—*Co. Litt.* 240.—(Examples illustrate, but do not restrain, the law.)

Exemplification, a copy; a certified transcript either under the Great Seal, or under the seal of a particular court.—1 *Stark. Evid.* 224.

Exemplificatione, a writ granted for the exemplification or transcript of an original record.—*Reg. Orig.* 290.

Exempli gratiâ [abbrev. ex.gr. or e.g., Lat.], for the purpose of example, or for instance.

Exemption, immunity; freedom from imposts; a privilege to be free from service or appearance.

Exempts, persons not bound by law.

Exennium, or **Exhenium,** a gift; a new year's gift.

Exequatur, an official recognition of a person in the character of consul or commercial agent, authorising him to exercise his power.

Exercitatorial power, the trust given to a shipmaster.

Exercitor navis, the temporary owner or charterer of a ship.

Exercituale, a heriot, paid only in arms, horses, or military accoutrements.

Ex facto jus oritur.—2 *Inst.* 49.—(The law arises from the deed.)

Exeter, or **Exon Domesday,** the name given to a record preserved among the muniments and charters belonging to the dean and chapter of Exeter Cathedral, which contains a description of the western parts of the kingdom, comprising the counties of Wilts, Dorset, Somerset, Devon, and Cornwall. The Exeter Domesday was published, with several other surveys nearly contemporary, by order of the Commissioners upon the Public Records, under the direction of Sir Henry Ellis, in a volume supplementary to the Great Domesday, folio, London, 1816.

Exfrediare, to break the peace; to commit open violence.

Ex frequenti delicto augetur pœna.—2 *Inst.* 479.—(Punishment increases with increasing crime.)

Ex gravi querelâ, a writ that lay for him to whom any lands or tenements in fee were devised (within any city, town, or borough wherein lands were devisable by custom), against the heir of the devisor when he entered and detained them from him.—*Reg. Orig.* 224. Abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Exheredatio [Lat.], the act of disinheriting. The exclusion of a child by his father from the inheritance of any part of his estate.—*Civil Law.* See *Sandars's Justinian,* p. 278.

Exhibit, a document or other thing shown to a witness when giving evidence, and referred to by him in his evidence. The term is usually applied to a document referred to in, but not annexed to, an affidavit, and shown to the witness when the affidavit is sworn. A certificate, signed by the person before whom the affidavit is sworn, identifying the document, is usually endorsed upon the exhibit.

Exhibitant, a person who exhibits anything, as a complainant in articles of the peace.

Exhibition, an allowance for meat and drink, usually made by religious appropriators of churches to the vicar. Also, the benefaction settled for the maintaining of scholars in the universities not depending on the foundation.—*Paroch. Antiq.* 304.

In the Scotch law, it is an action for compelling the production of writings.

Exigence, or **Exigency** [probably a corruption of *exigents,* vitiated by an unskilful pronunciation], demand; want; need.

Exigendaries. See EXIGENTER.

Exigent, or **Exigi facias** (*that you cause to be demanded*), a judicial writ commanding the sheriff to demand the defendant from county court to county court, or, if in London, from husting to husting, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff in an action of, &c. It ought to be tested on the *quarto die post* the return of the *ca. sa.* in term. It must be returnable in the same or following term, on a day certain, and must have fifteen days at least between the *teste* and return; and, if possible, the return day should be regulated so that five hustings in London or county courts elsewhere, may be held between the *teste* and return of the writ, in order to save the expense of an *allocatur exigent*; for the *exigent* shall have such a return as that five county courts may intervene between the *teste* and return.—2 *Chit. Arch. Prac. by Pren.* 1297.

Exigenter [fr. *exigendarius,* Lat.], an officer of the Court of Common Pleas, who makes all exigents, proclamations, &c.

Exigible, demandable, requirable.

Exile [fr. *exilium,* Lat.], banishment; the person banished.

Exilium, spoiling. The author of Fleta distinguishes between *vastum, destructio,* and *exilium*; for he tells us that *vastum* and *destructio* are almost the same, and are properly applied to houses, gardens, or woods; but *exilium* is where servants are enfranchised, and afterwards unlawfully turned out of their tenements.—*Fleta,* l. 1, c. xi.

Exilium est patriæ privatio, natalis soli mutatio, legum nativarum amissio.—7 *Co.* 20.—(Exile is a privation of country, a change of natal soil, a loss of native laws.)

Exitus, children; offspring; also, the rents, issues, and profits of lands and tenements; or the conclusion of the pleadings.

Exitus acta probat; finis, non pugna, coronat. (The conclusion proves the fact; the termination, not the trial, crowns the victory.)

Exlegalitus, he who is prosecuted as an outlaw.

Ex-lex, an outlaw.

Ex maleficio non oritur contractus.—(From a tort a contract does not arise.)

Ex malis moribus bonæ leges natæ sunt.—2 *Inst.* 161.—(Good laws arise from evil manners.)

Ex mero motu (*out of mere will*).

Ex multitudine signorum colligitur identitas vera.—*Bacon.*—(True identity is collected from a number of signs.)

Ex nudo pacto non oritur actio.—*Pl. Com.* 305.—(An action does not arise from a nude contract.)

Ex necessitate legis (*from the necessity of law*).

Ex necessitate rei (*from the urgency of the case*).

Ex officio (*officially; by virtue of office*).

Ex officio informations, proceedings filed in the Queen's Bench by the Attorney-General, at the direct and proper instance of the Crown, in cases of such enormous misdemeanors as peculiarly tend to disturb or endanger the government, or to molest or affront the sovereign in discharging the royal functions. The information is tried by a jury of the county where the offence arose, and for that purpose, unless the case be of such importance as to be tried at bar, it is sent down by writ of *Nisi Prius* into that county, and tried either by a common or special jury, like a civil action.—4 *Step. Com.* 458.

Ex officio oath, an oath taken by offending priests; abolished by 13 Car. II. s. 12.

Exoine, Essoigne [Fr.], the excuse for not appearing in court when cited.—3 *Step. Com.* 699.

Exoneratione sectæ, a writ that lay for the Crown's ward, to be free from all suit to the county-court, hundred-court, leet, &c., during wardship.—*F. N. B.* 158.

Exoneratione sectæ ad curiam baron, a writ of the same nature, issued by the guardian of the Crown's ward, and addressed to the sheriffs or stewards of the court, forbidding them to distrain him, &c., for not doing suit of court, &c.—*N. N. B.* 352.

Exoneretur (*that he be discharged*), an entry made upon the bail-piece upon render of a defendant to prison in discharge of his bail.—1 *Chit. Arch. Prac. by Pren.* 833, 869.

Ex parte (*on behalf of*), a proceeding by one party in the absence of the other.

Ex parte talis, a writ that lay for a bailiff or receiver, who, having auditors appointed to take his accounts, cannot obtain of them reasonable allowance, but is cast into prison.—*F. N. B.* 129.

Expatriation, the forsaking one's own country, and renouncing allegiance, with the intention of becoming a permanent resident and citizen in another country.

Ex paucis dictis intendere plurima possis.—*Litt.* s. 384.—(You can imply many things from few expressions.)

Ex paucis plurima concipit ingenium.—*Litt.* s. 550.—(From few things the mind conceives many.)

Expectancy, executory; relating to something *in futuro*.

Expectant, depending on hope.

Expectant estates, interests to come into possession and be enjoyed *in futuro*; they are of two sorts at common law—reversions and remainders.—2 *Bl. Com.* 163.

Expectation, in the doctrine of chances, is applied to any contingent event, upon the happening of which some benefit is expected. This is capable of being reduced to the rules of computation: for a sum of money in expectancy, when a particular event happens, has a determinate value before that event happens. Thus, if a person is to receive any sum, as 10*l.*, when an event takes place, which has an equal chance or probability of happening or failing, the value of the expectation is half that sum, or 5*l.*; but if there are three chances for failing, and only one for its happening, or one chance only in its favor out of all the four chances, then the probability of its happening is only one out of four, or one-fourth, and the value of the expectation is but one-fourth of 10*l.*, which is only 2*l.* 10*s.*, or half the former sum. And in all cases the value of the expectation of any sum is found by multiplying that sum by the fraction expressing the probability of obtaining it. So the value of the expectation on 100*l.*, when there are three chances out of five for obtaining it, or when the probability of obtaining it is three-fifths, is three-fifths of 100*l.*, which is 60*l.* And if s be any sum expected on the happening of an event, h, the chances for that event happening, and f, the chances for its failing; then, there being h chances out of $f+h$ for its happening, the probability will be $\frac{h}{f+h}$ and the value of the expectation is $\frac{h}{f+h} \times s$.

Expectation of life, in the doctrine of life annuities, is the share or number of years of life which a person of a given age may, upon an equality of chance, expect to enjoy. Consult *Inwood's Tables*.

Expediment, the whole of a person's goods and chattels, bag and baggage.

Expeditatæ arbores, trees rooted up or cut down to the roots.—*Fleta*, l. 2, c. xli.

Expedit reipublicæ ut sit finis litium.—*Co. Litt.* 303.—(It is for the public good that there be an end of litigation.)

Expeditate, to cut out the ball of a dog's

fore-feet, for the preservation of the royal game. *Manw.* c. xvi.

Expenditors, persons appointed by commissioners of sewers to pay, disburse, or expend the money collected by the tax for the repairs of sewers, &c., when paid into their hands by the collectors, on the reparations, amendments, and reformations, ordered by the commissioners, for which they are to render accounts when thereunto required.

Expensæ litis (*costs of suit*).

Expensis militum non levandis, &c., an ancient writ to prohibit the sheriff from levying any allowance for knights of the shire, upon those who held lands in ancient demesne.—*Reg. Orig.* 261.

Experientia per varios actus legem facit. Magistra rerum experientia.—Co. Litt. 60.—(Experience by various acts, makes law. Experience is the mistress of things.)

Experts, sworn appraisers. Also witnesses who give evidence upon matters of science.

Expilation, robbery; the act of committing waste upon land to the loss of the heir; also abstracting the goods of a succession.

Expleta, Expletia, or **Explecia,** the rents and profits of an estate.—*Old Records.*

Explorator, a scout, huntsman, chaser.

Exportation, that part of foreign commerce which consists in sending out goods for sale, and which is therefore the active part of foreign trade, as the importation or purchasing of goods is the passive. As to the exportation of arms, &c., see 16 & 17 *Vict.* c. 107, s. 45.

Exports, the goods or produce which are sent abroad.

Expositio, quæ ex visceribus causæ nascitur, est aptissima et fortissima in lege.—10 *Co.* 24. (That exposition, which springs from the vitals of a cause, is the fittest and most powerful in law.)

Exposing in a public thoroughfare a person infected with a contagious disease is a common nuisance, and punishable accordingly.—4 *Step. Com.* 351.

Ex post facto (*from something after the fact*).

Express, that which is not left to implication.

Express condition. See CONDITION.

Express contract. See CONTRACT.

Ex præcedentibus et consequentibus optima fiet interpretatio.—1 *Rol. Rep.* 375.—(The best interpretation is made from the context.)

Expressa non prosunt quæ non expressa proderunt.—4 *Co.* 73.—(The expression of things, of which, if unexpressed, one would have the benefit, is useless.)

Expressio eorum quæ tacitè insunt nihil operatur.—Co. Litt. 210.—(The expressing of those things which are tacitly implied has no effect.)

Expressio unius personæ est exclusio alterius. Co. Litt. 210.—(The mention of one person is the exclusion of another.)

Expressum facit cessare tacitum.—(What is expressed makes what is silent to cease.)

Expressum servitium regat vel declaret tacitum.—Bacon.—(Let service expressed rule or declare what is silent.)

Expromission, a species of novation, as a creditor's acceptance of a new debtor, who takes the place of the old debtor, who is discharged.

Expromissor, a surety; bail.—*Civ. Law.*

Expropriation, the surrender of a claim to exclusive property.

Ex provisione mariti (*from the provision of the husband*).

Expurgation, the act of purging or cleansing.

Expurgator, one who corrects by expunging.

Extend, to value the lands, &c., of one bound by a statute, who has forfeited his bond, at their yearly value, so that it may be known when the creditor will be paid his debt.

Extensâ manerii. 4 Edw. I. s. 1. It is a direction for the making of a survey or terrier of a manor and its appendages.

Extension, an indulgence by giving time to pay a debt, or perform an obligation.

Extent, or **Extendi facias** (*that you cause to be extended*), the peculiar remedy to recover debts of record due to the Crown; it differs from an ordinary writ of execution at the suit of a subject, because under it the body, lands, and goods of the debtor may be all taken at once, in order to compel the payment of the debt. It is not usual, however, to seize the body.

There are two kinds of Extents, *in chief,* and *in aid.* (1) Extent in chief. It issues from the Court of Exchequer, and may bear *teste* and be made returnable on any day certain in term or vacation (5 & 6 Vict. c. 86, s. 8). It directs the sheriff to take an inquisition or inquest of office, on the oaths of lawful men, to ascertain the lands, &c., of the debtor, and seize the same into the Queen's hands. The writ should be preceded by a *scire facias* in order to bring the debtor into court, and afford him an opportunity to show cause against it; but where the debt is in danger of being lost, the extent will be issued without a *scire facias,* upon an affidavit of circumstances; and after the sheriff's return, the debtor, if he dispute the debt, or a third person, if he claim the property set forth in the inquisition, may enter an appearance and plead to the extent; issue is then joined, and it is decided either on demurrer or by a trial before a jury. If judgment be given for the Crown, it is that the subject take nothing by his traverse or plea; if given for the defendant or claimant, it is an award of *amoveas manus.* Error will lie upon the judgment, provided the Attorney-General consent to the proceeding. It is enacted by 2 & 3 Vict.

c. 11, that no debt due to the Crown on judgment, statute or recognizance, inquisition of debt, obligation, or specialty, or acceptance of office, shall affect any lands, tenements, or hereditaments, as to purchasers or mortgagees, unless and until such memorandum or minute thereof, as in the act provided, shall be left with the Senior Master of the Court of Common Pleas, who shall forthwith enter the particulars in a book to be entituled, 'The Index to the Debtors and Accountants to the Crown;' and farther that, whenever a *quietus* shall be obtained by a debtor or accountant to the Crown, and an office copy thereof shall be left with such Master, together with a certificate signed by the accountant-general, that the same may be registered, that the Master shall forthwith enter the same in the said book accordingly; and also that it shall be lawful for the Lords of the Treasury, or any three of them, by writing under their hands (upon payment of such sums as they shall think fit to require into the receipt of her Majesty's Exchequer, to be applied in the liquidation of the debt or liability of any debtor or accountant to the Crown, or upon such other terms as they may think proper), to certify, that any lands, tenements, or hereditaments, of any such Crown debtor, or accountant, shall be held by the purchaser or mortgagee thereof, wholly exonerated from all further claim of the Crown; or in cases of leases for fines, to certify that the lessee shall hold the premises exonerated in like manner, without prejudice to the right of the Crown to the reversion upon such lease, and the rents and covenants reserved by the same; and thereupon the same lands, tenements, and hereditaments shall respectively be held exonerated as aforesaid.

There is also an *extent in chief in the second degree*, which is a hostile proceeding by the Crown against the debtor of a Crown-debtor, against whom also an extent in chief has issued.

(2) Extent in aid. It issues, not at the suit of the Crown, like an extent in chief, but at the suit or instance of a Crown-debtor against a person indebted to himself; and it is grounded on the Statute of Extent, 33 Hen. IV. c. 39, and on the principle that the Crown is entitled to the debts due to the debtor. The practice is governed by 57 Geo. III. c. 117.

There is a special writ of extent, which is issued in the event of the death of a Crown-debtor, and is called a *diem clausit extremum*, because it recites the death of the party. The sheriff is commanded to inquire, by a jury, concerning the property of the deceased debtor, and seize them into the Crown's hands.—4 *Step. Com.* 75.

Exterritoriality, immunity from a country's laws, such as that enjoyed by an ambassador.

Extinguishment, the annihilation of a collateral interest, or the supersedure of one interest by another and greater interest, thing, or subject in that out of which it is derived. It is of various natures as applied to various rights.

(1) Extinguishment of common. If he who is entitled to common appurtenant, purchase any part of the land which is subject to his right of common, that right is extinguished for the whole: and so, if he release his right over any part of the land. But it has been justly doubted whether in any case (and especially if all persons who have common appurtenant in the same land concur in discharging some part of it), this legal trap should be allowed to operate.—*Burton's Comp.* 437. If one of the tenants of a manor purchase any part of the land over which he has a right of common appendant, his right over the rest will continue. So on the alienation of any part of land to which common is appendant or appurtenant (though the latter is less favored by the old law), the right of common is preserved and apportioned.—1 *Bac. Ab.* 628. All incorporeal hereditaments of necessity, or arising by operation of law, and services, may be extinguished, excepting ways.

(2) Extinguishment of copyhold. When a tenant conveys to his lord, or does an act denoting his intention of not holding of his lord any longer, his copyhold is extinguished. When the lord does an act inconsistent with the nature of the tenure, e. g. conveys to the tenant the freehold or releases to him his seignorial rights, an enfranchisement is effected. See COPYHOLD.

(3) Extinguishment of debt. A creditor, by accepting a higher security than he had before, extinguishes the first debt. And when judgment is given for a debt, it supersedes or extinguishes the previous obligation. So, if a *feme-sole* debtee marry her debtor, or an obligee marry one of two joint obligors in a bond, or a debtor make his debtee, or *vice versâ*, his executor, in these cases the debt is extinguished.—*Plowd.* 184; 1 *Salk.* 304.

(4) Extinguishment of estates. If a person have a yearly rent out of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is extinguished; for no one can have a rent issuing out of his own land; though a person must have as high an estate in the land as in the rent, or the rent will not be extinct.—*Co. Litt.* 147. It appears that an estate by statute, recognisance, or *elegit*, may be extinguished by any act (as a deed of defeazance or of release), which extinguished the debt.—*Burt. Comp.* 373.

(5) Extinguishment of an *interesse termini*. A mere *interesse termini* can neither promote nor hinder the merger of any estate, nor can itself, properly speaking, be surrendered; but

it may be extinguished by surrender in law, or by assignment or release.—*Burt. Comp.* 364.

(6) Release by way of extinguishment. If my tenant for life make a greater estate than he is warranted in granting, as a lease to A. for life, remainder to B. and his heirs, and I release to A., this extinguishes my right to the reversion, and shall enure to the advantage of B.'s remainder as well as of A.'s particular estate.—2 *Bl. Com.* 325.

Extirpatione, a judicial writ, either before or after judgment, that lay against a person who, when a verdict was found against him for land, &c., maliciously overthrew any house, or extirpated any trees upon it.—*Reg. Jud.* 13, 56.

Extocare, to grub up lands and reduce them to arable or meadow.—*Mon. Angl.* t. 2, p. 71.

Extorsively, oppressively.

Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum.—10 *Co.* 102.—(Extortion is a crime, when, by color of office, any person extorts that which is not due, or more than is due, or before the time when it is due.)

Extortion [fr. *extorqueo*, Lat., to wrest away], any oppression under color of right. It differs from bribery, in that the latter consists in the *offering* a present, or receiving one if offered; the former in *demanding* a fee or present by color of office. See EXACTION.

Ex totâ materiâ emergat resolutio.—*Wing.* 238.—(Let the resolution arise from the whole case.)

Extra costs, those charges which do not appear upon the face of the proceedings, such as witnesses' expenses, fees to counsel, attendances, court-fees, &c., an affidavit of which must be made, to warrant the Master in allowing them upon taxation of costs.

Extract, a draught or copy of a writing.

Extracta curiæ, the issues or profits of holding a court, arising from the customary fees, &c.—*Paroch. Antiq.* 572.

Extradition, the act of sending by authority of law a person accused of a crime to a foreign jurisdiction, where it was committed, in order that he may be tried there. It is usually the subject of international treaty. Conventions have been entered into by this country with France and Denmark for the apprehension and extradition of persons charged with murder, attempt to murder, forgery, or fraudulent bankruptcy; and with the United States of America for the apprehension and extradition of persons charged with those offences, and also with piracy, arson, or uttering forged paper; and acts of parliament have been passed for carrying into effect those conventions. See as to France, 6 & 7 *Vict.* c. 75, amended by 8 & 9 *Vict.* c. 120; as to Denmark, 25 & 26 *Vict.* c. 70; and as to the United States, 6 & 7 *Vict.* c. 76, amended by 8 & 9 *Vict.* c. 120.

Extrajudicial [fr. *extra*, and *judicium*, Lat.], out of the regular course of legal procedure.

Extra legem positus est civiliter mortuus.—*Co. Litt.* 130.—(He who is placed out of the law is civilly dead.)

Extraneus est subditus qui extra terram, i. e. *potestatem regis, natus est.*—7 *Co.* 16.—(A foreigner is a subject who is born out of the territory, that is, government of the king.)

Extraparochial [fr. *extra*, and *parochia*, Lat.], out of any parish.

Extra territorium jus dicenti non paretur impunè.—10 *Co.* 77.—(The sentence of one adjudicating beyond his territory cannot be obeyed with impunity.)

Extravagantes, those decretal epistles which were published after the Clementines. They were so called because at first they were not digested or ranged with the other papal constitutions, but seemed to be, as it were, detached from the canon law. They continued to be called by the same name when they were afterwards inserted in the body of the canon law. The first extravagantes are those of Pope John XXII. successor of Clement V. The last collection was brought down to the year 1483, and was called the *common extravagantes*, notwithstanding that they were likewise incorporated with the rest of the canon law.—*Encyc. Lond.*

Extra viam, out of the way.

Extra vires, beyond their powers.

Extumæ, reliques in churches and tombs.

Ex turpi causâ non oritur actio.—(An action arises not from a base cause.)

Exuperare, to overcome; to apprehend or take.—*Leg. Edm.* c. ii.

Ex visitatione Dei (*by the visitation of God*).

Ex vi termini (*from the force* or *meaning of the expression*).

Ey, ea, or **ee** [either fr. *ig*, an island, by melting the Saxon *g* into *y*, which is usually done; or fr. the Saxon *ea*, water, river, &c., or fr. *ieag*, a field, by the same kind of melting. *Gibson*], water.

Eye-witness, one who gives testimony to facts seen by himself.

Eyre [fr. *eyre*, Fr.; *iter*, Lat.], the court of justices itinerant; and justices in *eyre* are those only, which Bracton in many places calls *justiciarios itinerantes*. The eyre also of the forest is nothing but the justice-seat, which is, or should, by ancient custom, be held every three years by the justices of the forest, journeying up and down for such purpose.—*Cowel.*

Ezardar, a farmer or renter of land, in the districts of Hindoostan.—*Indian.*

F.

F, a stigma put upon felons with a hot iron, on their being admitted to the benefit of clergy, abolished by 7 & 8 Geo. IV. c. 28, s. 6.

Fabric lands [*ad fabricam reparandam*, Lat.], land given to provide for the rebuilding or repair of cathedrals and churches. Anciently, almost every person gave something by his will to be applied in repairing the fabric of the cathedral or parish church where he lived.

Facinus quos inquinat æquat.—(Guilt makes equal those whom it stains.)

Facio, ut des (*I perform, that you may give*).

Facio, ut facias (*I do, that you may do*).

Fac simile probate, where the construction of a will may be affected by the appearance of the original paper, the court will order the probate to pass in *fac simile*, as it may possibly help to show the meaning of the testator.—1 *Wms. Ex.* 298.

Facta armorum, feats of arms, jousts, tournaments, &c.

Facta sunt potentiora verbis.—(Deeds are more powerful than words.)

Facta tenent multa quæ fieri prohibentur.—12 *Co.* 125.—(Deeds contain many things which are prohibited to be done.)

Facto, in fact; where anything is actually done.

Factor [fr. *facteur*, Fr.], a substitute in mercantile affairs; an agent employed to sell goods or merchandise consigned or delivered to him by or for his principal, for a compensation commonly called factorage or commission. Hence he is often called a commission-merchant or consignee; and the goods received by him for sale is called a consignment. He is a home factor when he resides in the same state or country with his principal, and a foreign factor when he resides in a different state or country. He differs from a broker in some important particulars, for he may buy and sell in his own name, but a broker must in that of his principal; he is also entrusted with the possession, management, control, and disposal of the goods, and has a special property in, and a lien on, them, but a broker has none of these rights; yet neither can delegate his authority to another person, unless it is conferred by the usages of trade, or by the assent of his principal, express or implied. Factors have no incidental authority to barter the goods of their principal, or to pledge such goods for advances made to them on their own account, or for debts due by themselves; although they may certainly pledge them for advances lawfully made on account of their principal, or for advances made to themselves to the extent of their own lien on the goods. And they may pledge their principal's goods for the duties and other charges due thereon.

The general duty of a factor is to procure the best intelligence of the state of trade at his residence; of the course of exchange; of the quantity and quality of the goods at market; their present price, and the probability of a rise or fall; to pay exact obedience to the orders of his employers; to consult their advantages in matters referred to his discretion; to execute their business with all the dispatch that circumstances will admit; to be early in his intelligence, distinct in his accounts, and punctual in his correspondence.—1 *Liverm. on Agency*, c. iii., p. 69.

By the Factor's Act, 6 Geo. IV. c. 94, a person intrusted with and in possession of a bill of lading, or any of the warrants, certificates, or orders mentioned in the act, is to be deemed the true owner of the goods therein described, so far as to give validity to any contract or agreement made by him for the sale or disposition of the goods, or the deposit or pledge thereof, as a security for any money or negotiable instrument, if the buyer, disponee, or pawnee has not notice by the document or otherwise that such person is not the actual and *bonâ fide* owner of the goods. By 7 & 8 Geo. IV. c. 29, s. 51, it is enacted, that if any factor or agent shall, for his own benefit, and in violation of good faith, deposit or pledge any goods, bill of lading, certificate, warrant or order for delivery of goods, he shall be guilty of a misdemeanor, and be liable to fourteen years' penal servitude. While the 6 Geo. IV. c. 94, confirms *bonâ fide* sales, made in the ordinary course of business, in cases in which the purchaser had notice that the seller was merely an agent, it does not confirm *bonâ fide* advances made on goods, or on documents of title to goods, under the same circumstances. To obviate this discrepancy, to get rid of the litigation to which certain ambiguities in the 6 Geo. IV. c. 94, had given rise, and to facilitate commerce, the 5 & 6 Vict. c. 39, was passed.—*Story's Agency*, 28.

Factorage, the wages, commission, or allowance made to a factor by a merchant.

Factory, a place where a number of traders reside in a foreign country for the convenience of trade; also a building in which goods are manufactured. As to labor in factories, see 3 & 4 *Wm. IV.* c. 103; 7 & 8 *Vict.* c. 15; 10 *Vict.* c. 29; 13 & 14 *Vict.* c. 54; 16 & 17 *Vict.* c. 104; 19 & 20 *Vict.* c. 38; 23 & 24 *Vict.* c. 78; 24 & 25 *Vict.* c. 117; 25 *Vict.* c. 8; and 26 & 27 *Vict.* c. 64.

Factum, a person's act or deed; anything stated or made certain.

Factum à judice quod ad ejus officium non

spectat, non ratum est.—10 *Co.* 76.—(An action of a judge, which relates not to his office, is of no force.)

Factum negantis nulla probatio.—(A negative fact is no proof.)

Factum non dicitur quod non perseverat.—5 *Co.* 96.—(That is not called a deed which does not continue operative.)

Factum unius alteri nocere non debet.—*Co. Litt.* 152.—(The deed of one should not hurt another.)

Facultas probationum non est angustanda.—4 *Inst.* 279.—(The faculty of proofs is not to be narrowed.)

Faculties, *Court of*, a jurisdiction or tribunal belonging to the archbishop. It does not hold pleas in any suits, but creates rights to pews, monuments, and particular places, and modes of burial. It has also various other powers under 25 Hen. VIII. c. 21, in granting licenses of different descriptions, as a license to marry, a faculty to erect an organ in a parish church, to level a churchyard, to remove bodies previously buried.—4 *Inst.* 337; 2 *Chit. Gen. Prac.* 507.

Faculty, a license or authority; in ecclesiastical law a privilege granted by the ordinary to a man by favor and indulgence to do that which by law he may not do, e. g. to marry without banns, to erect a monument in a church, &c.

Faculty of Advocates, the college or society of advocates in Scotland, who plead in all actions before the courts of sessions, justiciary, and exchequer.

Fæder-feoh, the portion brought by a wife to her husband, and which reverted to a widow, in case the heir of her deceased husband refused his consent to her second marriage; i. e. it reverted to her family in case she returned to them.—*Anc. Inst. Engl.*

Faggot, a badge worn in popish times by persons who had recanted and abjured what was then adjudged to be heresy, as an emblem of what they had merited.

Faida, malice or deadly feud.

Failing of record, when an action is brought against a person, who alleges in his plea matter of record in bar of the action, and avers to prove it by the record; but the plaintiff saith *nul tiel record*, viz. denies there is any such record: upon which the defendant has a day given him by the court to bring it in: if he fail to do it, then he is said to fail of his record, and the plaintiff is entitled to sign judgment.—*Termes de la Ley.*

Faint action, a feigned action.

Faint pleader, a fraudulent, false, or collusive manner of pleading to the deception of a third person.—3 *Edw. I.* c. 19.

Fair pleader. See BEAU-PLEADER.

Fairs [fr. *foire*, Fr.; *forum, nundinæ*, Lat.], these institutions are very closely allied to markets. A fair, as the term is now generally understood, is only a greater species of market, recurring at more distant intervals. Both are appropriated to the sale of one or more species of goods, the hiring of servants or labourers, &c.; but fairs are in most cases attended by a greater concourse of people, for whose amusement various exhibitions are got up. No fair can be holden without grant from the Crown, or a prescription which supposes such grant. Before a patent is granted, it is usual to have a writ of *ad quod damnum* executed and returned, that it may not be issued to the prejudice of another fair or market already existing. The grant usually contains a clause that it shall not be to the hurt of another fair or market; but this clause, if omitted, will be implied in law: for if the franchise occasion damage either to the crown or a subject, in this or any other respect, it will be revoked; and a person, whose ancient title is prejudiced, is entitled to have a *scire facias* in the Queen's name to repeal the letters-patent. If her Majesty grant power to hold a fair or market in a particular place, the lieges can resort to no other, even though it be inconvenient. But if no place be appointed, the grantees may keep the fair or market where they please, or rather where they can most conveniently. As to times of holding fairs and markets, these are either determined by the letters-patent appointing the fair or market, or by usage.—1 *Step. Com.* 671; 2 *Ibid.* 73, 537; and 3 *Ibid.* 45; *McCull. Comm. Dict.* See *The Markets and Fairs Clauses Act*, 10 & 11 *Vict.* c. 14.

Fait [fr. *factum*, Lat.], a deed or writing. See DEED.

Fait enrolle, a deed enrolled, as a bargain, and sale of freeholds.

Faith, *Articles of.* See ARTICLES OF RELIGION.

Faitours, evil doers; idle livers; vagabonds.

Falang, a jacket or close coat.—*Blount.*

Falcatura, one day's mowing of grass, a customary service to the lord by his inferior tenants. *Falcata*, the fresh grass mowed and laid in swathes. *Falcator*, the tenant-mower.—*Kenn. Glos.*

Fald, or **Falda,** a sheep-fold.—*Old Records.*

Faldage [fr. *faldagium*, bar. Lat.], a fold-course, i. e. common of pasture for sheep.

Faldæ cursus, a sheep-walk.

Fald-fee, a composition paid anciently by tenants for the privilege of faldage.

Faldisdory [fr. *falde*, Sax., a hedge, and *stop*, a place], the bishop's seat or throne within the chancel.

Faldstool, or **Foldstool,** a place at the south side of the altar, at which the sovereign kneels at his coronation.

Faldworth, a person of age, that he may be reckoned of some decennary.—*Du Fresne.*

Falesia, a hill, or down by the sea-side.—*Old Records.*

Falk-land. See FOLKLAND.

Falkland Islands. See 6 & 7 *Vict.* c. 13, amended by 23 & 24 *Vict.* c. 121.

Fall of land, a quantity of land six ells square superficial measure.

Fallow-land, land ploughed, but not sowed, and left uncultivated for one or more years, with a view to exterminate weeds, and to enable it to fix those atmospherical elements which promote vegetable growth, and which are exhausted by repeated crops of the same kind.

Fallum, an unexplained term for some particular kind of land.

Falmotum. See FOLKEMOTE.

Falsa demonstratio non nocet.—6 *T. R.* 676. (False description does not vitiate.)

Falsa orthographia, sive falsa grammatica, non vitiat concessionem.—9 *Co.* 48.—(Bad spelling or bad grammar does not vitiate a grant.)

Sir John Doderidge says:—'Though the lawyers' Latin cannot defend itself *in bello grammaticali*, will grammarians utterly condemn the use thereof? Methinks they should not, but might give lawyers leave to speak in their own dialect.'—*Treat. on Tenures; Noy's Max. Byth.* ed. 266.

False character to servants. See FALSE PERSONATION.

False imprisonment, restraining personal liberty without lawful authority, for which offence the law has not only decreed a punishment, as a heinous public crime, but has also given a private reparation to the party as well by removing the actual confinement for the present by *habeas corpus*, as by subjecting the wrongdoer to an action of trespass, &c. usually called an action of false imprisonment, on account of the damage sustained by the loss of time and liberty.—3 *Step. Com.* 499; 4 *Ibid.* 179.

False judgment, *writ of*, a process that lies, by way of appeal, to the superior courts from inferior courts not of record, to amend errors in their proceedings.—2 *Chit. Arch. Prac. by Pren.* 1333.

False Latin. When law proceedings were written in Latin, if a word were significant, though not good Latin, yet an indictment, declaration, or fine should not be made void by it; but if the word were not Latin, nor allowed by the law, and it were in a material point, it made the whole vicious.—5 *Rep.* 121; 2 *Nels.* 830.

False news, *spreading*, to make discord between the sovereign and nobility, or concerning any great man of the realm, is a misdemeanor, punishable at common law by fine and imprisonment, which is confirmed by statutes Westm. 1, 3 Edw. I. c. 34; 2 Rich. II. st. 1, c. 5; and 12 Rich. II. c. 11.

False oath. See PERJURY.

False personation to obtain property. Frauds of this description were indictable at common law as misdemeanors, and punishable by fine and imprisonment, but are now made penal by the express provisions of Acts of Parliament. By 7 Geo. IV. c. 16, s. 38, and 2 Wm. IV. c. 53, s. 49, to personate any soldier, in order fraudulently to receive his pay, pension, wages, or prize-money, is felony, and punishable by penal servitude for life, or such term of years as the court shall adjudge; or if the personation be for the purpose of obtaining prize-money, with penal servitude for life, or for not less than three years. By 11 Geo. IV. and 1 Wm. IV. c. 20, s. 84, to personate any seaman or marine with a like fraudulent intention, is also felony, and punishable with penal servitude for life, or not less than three years, or imprisonment for not more than four or less than two years. By 24 & 25 Vict. c. 98, s. 3, whoever shall falsely personate the owner of any share or interest of or in any stock, annuity or other public fund transferable at the Bank of England or of Ireland, or in the capital stock of any body corporate, company, or society, established by charter or by virtue of an Act of Parliament, or the owner of any dividend or interest payable in respect of such share or interest, and shall thereby transfer or endeavour to transfer any such share or interest, or thereby receive or endeavour to receive any money due to such owner, shall be guilty of felony, and be liable to penal servitude for life or any term not less than three years, or to imprisonment for not more than two years. By 32 Geo. III. c. 56, if any person shall personate a master, and give a false character to a servant, or assert in writing that a servant has been hired for a period of time or in a station, or was discharged at any time, or had not been hired in any previous service, contrary to truth; or if any person shall offer himself as a servant, pretending to have served where he has not served, or with a false certificate of character, or shall alter a certificate, or shall pretend not to have been in any previous service, contrary to truth, such offenders are liable, on conviction before two justices of the peace, to be fined 20*l.* and in default thereof to be imprisoned with hard labour for any time not more than three nor less than one calendar month. By 6 & 7 Vict. c. 18, s. 83, the false personation of voters at an election of a member of Parliament is made a misdemeanor, punishable with imprisonment and hard labour for any term not exceeding two years.

False plea. See SHAM PLEA.

False pretences, *obtaining property by.* This offence, though closely allied to larceny, is distinguishable from it, as being perpetrated through the medium of a mere fraud; it is a misdemeanor at common law, and punishable by fine and imprisonment. By 24 & 25 Vict. c. 96, s. 88, whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years; provided always, that if, upon the trial of any person indicted for such misdemeanor, it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor, and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts. As to the form of the indictment and evidence, see same section. Whosoever shall by any false pretence cause or procure any money to be paid or any chattel or valuable security to be delivered to any other person, for the use or benefit, or on account of the person making such false pretence, or of any other person with intent to defraud, shall be deemed to have obtained such money, &c., within the meaning of s. 88 (s. 89). Whosoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any other person to execute, make, endorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, &c., or the seal of any body corporate, &c., upon any paper or parchment, in order that the same may be afterwards made, or converted into, or used, or dealt with as a valuable security, shall be guilty of a misdemeanor, and is liable to the same punishment (s. 90).

False prophecies, with intent to disturb the peace, are unlawful, as they raise enthusiastic jealousies in the people, and terrify them with imaginary fears. They are punishable as misdemeanors. By 5 Eliz. c. 15, the penalty for the first offence is a fine of 10*l.* with one year's imprisonment; for the second, forfeiture of all goods and chattels, and imprisonment during life.

False return by a sheriff, mayor, &c. to a writ is remedied by a special action on the case.

False signal, or **lights,** exhibiting, with intent to bring ships into danger, is a felony punishable with penal servitude for life.—24 & 25 *Vict.* c. 97, s. 47.

False verdict. Formerly, if a jury gave a false verdict, the party injured by it might sue out and prosecute a writ of attaint against them, either at common law or on the statute 11 Hen. VII. c. 24, at his election, for the purpose of reversing the judgment and punishing the jury for their verdict; but not where the jury erred merely in point of law, if they found according to the judge's direction. The practice of setting aside verdicts and granting new trials, however, has so superseded the use of attaints, that there is no instance of one to be found in our books of reports later than in the time of Elizabeth; and it is now altogether abolished by 6 Geo. IV. c. 50, s. 60.

False weights and measures. By 5 Geo. IV. c. 74, 6 Geo. IV. c. 12, and 5 & 6 Wm. IV. c. 63 (repealing the former acts on the subject), standards are fixed for length, weight, and capacity, and it is provided that all contracts for sale by weight or measure, where no special agreement is made to the contrary, shall be taken to refer to the standards so established. The 55 Geo. III. c. 34, provides for the punishment of offenders using false and deficient measures. The 37 Geo. III. c. 143, gives magistrates in petty sessions summary jurisdiction herein. See 7 & 8 *Geo. IV.* c. 38.

Falsi crimen, fraudulent subornation or concealment, with design to darken or hide the truth, and make things appear otherwise than they are. It is committed:—(1) By words, as when a witness swears falsely; (2) by writing, as when a person antedates a contract; (3) by deed, as selling by false weights and measures.

Falsifying judgments, reversing them.

Falsifying a record, a high offence against public justice, punishable by 24 & 25 Vict. c. 98, ss. 27, 28.

Falsing of dooms, an appeal from the sentence of a court.—*Scotch Law.*

Falsonarius, a forger.

Falso retorno brevium, a writ that lay against a sheriff, who had execution of process, for a false return.—*Reg. Jud.* 43.

Falsus in uno, falsus in omnibus.—(False in one thing, false in all.)

Fama, fides, et oculus non patiuntur ludum. 3 *Buls.* 226.—(Fame, faith, and eyesight do not suffer a cheat.)

Fama, quæ suspicionem inducit, oriri debet apud bonos et graves, non quidem malevolos et maledicos, sed providas et fide dignas personas, non semel sed sæpius, quia clamor minuit et defamatio manifestat.—2 *Inst.* 52.—(Report, which induces suspicion, ought to arise from good and grave men, not indeed from malevolent and malicious men, but from cautious and credible persons, not only once, but frequently; for clamour diminishes, and defamation manifests.)

Famacide [fr. *fama,* Lat., reputation, and *cædo,* to kill], a slanderer.—*Scott.*

Familia, all the servants belonging to a particular master; also a portion of land sufficient to maintain one family.

In the widest sense among the Romans, it signified the totality of that which belongs to a Roman citizen who is *sui juris*, and therefore a *paterfamilias*.

But the word '*familia*' is sometimes limited to signify persons, that is, all those who are in the power of a paterfamilias, such as his sons (*filiifamilias*), daughters, grandchildren, and slaves.—*Smith's Dict. Antiq.*

Famosus libellus, an infamous libel.

Fanatio. See FENCE-MONTH.

Faqueer, or **Fakir,** a poor man, mendicant; a religious beggar.—*Indian.*

Farandman, a traveller or merchant stranger.

Fardel of land, the fourth part of a yard-land. Noy says an eighth only, because, according to him, two fardels make a nook, and four nooks a yard-land.—*Compl. Lawy.* 57.

Farding-deal, or **Farundel of land,** the fourth part of an acre of land.

Fare, a voyage or passage by water; also the money paid for a passage either by land or by water.

Farinagium, toll of meal or flour.

Farleu, money paid by tenants in lieu of a heriot. It is often applied to the best chattel, as distinguished from *heriot* the best beast.

Farlingarii, whoremongers and adulterers.

Farm, or **Ferm** [fr. *firma*, Lat.; *feorme*, Sax., food, and *feorman*, to feed], land taken upon lease under a yearly rent, payable by the tenant. It is a collective word, consisting of many things, as a messuage, land, meadow, pasture, wood, common, &c. In Lancashire a farm is called *ferm-holt*; in the north, a *tack*; and in Essex, a *wike*.—*Termes de la Ley.*

Farm let [*ad firmam tradidi*, Lat.], operative words in a lease, which strictly mean to let upon payment of a certain rent in farm, i. e. in agricultural produce.

Farmer, one who cultivates hired land, also the lessee of taxes or tolls.

Faro, an unlawful game.—4 *Step. Com.* 353.

Farthing [fr. *feowen*, Sax., four], the fourth of a penny.

Farthing of gold, an ancient coin, containing in value the fourth part of a noble.

Farthing, or **Farthingdell of land,** a quantity of land, the extent of which is not known. Some say it is a quarter of an acre.

Farundel of land. See FARDING-DEAL.

Faryndon Inn, the ancient appellation of Serjeant's Inn, Chancery Lane.

Fasins, a faggot of wood.

Fast-day, a day of mortification by religious abstinence. As to such a day being reckoned in proceedings, see 1 *Chit. Arch. Prac. by Pren.* 158 & 159.

Fastens een or **even** [fr. *vastal-abend*, low Sax.], Shrove-Tuesday, the succeeding day being Ash-Wednesday, the first of the Lenten fast.

Fastermans, or **Fasting-men** [*homines habentes*, Lat.], men in repute and substance; pledges, sureties or bondsmen, who, according to the Saxon polity, were *fast* bound to answer for each other's peaceable behaviour.—*Encyc. Lond.*

Fasti, *fas* signifies divine law; the epithet *fastus* is properly applied to anything in accordance with divine law, and hence those days upon which legal business might without impiety (*sine piaculo*) be transacted before the prætor, were technically denominated *fasti dies*, i. e. lawful days. Varro and Festus derive *fastus* directly from *fari* (Varro, *De Ling. Lat.* vi. 2; Festus *s. v. Fasti*), while Ovid (*Fast.* i. 47) may be quoted in support of either etymology.

The sacred books in which the *fasti dies* of the year were marked were themselves denominated *fasti*; the term, however, was employed in an extended sense to denote registers of various descriptions, and many mistakes have arisen among commentators from confounding *fasti* of different kinds. Consult *Smith's Dict. of Antiq.* for the several *fasti*.

Fatetur facinus qui judicium fugit.—3 *Inst.* 14.—(He who flees judgment confesses his guilt.)

Father-in-law [*socer*, Lat.], the father of one's wife or husband.

Fathom [fr. *fad*, Teut.], a measure of 6 feet in length.

Fatua mulier, a whore.

Fatuous persons, idiots.

Fatuus, apud jurisconsultos nostros, accipitur pro non compos mentis; et fatuus dicitur, qui omnino desipit.—4 *Co.* 128.—(Fatuus, among our jurisconsults, is understood for a man not of right mind; and he is called '*fatuus*' who is altogether foolish.)

Fausetum, a faucet, musical pipe, or flute.

Fautors, favorers or supporters of others; abettors of crimes, &c.

Favor, challenge to. See CHALLENGE.

Favorabilia in lege sunt fiscus, dos, vita, libertas.—Jenk. Cent. 94.—(Things favorably considered in law are the treasury, dower, life, liberty.)

Favorabiliores sunt executiones aliis processibus quibuscunque.—Co. Litt. 289.—(Executions are preferred to all other processes whatever.)

Favores ampliandi sunt; odia restringenda.—Jenk. Cent. 186.—(Favors are to be enlarged; things hateful restrained.)

Feal, tenants by knight-service, who swore to their lords to be *feal* and *leal*, i. e. faithful and loyal.

Feal, and **Divot,** a right in Scotland, similar to the right of turbary in England, for fuel, &c.

Fealty [fr. *fidelitas*, Lat.; *feaulté*, Fr.], the *special* oath of fidelity or mutual bond of obligation between a lord and his tenant; the general oath being the allegiance performed by every subject to his sovereign, but this is better known by its more significant appellation of the oath of allegiance. Although foreign jurists consider fealty and homage as convertible terms, because in some continental countries they are blended so as to form one engagement, yet they are not to be confounded in our country, for they do not imply the same thing, *homage* being the acknowledgment of tenure, and *fealty*, the vassal-oath of fidelity, being the essential feudal bond, and the animating principle of a feud, without which it could not subsist. Fealty comprehends the following obligations, viz.:—(1) *Incolume*, that the tenant do no bodily harm to his lord; (2) *Tutum*, that he do no secret damage to him in his house; (3) *Honestum* that he damage not his reputation; (4) *Utile*, that he do no damage to him in his possessions; (5) *Facile*; and (6) *Possibile*, that he render it easy for the lord to do any good, and not make that impossible to be done which was before in his power to do.—*Leg. Hen. I.* c. 5.

Feasts, anniversary days of rejoicing, either on a civil or religious occasion. Opposed to fasts.

Our feasts are either (1) *immoveable*, such as Christmas-day, the Circumcision, Epiphany, Candlemas-day, Lady-day, All Saints, and All-Souls, besides the days of the several apostles St. Peter, St. Thomas, &c.; these are always celebrated on the same day of the year; or (2) *moveable*, such as Easter, which fixes all the rest, as Palm Sunday, Good Friday, Ash Wednesday, Sexagesima, Ascension-day, Pentecost, Trinity Sunday, &c.

The four principal immoveable feasts of the year, which the English jurisprudence has assigned for the reservation or payment of rents on leases, are, the Annunciation of the Blessed Virgin Mary on Lady-day, being the 25th of March; the Nativity of St. John the Baptist, held on the 24th of June; the Feast of St. Michael the Archangel, on the 28th of September; and that of St. Thomas the Apostle, on the 21st of December.—5 & 6 *Edw. VI.* c. 3; 3 *Jac. I.* c. 1; and 12 *Car. II.* c. 30.

Federal Government. When two or more sovereign or independent states mutually agree not to exercise certain powers incident to their several sovereignties, but to delegate the exercise of those powers to some person or body chosen by them jointly, there is said to be a federal union of those states, and the person or body to whom the exercise of such powers is delegated is called the Federal Government. The Germanic Confederation, the Swiss Confederation, and the United States of North America, are instances of Federal governments.

Fee [fr. *feoh*, Sax.; *fee*, Dan., cattle; *feudum*, low Lat.; *feu*, Scot.], property, peculiar; reward or recompense for services. Also an estate of inheritance divided into three species: (1) fee-simple absolute; (2) qualified or base fee; (3) fee-tail, formerly fee-conditional.

Fee-base. See BASE FEE.

Fee-conditional. See CONDITIONAL FEE.

Fee-expectant, where lands are given to a man and his wife, and the heirs of their bodies.

Fee-farm-rent, where an estate in fee is granted, subject to a rent in fee of at least one-fourth of the value of the lands at the time of its reservation, and such rent appears to be called fee-farm, because a grant of land reserving so considerable a rent, is indeed only letting lands to farm in fee-simple, instead of the usual method of life or years.—1 *Step. Com.* 685.

Fee-simple, a freehold estate of inheritance, absolute and unqualified. It stands at the head of estates as the highest in dignity and the most ample in extent; since every other kind of estate is derivable thereout, and mergeable therein, for *omne majus continet in se minus*. It may be enjoyed not only in land, but also in advowsons, commons, estovers, and other hereditaments as well as in personalty as an annuity or dignity, and also in an upper chamber, though the lower buildings and soil belong to another.

A fee-simple generally (5 *Rep.* 115) is pure, without condition, and unrestrained, except by the laws of escheat, and the canons of real-property descent. Noy, in his *Treatise on Tenures*, p. 65, says: 'This estate can never perish, so long as the *substance*, whereof the estate ariseth, hath a being. And, therefore, albeit that he which is seized of such estate, happen to die without heir, yet the *same* estate is not extinguished, but, by act in law, in some other degree, transferred to the lord of whom the lands were holden, by way of escheat; because the land, wherein the tenant hath such estate, doth still continue. But, if a man seised in fee of a rent-charge or rent-seck, dieth without heir, this fee-simple, although it be of the first sort, doth perish; because the rent, wherein he hath estate, being transitory, is, by such dying without heir, quite swallowed up and drowned in the land out of which it did issue.' It is not, however, confined to any particular line or species of heirs, but descends to the owner's heirs general, whether lineal or collateral, paternal or maternal, male or female, born or unborn.

Littleton, in his *Tenures* (s. 1), gives a description of this estate, which appears to have been adopted by every subsequent writer. His language is this:—

A person who holds 'in fee simple is he which hath lands or tenements to hold to him and his heires for ever. And it is called in Latin *feodum simplex*, for *feodum* is the same that inheritance is, and *simplex* is as much as to say lawful or pure. And so *feodum simplex* signifies a lawful or pure inheritance. For if a man would purchase lands or tenements in fee simple it behoveth him to have these words in his purchase, to have and to hold to him and to his heires: for these words (his heires) make the estate of inheritance. For if a man purchase lands to have and to hold for him for ever; or by these words, to have and to hold to him and his assignes for ever: in these two cases he hath but an estate for term of life, for that there lack these words (his heires), which words only make an estate of inheritance in all' transfers, *inter vivos*.

This estate may be created by agreement or act of parties, evidenced either by a deed or will.

In a deed the word 'heirs' is so absolutely necessary either expressly or by direct and immediate reference to constitute a fee or inheritable estate, that not even a synonymous term, nor any periphrasis or circumlocution, will have that effect, how clear soever the intent of the parties using such language may be. But such a sentence as this: 'to the use of all and every, the child and children, share and share alike, if more than one, as tenants in common and not as joint-tenants, and if but one child, then to such only child his or her heirs and assigns for ever,' will pass the fee-simple to all the children, notwithstanding the word 'their' is omitted, for the words 'his or her heirs' will operate as words of limitation on all the preceding words in the sentence.—4 *T. R.* 39. The common law adopted this strict and necessary rule to rebut the presumption of the grant being but a life-freehold, and also to avoid uncertainty—the mother of contention. And so far has this prescriptive rule been carried that the word 'heirs' in the plural number was held by Lord Coke (*Co. Litt.* 9 *a*) essential, and a conveyance to A. and his 'heir' in the singular number, vested in A. a life-freehold only; because it was contended the heir cannot take a fee-simple by descent, as he is but one, and therefore, in such case, cannot take anything. But the term 'heir' is a *nomen collectivum*, operating similarly as heirs in the plural number. Perhaps a limitation to A. and his *heir* would be ruled by the Courts, in the present day, as conveying a fee-simple.—*Dubber* dem. *Trollope* v. *Trollope*, *Amb.* 453. See, however, *Bayley* v. *Morris*, 4 *Ves.* 794. The word 'heir' in the singular number only is a word of purchase, and not of limitation.—*Gilbert on Uses*, p. 24; 2 *Prest. Est.* 8. A limitation to 'A. and heirs,' omitting 'his' will pass but an estate for life, on account of its uncertainty.—*Plowd.* 28. But in the following cases a fee-simple will pass without the word 'heirs:' (1) By creation of nobility *by writ*, which of itself ennobles the blood to a man and his lineal heirs, unless the writ otherwise limit it; the creation of nobility *by patent*, however, gives no inheritance without proper words. (2) In gifts that take effect by reference; as if A. give land to B. and his heirs, and then B. grant to A. as fully as A. had before granted to him. — *Chambers on Estates*, 31. (3) Where one coparcener or joint-tenant release all right to another, for words of inheritance are not necessary in a release of a right; and (4) Where one coparcener grants a rent to the other, for equality or owelty of partition, a fee-simple in the rent will pass without the word 'heirs,' for the rent is substituted for the fee.

In practice the phrase universally adopted in the designation-clause of deeds, in order to transfer a fee-simple absolute, is—'to A., his heirs, and assigns, for ever.'

The word 'assigns' is not material, and may be omitted, for it gives no other privilege to the owner than that which the law itself confers upon him by virtue of his estate, as entitling him to alien or transfer it; and the phrase 'for ever' not being limitary but simply declaratory of the time during which the property shall be enjoyed, may also be omitted in the conveyance.

It must be remarked that the word 'successors' is the proper term to be used in transfers to corporations sole, it corresponding to the word 'heirs.' In every conveyance then of a fee-simple or perpetual estate to a bishop, rector, or any other corporation sole, other than the queen, the word 'successors' is as necessary as the word 'heirs' in a grant to a private person. But in transfers to the queen or to corporations aggregate, as the head and fellows of a college, a dean and chapter, the mayor and commonalty of a city, &c., neither 'successors' nor 'heirs,' nor any other word of perpetuity is requisite, because they never die as such, but enjoy a kind of legal immortality; nor is it necessary in the case of a corporation sole, when the grant is made to it by its corporate or collective name, as a grant to the church of A.—1 *Atk.* 437.

This stern and inflexible rule is now wisely confined to formal deeds, which are duly deliberated upon and weighed as to the precise and technical effect of the language inserted in them before they are executed by the parties thereto. In wills, however, which are frequently written and signed, without counsel and without proper deliberation, and often during an unanticipated malady, and amidst the consternation of a sick chamber, the law relaxes this iron principle, declaring (1 Vict. c. 26, s. 28) 'that after 1st January 1838, where any real estate shall

be devised to any person without any words of limitation, such devise shall be construed to pass the fee-simple, or other the whole estate or interest which the testator had the power to dispose of by will in such real estate, unless a contrary intention should appear by the will.'

It will be advisable, however, notwithstanding this wholesome statutable provision, to introduce into wills, more especially when they are prepared by a professional man, the technical words which are absolutely indispensable in the case of deeds, so as to express with certainty the testator's intention respecting the quantity of estate which he desires shall be devised.

The attributes or incidents, rights and privileges of this estate, are the following:—

(*a*) An uncontrollable power of alienation, whether by deed, gift, or will; and, whether of the whole or part of the estate. This power may be *partially* limited thus: a condition that the tenant shall not alien to a given person or any of his heirs; or a devise in fee to A. and B. on condition that they shall not alien to any but sisters or their children (*Litt.* s. 361; 4 *East*, 173; 3 *Ves.* 324), or for a given time.

A new kind of inheritance cannot be created, for if one convey an estate to A. and his heirs *male*, or to A. and his heirs *female*, the word 'male' or 'female' is to be rejected, and A. will have the estate to him and his heirs generally.—*Litt.* s. 31. So a grant to A. and his heirs, *on the part of his mother*, will descend to his heirs on the part of his father, the words *italicised* being rejected.

Inheritable offices of personal trust, dignity or foundership cannot be alienated.

(*b*) If the owner die intestate, it descends to his heirs general, male or female, lineal or collateral, according to the canons as settled by 3 & 4 Wm. IV. c. 106, except the estate be subjected to gavelkind, borough-English, or copyhold customs, when the particular custom vacates the general law, for *consuetudo loci observanda est* (6 *Rep.* 67).

(*c*) It is subject to the curtesy of a husband, and the dower of a wife, as the case may be, provided the right of the former be consummated by the necessary stipulations having been perfected, or that of the latter has not been barred.

(*d*) The owner has an uncontrollable power of waste over it.

(*e*) It is liable to all the owner's debts (1 Wm. IV. c. 47; 3 & 4 Wm. IV. c. 104; 1 & 2 Vict. c. 110; 2 & 3 Vict. c. 11; 2 & 3 Vict c. 60; and 11 & 12 Vict. c. 87), after the unexempted personalty has been exhausted.

(*f*) It escheats to the lord of the fee for want of heirs, except in the case of persons having the legal estate, as trustees or mortgagees in pursuance of 13 & 14 Vict. c. 60, s. 46, which act also prevents the forfeiture of such estates by reason of the attainder or conviction for any offence of a trustee or mortgagee.

(*g*) It is forfeitable for treason of the beneficial owner to the crown absolutely; for murder, to the crown during a year and a day, and then to the lord of the fee absolutely; for other felonies to the crown, during a year and a day, and then the lord takes the profits during the felon-owner's life, who still retains the legal estate, which upon his death devolves upon his heir-at-law, unless the offender have otherwise disposed of the estate in reversion expectant on his decease.—1 *Cru. Dig.* 63. The forfeiture relates back to the commission of the crime, so as to shut out and make void all intermediate transfers of and charges upon the estate.

Fee-tail. See TAIL.

Fees, certain perquisites allowed to officers in the administration of justice, as a recompense for their labor and trouble, ascertained either by acts of Parliament, by rule or order of court, or by ancient usage. As to Common Law fees, see 2 *Chit. Arch. Prac. by Pren.* 1693; and in Equity, see *Smi. Ch. Pr.* 842. Fees in Chancery are paid by means of stamps.—15 & 16 *Vict.* c. 87, s. 8.

The fees of the steward of a manor are regulated entirely by custom, and a customal or list of fees to be taken, under every circumstance, is generally handed down from steward to steward. When the steward charges enormously, the copyholder may bring an action on the case, to recover the excess, and it has been suggested that an indictment would lie for extortion *colore officii*. The fees of the steward of a manor who is a solicitor, but acts in the character of a steward only, are not taxable under 6 & 7 Vict. c. 73, s. 37. In transactions where these fees are large or numerous, a special agreement is generally made between all parties.—*Allen* v. *Aldridge*, 5 *Beav.* 401. As to barristers' fees, see BARRISTER.

Feigned action. See FAINT ACTION.

Feigned diseases, simulated maladies.

Diseases are generally feigned from one of three causes—fear, shame, or the hope of gain. Thus a man engaged in the military or naval service will pretend to be afflicted with various maladies, in order to escape the performance of military duty; the mendicant, to avoid labor and to impose on public or private beneficence; and the criminal, to prevent the infliction of punishment. The spirit of revenge, and the hope of receiving exorbitant damages, have also induced some to magnify slight ailments into alarming illnesses. On this subject, Foderé (vol. ii. p. 452) observes, at the time when the conscription was in full force in France, 'that it is at present brought to such perfection as to render it as difficult to detect a feigned disease as to cure a real one.'

Zacchias has given five general rules for the detection of feigned diseases :—

(1) That inquiry should be made of the relatives and friends of the suspected individual as to his physical and moral habits, and as to the state of his affairs, and what may possibly be the motive for feigning disease—particularly whether he is not in immediate danger of some punishment, from which this sickness may excuse him.

(2) Compare the disease under examination with the causes capable of producing it; such as the age, temperament, and mode of life of the patient.

(3) The aversion of persons feigning disease to take proper remedies. This, indeed, will occur in real sickness; but it rarely happens when severe pain is present.

(4) Particular attention should be paid to the symptoms present, and whether they necessarily belong to the disease.

(5) Follow the course of the complaint, and attend to the circumstances which successively occur.—*Beck's Med. Jurisp.* c i. For a table of feigned diseases, see *Dung.* pp. 379–383.

Feigned issue, a proceeding whereby an action is supposed to be brought by consent of the parties to determine some disputed right, without the formality of pleading, saving thereby both time and expense. It may be ordered either by a court of law or equity, or by a judge under the Interpleader Act, 1 & 2 Wm. IV. c. 58. The 8 & 9 Vict. c. 109, s. 19, after reciting that many important questions are now tried in the form of feigned issues, by stating that a wager was laid between two parties interested in respectively maintaining the affirmative and the negative of certain propositions; but that such questions may be as satisfactorily tried without such form, enacts, that in every case where any court of law or equity may desire to have any question of fact decided by a jury, it shall be lawful for such court to direct a writ of summons to be sued out by such person or persons as such court shall think ought to be plaintiff or plaintiffs against such person or persons as such court shall think ought to be defendant or defendants therein, in the form set forth in the second schedule to the act annexed, with such alterations or additions as such court may think proper; and thereupon all the proceedings shall go on and be brought to a close in the same manner as is now practised in proceedings upon a feigned issue.

This enactment is an enabling and not a compulsory one, and, therefore, feigned issues may still be stated in the form of wagers between the plaintiff and defendant, as they used to be before the act.—1 *Chit. Arch. Prac. by Pren.* 890.

Felagus, a companion, but particularly a friend who was bound in the *decennary* for the good behaviour of another.

Feld, field; in composition, wild.—*Blount.*

Fele, or **Feal homagers** [fr. *fai,* Sax.; *fides,* Lat.], faithful subjects.

Fellow [*quasi,* to follow, *Minshew;* fr. *fe,* Sax., faith, and *lag,* bound, *Junius; fallow,* Scot.], a companion; one with whom we consort; a member of a college or corporate body.

Fellow-heir, co-heir; partner of the same inheritance.

Felo de se (*a felon of himself*), a self-murderer; one who feloniously commits self-murder. The barbarous mode of burying such persons is abolished; the only legal consequences of the crime are now forfeiture and deprivation of Christian burial.—4 *Geo. IV.* c. 52, s. 1.

Felon [fr. *felon,* Fr.; *felo,* low Lat.; *fel,* Sax.], one who has committed a felony.

Felonia implicatur in quâlibet proditione.—3 *Inst.* 15.—(Felony is implied in every treason.)

Felonia, ex vi termini, significat quodlibet capitale crimen felleo animo perpetratum.—*Co. Litt.* 391.—(Felony, by force of the term, signifies any capital crime perpetrated with a malignant mind.)

Felonious homicide, killing a human creature without justification or excuse. It is of two kinds :—(1) Killing one's self, or *felo de se.* (2) Killing another.

Felony [fr. *félonie,* Fr.; *felonia,* Lat.; some deduce it fr. φῆλος, Gk., a deceiver, fr. *fallo,* Lat., to deceive; *Spelman* derives it fr. the Teutonic or German *fee,* a fieu or fief, and *lon,* price or value]. In its original signification it meant the penal consequences resulting from the commission of certain offences, i. e. the forfeiture of the offender's lands and goods at Common Law, but in modern times it imports the offence itself. See 1 *Mill's Log.* 40, note.

Female-labor, the 5 & 6 Vict. c. 99, altogether prohibits the employment of women and girls in mines and collieries after 1st of March 1843, under heavy penalties.

Feme, or **Femme,** a woman.

Feme-covert, a married woman. See COVERT-BARON.

Feme-sole, an unmarried woman.

Femicide, the killing of a woman.

Fence, a hedge, ditch, or other enclosure of land for the better manurance and improvement of the same.

Fence-month, or **Defence-month,** a time during which deer in forests do fawn; when their hunting is unlawful. It begins fifteen days before Old Midsummer, and ends fifteen days after it.—*Manw.* pt. 2, c. xiii.

Feneration [fr. *fœneratio,* Lat.], usury; the gain of interest; the practice of increasing money by lending.

Fengeld, a tax or imposition, exacted for the repelling of enemies.

Feod, or **Feud,** the right which the vassal had in land, or some immoveable property of his lord, to use the same and take the profits thereof, rendering unto the lord such duties and services as belonged to the particular tenure; the actual property in the soil always remaining in the lord.—*Spelm. Feuds and Tenures.*

Feodal, of or belonging to the feod or feud.

Feodal system. See FEUDAL SYSTEM.

Feodality, fealty. See FEALTY.

Feodary, or **Feudary,** an officer of the court of wards, appointed by the master of that court under 32 Hen. VIII. c. 26, whose business it was to be present with the escheator in every county at the finding of offices of lands, and to give evidence for the king, as well concerning the value as the tenure; and his office was also to survey the land of the ward, after the office found, and to rate it. He also assigned the king's widows their dower; and received all the rents, &c. Abolished by 12 Car. II. c. 24.

Feodatory, or **Feudatary,** the tenant who held his estate by feudal service.

Feodum est quod quis tenet ex quâcunque causâ, sive sit tenementum sive redditus.—Co. Litt. 1. (A fee is that which any one holds from whatever cause, whether tenement or rent.)

Feodum simplex quia feodum idem est quod hæreditas, et simplex idem est quod legitimum vel purum; et sic feodum simplex idem est quod hæreditas legitima vel hæreditas pura.—Litt. s. 1.—(A fee-simple, so called because fee is the same as inheritance, and simple is the same as lawful, or pure; and thus fee-simple is the same as a lawful inheritance, or pure inheritance.)

Feodum talliatum, i. e. *hæreditas in quandam certitudinem limitata.—Litt.* s. 13.—(Fee-tail; that is an inheritance limited in a definite descent.)

Feodum. See FEOD.

Feodum, or **Feudum antiquum,** a feud which devolved upon a vassal from his intestate ancestor.

Feodum laicum, a lay-fee.

Feodum militis, a knight's fee.

Feodum, or **Feudum novum,** a feud acquired by a vassal himself.

Feoffee, one put into possession.

Feoffee to uses, the person in whom, before the Statute of Uses, the legal seisin or feudal tenancy of the land was vested, the substantial and beneficial ownership or use being in the *cestui que use.* The statute destroyed the estate of the feoffee to uses, and conveyed the possession to the *cestui que use,* who has now the legal estate, his use being executed by the statute.

Feoffer, one who gives possession of anything.

Feoffment [fr. *feoffare,* to give a feud], a deed (29 Car. II. c. 3, s. 1, and 8 & 9 Vict. c. 106, s. 3) evidencing and explaining the transmuting of the possession of a freehold estate, the transmutation being effected by a ceremony technically called livery of seisin.

The incidents to this assurance are:—

(1) The feoffor or person conveying must have actual seisin or possession of the freehold to be conveyed. But if a lessee for years be possessed, the feoffor may nevertheless enfeoff the feoffee with the freehold, if the tenant will give his consent to it, and such consent will not operate as a surrender or forfeiture of the lease.

(2) The feoffee must be capable of taking by feoffment, and must not have the actual seisin already: therefore, one joint-tenant cannot convey his share of the freehold to his companion by feoffment, since he is seised *per my et per tout.*

(3) The appropriate operative verbs are, 'give, grant, and enfeoff.'

(4) The estate must be either a freehold in possession or expectant upon a chattel interest.

(5) The freehold must not be put in abeyance or expectancy, but must take effect *in præsenti.*

(6) The livery of seisin may be by the feoffor or his attorney going upon the land, and giving to the feoffee or his attorney a clod, branch, or turf, or in the case of a house the knocker, ring, or latch of the door, in the name of seisin of all the lands and tenements contained in the deed or charter of feoffment. This is called livery in deed. The attorney (if any) must be appointed by deed, and if the feoffment be by deed-poll, the letter of attorney may be contained in it, and so, if it be by indenture; but the attorney should then, it has been said, be a party to it.

There is another kind of livery which is within view or in law, when the feoffor or feoffee not being upon the land, or in the house, the livery is given of yonder property, whereupon the feoffee must make entry on it. This livery can neither be made nor received by attorney.

(7) When a particular estate for years and a freehold remainder are created at the same time, the livery in deed must be given to the lessee for years; the freehold then commences *in præsenti,* though to be enjoyed *in futuro.*

(8) A memorandum that livery of seisin was given should be endorsed on the feoffment, although it will be presumed to have been given, when not endorsed, where the possession has been enjoyed for 20 years according to the tenor of the feoffment, or it may be proved by parol evidence, and equity will supply the want of it, where the deed was made for a good or valuable consideration.

(9) Estoppel operates upon a feoffment so far as to bind the feoffor's estate during his own life.

(10) A feoffment was a tortuous conveyance, i. e. if a person attempted to convey by it a greater freehold than he had, he forfeited the estate of which he was seised; but now it is a rightful (*droiturel*) or innocent conveyance, transferring only the estate which the feoffor can lawfully convey, being void *pro tanto* the excess, and so operating no forfeiture.—8 & 9 *Vict.* c. 106, s. 4.

Feoffment to uses. A feoffment is a conveyance at the common law, so far as it conveys the land to the feoffee; if it is directed to operate to, or to the use of the feoffee, it has no other operation than at the common law: but if it is directed to operate to the use of any other person, then, though it be a common law conveyance, so far as it conveys the land to the feoffee, it derives its effect from the Statute of Uses, so far as the use is limited by it to the person or persons in whose favor it is declared. Thus, if A. be desirous to convey to B. in fee, he may do so by enfeoffing a third person, C. (of course with livery of seisin), to hold to him and his heirs to the use of B. and his heirs: the effect of which will be to convey the legal estate in fee-simple to B. For, since the Statute of Uses, the legal estate passes to the feoffee by means of the livery, as it would have done before; but no sooner has this taken place, than the limitation to uses begins to operate, and C. thereby becomes seised to the use defined or limited; the consequence of which is, that by force of the legislative enactment the legal estate is *co instanti* taken out of him, and vests in B., for the like interest as was limited in the use, that is, in fee-simple. B. thus becomes the legal tenant as effectually as if the feoffment had been made to himself, and without the intervention of a trustee. This method is not much practised, in consequence of the livery of seisin.—2 *Sand. Uses and Trusts*, 13; *Watk. Conv.* 288.

Feoffor. See FEOFFER.

Feoh, or **Fioh,** cattle; money.

Feorme, a certain portion of the produce of the land due by the grantee to the lord according to the terms of the charter.

Feræ naturæ, Animals. Beasts and birds of a wild disposition, such as deer, hares, coneys in a warren, pheasants, partridges, &c., as distinguished from those *domitæ naturæ*, or tame, such as horses, sheep, poultry, &c. They are not whilst living the subjects of absolute property, but a man may acquire a qualified property in them either: (1) *Per industriam*, by his reclaiming and making them tame by art and industry, or by so confining them that they cannot escape, e. g. deer in a park, hares or rabbits in an enclosed warren, &c. The property in them only continues so long as they remain in a man's actual possession, but ceases if they regain their liberty, unless they have *animus revertendi*, as in the case of pigeons, tame hawks, &c. (2) *Ratione impotentiæ*, on account of their inability, as when birds, coneys, &c., make their nests or burrows on a man's land, and have young ones, then he has a qualified property in the young until they can fly or run away. (3) *Propter privilegium*, when a man has the privilege of hunting, taking and killing certain wild animals, usually called game, in exclusion of other persons. He has a transient property in them so long as they continue within his liberty, and may prevent any stranger from taking them therein; but the instant they depart from his liberty, his qualified property in them ceases. Of animals *ferœ naturæ* when dead, reclaimed, or confined, if they are fit for food, larceny may be committed at common law. See 2 *Bl. Comm.* 391; *Steph. Comm.* vol. i., 164, 673; ii., 419, 237, 569; iii., 358; iv., 199, 200; and see *Roscoe's Crim. Evid.*, 454; see also 24 & 25 *Vict.* c. 96, ss. 11–24.

Ferdella terræ, a fardel-land; ten acres; or perhaps a yard-land.

Ferdingus, apparently a freeman of the lowest class, being named after the *cotseti.*—*Anc. Inst. Eng.*

Ferdwit [fr. *ferd*, Sax., army, and *wite*, punishment], quit of manslaughter committed in the army; also a fine imposed on persons for not going forth in a military expedition.—*Cowel.*

Feriæ, holidays; generally speaking, days or seasons during which free-born Romans suspended their political transactions and their law-suits, and during which slaves enjoyed a cessation from labor.—*Cic. De Leg.* ii. 8, 12. All feriæ were thus *dies nefasti.*

All feriæ were divided into two classes—*feriæ publicæ* and *feriæ privatæ*. The latter were only observed by single families or individuals, in commemoration of some particular event which had been of importance to them or their ancestors.—*Smith's Dict. Antiq.*

Ferling, the fourth part of a penny; also the quarter of a ward in a borough.—*Old Records.*

Ferlingata, a fourth part of a yard-land.

Ferlingus, or **Ferlingum,** a furlong, which see.—*Co. Litt.* 5 *b.*

Ferm, or **Fearm,** a house and land let by lease.

Fermary, an hospital.

Fermier, one who farms any public revenue in France.

Fermisona, the winter season for killing deer.

Fern. Unlawfully and maliciously setting fire to growing fern or to a stack of fern is a felony. See 24 & 25 *Vict.* c. 97, ss. 16 & 17.

Fernigo, a piece of waste ground where ferns grow.

Ferrets are not the subjects of larceny.—3 *Step. Com.* 8 n.

Ferriage, the fare paid at a ferry.

Ferry, the right to carry persons and their goods in boats across a river, and to take toll for such carriage. It is a franchise, and can only be created by license from the Crown or by Act of Parliament. See *Steph. Comm.* i., 671, 673; and iii., 520 n.

Ferspeken, to speak suddenly.

Fesance, an act.

Festinatio justitiæ est noverca infortunii.—*Hob.* 97.—(Hasty justice is the stepmother of misfortune.)

Festing-men. See FASTING-MEN.

Festing-penny [fr. *festnian*, Sax., to confirm], earnest given to servants when hired or retained in service.

Festinum remedium, a prompt redress.

Festum (*a feast*).

Festum stultorum (*the feast of fools*).

Feu, or **Few,** a free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. *Feu*, in Scotland, means vassal-tenure, in contradistinction to wardholding, or military tenure.—*Scotch Law.*

Feu, or **Few annual,** the rent due by the *reddendo* of the property of the ground, before the house was built within burgh.—*Ibid.*

Feud. See DEADLY FEUD.

Feudal. See FEODAL.

Feudal system, that scheme of tenure which the Conqueror perfected in this country, thereby displacing the Saxon laws of property, and which was the chief institution of the middle ages. See TENURE.

While the principles of realty are for the most part of feudal derivation, the rules concerning personalty are brought from the civil law, or the law of nature. Sir Robert Chambers, in his Treatise on Estates and Tenures, epitomizes the history of the Feudal System as follows:—

The duration of the feudal law has by some writers been fancifully enough distinguished into four ages:

(1) In its infancy, the lands given to the soldiers, which were not yet called feuds, and perhaps had no general denomination, were held by the mere will and pleasure of their lord.

(2) The second age began when some regard was had to descent. It is supposed, that at first the son of a tenant was put into possession of his father's land, not as having a better right, but as being naturally more known and more favored than a stranger. That which was reasonable by degrees became customary, and when the son without any cause alleged was excluded, the lord was considered as exercising *summum jus*, as acting unkindly, though not illegally. In time the advantages of a more certain settlement were discovered, and grants were made to a tenant and his sons. These grants were, however, interpreted in their most literal rigor.

(3) In the third age those possessions which, while they were granted only for life, or at most with very strict limitations, had been termed *beneficia*, began to be made indefinitely inheritable, and took the name of feuds. The succession to a feud was for some time strictly lineal.

The three periods of the feudal law which have been mentioned are called its infancy, childhood, and youth.

(4) Then commenced its fourth age or maturity: the order of descent was settled, collateral relations were admitted to inheritance, the reciprocal obligations of lord and tenant were fully understood, and some princes, the first of whom was the Emperor Conrad the Second, had published edicts in writing for regulating feudal successions.—*Craig. Feud. lib. passim.*

About a century after the Conquest the feudal law received its completion by the book *De Feudis*, now appended to the body of the civil law, and compiled in the time of Frederic the First. This book comprises some decretal epistles of popes and some edicts of emperors, with the opinions and decisions of feudal lawyers, particularly of those from whose collections it was chiefly compiled, Gerardus Niger and Obertus de Horto. This was the highest state of the feudal law, in which, like all other human things, it continued a short time, and from which it afterwards declined.

Feudbote, a recompense for engaging in a feud or quarrel.

Feudist, a writer on feuds, as Cujacius, Spelman, &c.

Feudum. Fidelis ero verè domino vero meo.—(A fee. I will be truly faithful to my true lord.)

Feuds, Book of, published during the reign of Henry III., about the year 1152. The particular customs of Lombardy, as to feuds, began to be the standard and authority to other nations, on account of the greater refinement with which that kind of learning had been there cultivated. It is probable that this compilation was known here, but it does not appear that it had any other effect than influencing our lawyers to study their own tenures with more diligence, and work up the learning of real property with much curious matter of a similar kind. Thus, tenures in England continued a peculiar species of feuds, partaking of certain original qualities in common with others; but when once established here, growing up with a strength and figure entirely their own. While most of the nations

in Europe referred to the Book of Feuds as the grand code of law by which to correct and amend the imperfections in their own tenures, there is not in our law-books any allusion that intimates the existence of such a body of constitutions.—2 *Reeves*, 55.

Fiar, opposed to *life* renter. The person in whom the property of an estate is vested, subject to the life renter's estate.—*Scotch Law.*

Fiars prices, the value of grain in the different counties of Scotland, fixed yearly by the respective sheriffs, in the month of February, with the assistance of juries. These regulate the prices of grain stipulated to be sold at the fiar prices, or when no price has been stipulated.

Fiat (*let it be done*), a decree; a short order or warrant of some judge for making out and allowing certain processes.

Fiat in bankruptcy, the authority of the Lord Chancellor to a commissioner of bankrupts, which authorized him to proceed in the bankruptcy of a trader mentioned therein. It was abolished by 12 & 13 Vict. c. 106, and a petition for adjudication substituted.

Fiat justitia ruat cælum.—(Let right be done, though the heavens should fall.)

Fiat prout fieri consuerit, nil temere novandum.—Jenk Cent. 116.—(Let it be done even as it is accustomed to be done, let nothing be innovated rashly.)

Fiaunt [fr. *fiat*, Lat.], warrant.

Fictio cedit veritati. Fictio juris non est ubi veritas.—(Fiction yields to truth. Where there is truth, fiction of law exists not.)

Fictio, fictions, in Roman law, are like fictions in English law, of which it has been said that they are 'those things that have no real essence in their own body, but are so acknowledged and accepted in law for some especial purpose.' The fictions of the Roman law apparently had their origin in the edictal power, and they were devised for the purpose of providing for cases where there was no legislative provision. A fiction supposed something to be which was not, but the thing supposed to be was such a thing as, being admitted to be a fact, gave to some person a right, or imposed on some person a duty. Various instances of fictions are mentioned by Gaius.

It was by a fiction that the notion of legal capacity was extended to artificial persons, that is, to such persons as were merely supposed to exist for legal purposes. Numerous instances of fictions occur in the chapters entitled *Juristische Personen*, in Savigny's *System des Heut. R. R.* vol. ii.

Fictio legis iniquè operatur alicui damnum vel injuriam.—2 *Co.* 35.—(A fiction of law improperly works loss or injury to any one.)

Fictitious actions, actions brought upon pretended rights.

Fictitious payee, a payee who does not exist.

Fide-jussor, a surety, or one that obliges himself in the same contract with a principal, for the greater security of the creditor or stipulator.—*Civ. Law.*

Fidei-commissum, a testamentary disposition, by which a person who gives a thing to another imposes on him the obligation of transferring it to a third person. The obligation was not created by words of legal binding force (*civilia verba*), but by words of request (*precativè*), such as '*fidei committo*,' '*peto*,' '*volo dari*,' and the like, which were the operative words (*verba utilia*). If the object of the fidei-commissum was the hæreditas, the whole or a part, it was called *fidei commissaria hæreditas*, which is equivalent to a universal fidei-commissum; if it was a single thing, or a sum of money, it was called *fidei-commissum singulæ rei.* The obligation to transfer the former could only be imposed on the heres; the obligation of transferring the latter might be imposed on a legatee.

It appears that there were no legal means of enforcing the due discharge of the trust called fidei-commissum, till the time of Augustus, who gave the consuls jurisdiction in fidei-commissa.

Fidei-commissa seem to have been introduced in order to evade the civil law, and to give the hæreditas, or a legacy, to a person who was either incapacitated from taking directly, or who could not take as much as the donor wished to give. Gaius, when observing that peregrini could take fidei commissa, observes that, 'this' (the object of evading the law) 'was probably the origin of fidei-commissa;' but by a senatus-consultum, made in the time of Hadrian, such fidei-commissa were claimed by the fiscus. Fidei-commissa were ultimately assimilated to legacies.—*Gaius*, ii. 247–289; *Ulp. Frag.* tit. 25; *Sand. Just.* 347.

Fidelitas. De nullo tenemento, quod tenetur ad terminum, fit homagii; fit tamen inde fidelitatis sacramentum.—Co. Litt. 676.—(Fealty. For no tenement which is held for a term is there the oath of homage, but there is the oath of fealty.)

Fidem mentiri, when a tenant does not keep that fealty which he has sworn to the lord.—*Leg. Hen. I.* c. 53.

Fides est obligatio conscientiæ alicujus ad intentionem alterius.—Bacon.—(Faith is an obligation of conscience of one to the will of another.)

Fiducia. If a man transferred his property to another, on condition that it should be restored to him, this contract was called *fiducia*,

and the person to whom the property was so transferred was said *fiduciam accipere*—*Cic. Top.* 10. A man might transfer his property to another for the sake of greater security in time of danger, or for other sufficient reasons.—*Gaius*, ii. 60.

Fiduciary [fr. *fiduciarius*, Lat.], one who holds anything in trust.

Fief, a fee; a manor, a possession held by some tenant of a superior.

Fiefs were originally called *terræ jure beneficii concessæ*; and it was not till under *Charles le Gros*, the term *fief* began to be in use.—*Du Cange.*

Fief d'haubert, the Norman phrase for knight-service.

Fierding courts, inferior ancient Gothic courts, so called because four were established within every superior district or hundred.

Fieri facias, usually abbreviated *fi. fa.* (*that you cause to be made*), a judicial writ that lies for him who has recovered any debt or damages in the Queen's courts. It is a command to the sheriff, that of the goods and chattels of the party he cause to be made the sum recovered by the judgment, together with interest, at 4*l.* *per cent.* from the time of entering up the judgment, and have the money and interest, and the writ itself, before the queen, or before her justices, if in the Common Pleas; or her barons, if in the Exchequer, at Westminster, immediately after the execution of the writ, to be rendered to the party who sued it out. If the sheriff return *nulla bona*, an *alias fi. fa.* may issue; and upon that being returned, a *pluries*, or a *testatum fi. fa.* may be issued into another county.

By 8 Anne, c. 14, s. 1, 'no goods or chattels whatsoever, lying or being in or upon any messuage, lands, or tenements, which are or shall be leased for life or lives, term of years, at will, or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall, before the removal of such goods from off the premises, by virtue of such execution or extent, pay to the landlord of the said premises, or his bailiff, all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution, provided the said arrears of rent do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent, then the said party, at whose suit such execution is sued out, paying the said landlord, or his bailiff, one year's rent, may proceed to execute his judgment, as he might have done before the making of this act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution-money.' And see 7 & 8 *Vict.* c. 96, s. 67, as to short tenancies.

Under this execution can be taken all personal goods and chattels, excepting wearing apparel, &c. to the value of 5*l.* (8 & 9 Vict. c. 127, s. 8). Also any money or bank-notes (whether of the Governor and Company of the Bank of England, or of any other bank or bankers), and any cheques, bills of exchange, promissory notes, bonds, specialties, or other security for money belonging to the person against whose effects a *fi. fa.* shall be sued out. (1 & 2 Vict. 2. 110, s. 12). The sheriff cannot sell an estate in fee or for life, unless, perhaps, an estate *pur autre vie*; but he may sell leases and terms for years. Neither can fixtures be seized, but emblements may. The seizure and sale of straw, chaff, turnips, manure, hay, grapes, roots, vegetables, &c. on lands let to farm, are regulated by 56 Geo. III. c. 50. As to growing crops, see 14 & 15 Vict. c. 25, s. 2. If the sheriff seize the goods of a stranger, he will be liable to an action. The goods of a woman cohabiting with a defendant cannot be taken in execution, although she passes as his wife. If the sheriff return that he has taken goods, but that they remain in his hands for want of buyers, a *venditioni exponas* is issued to compel a sale; but if the sheriff have gone out of office after such return, instead of a *venditioni exponas*, a *distringas nuper vicecomitem*, addressed to the present sheriff, issues, commanding him to distrain the late sheriff to sell the goods, or forfeit issues to the amount of the debt. An *elegit* or a *ca. sa.* may issue after a *fi. fa.* if the judgment be not satisfied.—1 *Chit. Arch. Prac. by Pren.* 134.

A *fi. fa.* may be issued in Chancery suits, for the purpose of obtaining satisfaction of any pecuniary demand, to which a person may be entitled under a decree or order of the court.—1 & 2 *Vict.*, c. 110; and *Consol. Ord.* 1860, *Ord.* xxix. 3.

Fieri facias de bonis ecclesiasticis (*that you cause to be made of the ecclesiastic's goods*), when a sheriff to a common *fi. fa.* returns *nulla bona*, and that the defendant is a beneficed clerk, not having any lay fee, a plaintiff may issue a *fi. fa. de bonis ecclesiasticis*, addressed to the bishop of the diocese, or to the archbishop (during the vacancy of the bishop's see), commanding him to make of the ecclesiastical goods and chattels belonging to the defendant within his diocese, the sum therein mentioned. 2 *Chit. Arch. Prac. by Pren.* 1272.

It can be obtained in Chancery. See *Consol. Ord.* 1860, *Ord.* xxix. 4.

Fieri feci (*I have caused to be made*), a return made by a sheriff when he has executed a writ of execution.

Fifteenths, a tribute or imposition of money, anciently laid generally upon cities, boroughs,

&c. through the whole realm; so called, because it amounted to a fifteenth part of that which each city or town was valued at, or a fifteenth of every man's personal estate, according to a reasonable valuation.—*Cam. Brit.* 171.

Fightwite, making a quarrel to the disturbance of the peace.

Figures, the numeral characters by which numbers are expressed or written, as the ten digits, which are usually called the Arabic or Indian figures, from their supposed origin. The 6 Geo. II. c. 14, allows the expressing numbers by figures in all writs, &c., pleadings, rules, orders, and indictments, &c. in courts of justice, in like manner as had been commonly used in the said courts, notwithstanding anything in 4 Geo. II. c. 26.

Filacer, Filazer, or **Filizer** [fr. *filum*, Lat.; *file, filace*, Fr., a thread], an officer of the superior courts at Westminster, who files original writs, &c. and issues processes thereon.—2 *Wm. IV.* c. 39, s. 4; 2 & 3 *Wm. IV.* c. 110, s. 2.

Fild-ale, or **Filk-ale** [fr. *fillen*, Sax., to fill, and *ale*], an ale feast. A term applied to an extortionate practice of officers of the forest, and of bailiffs of hundreds, of compelling persons to contribute to the supplying them with drink, &c. Prohibited by the Carta de Foresta. 4 *Inst.* 307.

File [fr. *filacium*, Lat.], a thread, string, or wire, upon which writs and other exhibits in courts and offices are fastened or filed, for the more safe keeping of, and ready reference to, the same.

Filiation [fr. *filius*, Lat.], the relation of a son to his father; correlative to paternity.

Filiatio non potest probari.—*Co. Litt.* 126.—(Filiation cannot be proved.) But see 7 & 8 *Vict.* c. 101.

Filicetum [fr. *filix*, Lat., fern brake], brackie land, land where ferns grow.—*Co. Litt.* 4.

Filiotus, a little son; a godson.

Filius in utero matris est pars viscerum matris. 7 *Co.* 8.—(A son in the mother's womb is part of the mother's vitals.)

Filius mulieratus, the eldest legitimate son of a woman who was illicitly connected with his father before marriage.

Filius populi, a son of the people, a natural child.

Filum aquæ, medium, the thread or middle of the stream where a river parts two lordships; also the middle of any river or stream which divides counties, townships, parishes, manors, liberties, &c.

Filum viæ, the thread or middle of a road.

Final decree, a conclusive decision of the court, as distinguished from interlocutory.

Final judgment. See JUDGMENT.

Final process, a writ of execution on a judgment or decree.

Finances, the revenue of a sovereign or state, or the money raised by loans, taxes, &c. for the public service.

Financier, a person employed in the economical management and application of public money.

Finder, a searcher employed to discover goods imported or exported, without paying custom.

Finder of goods acquires a special property in them, available against all the world, except the true owner; he is bound, however, before appropriating them to his own use, to take all the means in his power to discover the owner. If the property had not been designedly abandoned, and the finder knew who the owner was, or with due exertion could have discovered him, he is held guilty of larceny if he keep and appropriate the articles to his own use.—*Merry* v. *Green*, 7 *M. & W.* 623; *Armory* v. *Delamirie*, 1 *Str.* 505; and 1 *Smith, L. C.*

Fine, a sum of money, or mulct imposed upon an offender, also called a ransom; an income or a sum of money paid at the entrance of a tenant into his land; a sum paid for the renewal of a lease; and an assurance by matter of record, founded on a supposed previously existing right.

In every fine which was the compromise of a fictitious suit, and resembled the *transactio* of the Romans, there was a suit supposed, in which the person who was to recover the thing was called the plaintiff, conusee, or recognisee, and the person who parted with the thing the deforceant, conusor, or recognisor. It was termed a fine for its worthiness, and the peace and quiet it brought with it—*finis fructus exitus et effectus legis.*

There were five essential parts to the levying of a fine:—(1) The original writ of right, usually of covenant, issued out of the Common Pleas against the conusor, and the præcipe, which was a summary of the writ and upon which the fine was levied; (2) the royal license (*licentia concordandi*) for the levying of the fine, for which the Crown was paid a sum of money called king's silver, which was the post-fine, as distinguished from the præ-fine, which was due on the writ; (3) the conusance, or concord itself, which was the agreement expressing the terms of the assurance, and was indeed the conveyance; (4) the note of the fine, which was an abstract of the original contract or concord; (5) the foot of the fine, or the last part of it, which contained all the matter, the day, year, and place, and before what justices it had been levied. A fine was said to be engrossed when the chirographer made the indentures of the fine and delivered them to the party to whom the conusance was made. The chirograph or indentures were evidence of the fine..

A fine without proclamation was a fine at the Common Law, and a fine with proclamations (which was to be proclaimed openly in the Common Pleas once a term for four terms next after its engrossment) was a fine according to the statute 4 Hen. VII. c. 24, and of this sort were most fines. A fine was single when an estate was granted to the cognisee, and nothing rendered to the cognisor; or double, when there was a render back again either of the land itself or something out of it, for some new estate.

There were four sorts of fine:—(1) A fine *sur cognizance de droit come ceo, &c.*, which was the most common, and was an acknowledgment on record of a previous gift or feoffment.

(2) A fine *sur done grant et render* was obsolete. It consisted of two parts, a grant and a render, and operated like a feoffment and re-enfeoffment.

(3) A fine *sur conuzance de droit tantum* gave or transferred only the right or estate which was in the conusor. It was generally used to pass a reversionary interest or to surrender a life estate.

(4) A fine *sur concessit*, which might have been either for years, for life, in tail or in fee. It conveyed the estates of wives, and created terms, which were binding, by estoppel, on contingent or executory interests. See 1 *Touch.* c. ii., and 1 *Pres. Conv.* c. ii. Fines were abolished by 3 & 4 Wm. IV. c. 74. See TAIL.

The chirograph of a fine is sufficient evidence of its acknowledgment. It will be proper to see that the fine agrees with the deed leading or declaring the uses; that the parcels are sufficient to comprise the property conveyed; that the proclamations are endorsed; and that the possession has gone according to the fine.

Fine adullando levato de tenemento quod fuit de antiquo dominico, an abolished writ for disannulling a fine levied of lands in ancient demesne to the prejudice of the lord.—*Reg. Orig.* 15.

Fine capiendo pro terris, &c. an obsolete writ which lay where a person, upon conviction of any offence by jury, had his lands and goods taken, and his body imprisoned, to be remitted his imprisonment, and have his lands and goods redelivered to him, on obtaining favor of a sum of money, &c.—*Reg. Orig.* 142.

Fine force, where a person is compelled to do that which he can in nowise help.—*O. N. B.* 63.

Fine non capiendo pro pulchre placitando, an obsolete writ to inhibit officers of courts to take fines for fair pleading.

Fine pro redisseisinâ capiendo, an old writ that lay for the release of one imprisoned for a redisseisin, on payment of a reasonable fine.—*Reg. Orig.* 222.

Fines for alienation, one of the oppressions of the feudal system, abolished by 12 Car. II. c. 24.

Fines in copyholds. A fine which is preserved by 12 Car. II. c. 24, s. 6, is a sum of money payable by custom to the lord. There are three classes of fines:—(1) Those due on the change of the lord; (2) Those on the change of the tenant; and (3) Those for a license to empower the tenant to do certain acts.

When the fine is due on the change of the lord, such change must be by the act of God, and not in consequence of any act of the party. It can therefore be only claimed on the death of the lord.

When the fine is due on the change of the tenant, it matters not whether that change is effected by the act of God or by the tenant's own act. Whenever the tenancy is changed, there a fine is payable. Should the tenant be compelled to pay a fine by reason of any act of the lord, he would be subject to much oppression; but where it is the consequence of his own act, he is left to his own discretion.

Those fines which are due on licenses by the lord, to empower the tenant to do certain acts, as to demise, &c. are rare. There must be a special custom to support such fine, for, by general custom, fines are due only on admissions.

Upon admittance, then, a fine becomes due to the lord, unless there is a special custom to the contrary. This fine, as well as the steward's fees, are payable by the purchaser; and even a covenant to surrender copyholds, at the costs of the vendor, is not broken by the non-payment of this fine, the title being perfected by admittance.—*Graham* v. *Sime*, 1 *East.* 634.

The admission fine is *primâ facie* uncertain and arbitrary, or rather arbitrable, unless a special custom fix it; it must, however, be reasonable, and not excessive, for *excessus in re quâlibet, jure reprobatur communi*, and two years' improved value of the land, deducting quit-rents, but not land-tax, is now the full extent which the courts will allow the lord to take in the exercise of this arbitrary power, except on voluntary grants, for then it is altogether in the lord's option. On the death of a surrenderee before admission, the lord must admit his heir on payment of a single fine only.—1 *Scriv. Cop.* 341. But if the heir of a copyholder die before admission, his heir or devisee could not compel admission, except on payment of a double fine. Without a special custom for it, the remainder-man is not liable on the death of the tenant for life, to pay a fine; for the admittance of the life-tenant is an admittance of those in remainder or reversion,

and although there is an alteration of the tenant yet there is not any of the estate; but the heir or surrenderee of a reversioner or remainder-man, as well as the surrenderee of a particular tenant, must be admitted and pay a fine.

If a copyholder intend that the estate shall be sold at his death, he may save a double fine by giving a power of sale to his executors, for the donee of a power is not admitted, but the appointee only, upon whose admittance a fine is due; if, however, he devise the copyhold to trustees, upon trust to sell, then the trustees must themselves be admitted; a trustee, and not the *cestui que trust*, is the person to be admitted the lord's tenant.

If the fine be certain, the tenant should come prepared to pay it, but the lord cannot refuse admittance because the fine is not tendered to him. When the fine is uncertain, the practice is to fix a reasonable day and place of payment.

Upon payment of the fine, the steward delivers a copy of the court-roll, which is the tenant's muniment of his title.

Fines for endowment, anciently paid to the lord when a married woman was endowed: they were grounded on the feudal exactions.

Fines for offences, amends, pecuniary punishment, or recompense for offences committed against the sovereign and the laws, or the lord of a manor, &c.—4 *Bl. Com.* 378.

Fines mandatorum domini regis per rescripta sua [scil. *brevia*] *diligenter sunt observandi.*—5 *Co.* 87.—(The limits of the king's mandates in his rescripts [i. e. writs] are to be diligently observed.)

Finire, to fine, or pay a fine upon composition and making satisfaction.—*Old Records.*

Finis rei attendendus est.—3 *Inst.* 51.—(The end of a thing is to be attended to.)

Finis finem litibus imponit.—3 *Co.* 78.—(A fine puts an end to litigations.)

Finis unius diei est principium alterius.—2 *Buls.* 305.—(The end of one day is the beginning of another.)

Finis. Talis concordia finalis dicitur, eo quod finem imponit negotio, adeò quod neutra pars litigantium ab eo de cætero potest recedere.—*Co. Litt.* 121.—(A fine. Such a concord is called final because it puts an end to the business, so that neither of the litigants can recede from it thenceforth.)

Finitio, death.

Firderinga, a preparation to go into the army.

Firdfare, and **Firdwite**. See FERDWIT.

Fire-arms, under this designation is comprised all sorts of guns, fowling-pieces, blunderbusses, pistols, &c. The manufacture of these weapons is of considerable importance; employing at all times, but especially during war, a large number of persons.

In consequence of the frequent occurrence of accidents from the bursting of insufficient barrels, the legislature has most properly interfered, not to regulate their manufacture, but to prevent all persons from using or selling barrels that have not regularly been proved in a public proof-house. The first act for this purpose was passed in 1813, but it was soon after superseded by a fuller and more complete one: the 55 Geo. III. c. 59. This statute imposes a fine of 20*l.* on any person using, in any of the progressive stages of its manufacture, any barrel not duly proved; on any person delivering the same except through a proof-house; and on any person receiving for the purpose of making guns, &c. any barrels which have not passed through a proof-house. This penalty may be levied on conviction before two justices; and like penalties are imposed on persons counterfeiting the proof marks.—*McCull. Comm. Dict.*

Firebare, a beacon or high tower by the seaside, wherein are continual lights, either to direct sailors in the night, or to give warning of the approach of an enemy.

Firebote, fuel for necessary use, allowed to tenants out of the lands granted to them.

Fire-ordeal, the trial by red-hot iron, used upon accusations without manifest proof (though not without suspicion that the accused might be guilty). The person accused if he denied was adjudged to take red-hot iron, and to hold it in his bare hand, which, after many prayers and invocations that the truth might be manifested, he must adventure to do, or yield himself guilty, and so receive the punishment that the law, according to the offence committed, awarded.

Some were adjudged to go blindfolded, with their bare feet over certain plough-shares, which were made red-hot and laid a little distance one before another. If the person undergoing the ordeal either in passing through them did chance not to tread upon them, or treading upon them received no harm, then by the judge he was declared innocent. This kind of trial was practised in England upon Emma the mother of King Edward the Confessor, who was accused of dishonesty of her body with Alwyne, Bishop of Winchester; and being led blindfolded unto the place where the glowing hot irons were laid, went forward with her bare feet, and so passed over them, and being gone past them all, and not knowing whether she were past them or not, said, 'O! good Lord! when shall I come to the place of my purgation?' And having her eyes uncovered, and seeing herself to have passed them, she kneeled down and gave thanks to God, for manifesting her innocence by her preservation from being hurt. A trial like this is recorded of Kunigund, wife unto the Emperor Henry the Second, who being falsely accused of adul-

tery, to show her innocence, did, in a great and honorable assembly, take seven glowing irons one after another in her bare hands, and had thereby no harm.—*Verstegan's Rest. Dec. Intel.* 65.

Fire policy, a contract in writing effected at an insurance office, whereby, in consideration of a single or periodical payment of premium, the company engages to pay an assured person such loss as may occur by fire to his property described in the policy, within the period therein specified, to an amount not exceeding a particular sum fixed for that purpose by such policy.—2 *Step. Com.* 134. As to duties on fire-insurances, wheresoever made, see 19 *Vict.* c. 22, and 22 & 23 *Vict.* c. 35, s. 7.

Fire and **Sword,** *Letters of*, anciently issued from the privy council of Scotland, addressed to the sheriff of the county, authorising him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge or the sentence of a court.

Fireworks discharging, a common nuisance. See 2 & 3 *Vict.* c. 47, s. 54; 9 & 10 *Vict.* c. 25; and 23 & 24 *Vict.* c. 139.

Firkin, a measure of capacity, containing nine gallons.

Firm, the name or names under which any house of trade is established.

Firma, the fee or acknowledgment which a tenant pays to his lord in Scotland; also a tribute anciently paid towards the entertainment of the King of England for one night; also victuals, provisions, or rent.

Firma Alba. See Alba Firma.

Firman, a passport or permit granted by the Great Mogul to foreign vessels to trade within the territories of his jurisdiction.

Firmarius, a fructuary.—1 *Reeves*, 324.

Firmary, the right of a tenant to his lands and tenements.

Firmatio, the doe season; a supplying with food.—*Leg. Inæ.* c. 34.

Firmaun, or **Phirmaund,** an order, mandate, an imperial decree, royal grant or charter.—*Indian.*

Firme, a farm.—*Old Records.*

Firmior et potentior est operatio legis quàm dispositio hominis.—*Co. Litt.* 102.—(The operation of the law is firmer and more powerful than the disposition of man.)

Firmura, liberty to scour and repair a milldam, and carry away the soil, &c.—*Blount.*

First fruits, an incident to the old feudal tenures, being one year's profits of the land, after the death of a tenant, which belonged to the king. Hence arose the claim of the head of the church to the first year's profits of every clergyman's benefit; otherwise called *annates* or *primitiæ*. By 2 & 3 Anne, c. 8, the first fruits of all benefices, except those under the value of 50*l.* per annum, which are exempted from the payment of first fruits, were vested in trustees to form a perpetual fund, called Queen Anne's Bounty, for the augmentation of poor livings.—2 *Step. Com.* 553.

Fisc, or **Fiscus** [fr. *fiscus*, Lat., a great basket], the treasury of a prince or state.

The word *fiscus* signified a wicker basket or pannier, in which the Romans were accustomed to keep and carry about large sums of money (*Cic.* 1 Verr. c. viii.; *Phaedr. Fab.* ii. 7), and hence *fiscus* came to signify any person's treasure or money chest.

The importance of the imperial fiscus soon led to the practice of appropriating the name to that property which the Cæsar claimed as Cæsar, and the word fiscus, without any adjunct, was used in this sense (*Juv. Sat.* iv. 54). Ultimately the word came to signify, generally, the property of the state, the Cæsar having concentrated in himself all the sovereign power, and thus the word fiscus finally had the same signification as *ærarium*, in the republican period. It does not appear at what time the *ærarium* was merged in the *fiscus*, though the distinction of name and of thing continued at least to the time of Adrian. In the latter periods the words ærarium and fiscus were often used indiscriminately, but only in the sense of the imperial chest, for there was then no other public chest.—*Smith's Dict. Antiq.*

Fiscal, belonging to the exchequer; revenue.

Fishery, the right to take fish. Fisheries are either free, common, or several. A *free* fishery is the exclusive right of fishing in a public river, and is a royal franchise. Common of fishery, or common of piscary, is the right of fishing in another man's water. A several fishery is the exclusive right of fishing, and he that has it, according to Blackstone, 'must also be (or at least derive his right from) the owner of the soil.'—2 *Bl. Com.* 40. This position of Blackstone has been questioned. See *Harg. Co. Litt.* 122 *a*, n. (7); *Holford* v. *Bailey*, 8 *Q. B.* 1000; 13 *Q. B.* 427; and *Marshall* v. *The Ulleswater Steam Navigation Company*, 32 *L. J.* (*Q. B.*), 139. See also 2 *Selw. N. P.*

The term fisheries is also applied to fishing-grounds, or parts of the sea where at certain seasons great numbers of fish are taken. The right of frequenting these has frequently been the subject of dispute between nations, and sometimes of treaties.

For an enumeration of the statutes relating to fisheries, see 3 *Step. Com.* 276, 277. As to salmon fisheries, see 25 & 26 *Vict.* c. 97; 26 & 27 *Vict.* cc. 50 & 114. As to exportation of salmon at certain times, see 26 & 27 *Vict.* c. 10.

As to cutting through or destroying the dam, floodgate, or sluice of, or putting lime or noxious materials in, a fishpond or water which is private property, or in which there is a private

right of fishery, with intent to take or destroy fish, see 24 & 25 *Vict.* c. 97, s. 32. As to the unlawful taking or destroying of fish, see 24 & 25 *Vict.* c. 96, ss. 24 & 25.

Fisk, the right of the Crown to the moveable estate of a person pronounced rebel.—*Scotch Law.*

Fitung, strife.

Fitz [Nor. fr. *fils,* Fr.], a son. It is used in law and genealogy; as *Fitzherbert,* the son of Herbert; *Fitzjames,* the son of James; *Fitzroy,* the son of the king. It was originally applied to illegitimate children.

Fitzherbert. The most distinguished writer upon law in the reign of Henry VIII. He was first a serjeant, and some years after a judge of the Common Pleas. The first book published by this learned author was his *Grand Abridgment,* printed in 1514 by Richard Pynson. So useful a work soon required another supply. In 1516 a second edition was printed by Wynkyn de Wordo, or perhaps this is one of the books printed for him abroad, where the Law-French was better understood, and where, for that reason, many of our law books used to be printed. In 1534 he published his new *Natura Brevium,* which was reprinted in 1537. Several books were printed in this reign on the office and duty of a justice of the peace. The first was in 1515, in which year we find two works printed by different printers under the title of *The Boke of Justices of Peas.* In 1534 there appeared another work, entitled, *The Boke for a Justyce of Peace never so well and diligently set forth.* All these were without any name. Afterwards, in 1541, we find *The New Booke of Justyces of Peace made by Anthony Fitzherbert, Judge, lately translated out of Frenche into Englishe.* These are all the writings that are known to belong to Fitzherbert upon the law of England: several anonymous tracts have been attributed to him, though upon no sufficient authority.

The Abridgment is a work of singular learning and utility. If the date of Statham's publication could be ascertained to be antecedent to this, many reflections might be founded on the comparative excellence of the present work; it might then be said to be formed on that of Statham; that Statham's was the commonplace book of that time, and as such furnished a basis on which the superstructure of Fitzherbert's more enlarged and improved work was raised; that the experience of a few years pointed out the defects of the former, and enabled Fitzherbert to make the necessary corrections. The foundation for these observations being very uncertain, we can only remark that the latter work is five times the size of the former; that it contains the cases as low down as the time of its publication; that these are abstracted more fully, and convey the sense of the book more satisfactorily; otherwise, the order of Statham's work, in the titles, seems to be followed, and the cases seem to be arranged with the same disregard to method and connection. This abridgment was a valuable acquisition to the lawyers of this period, but was superseded by the abridgment of Sir Robert Brooke in after-times; the latter abridger had the advantage of his predecessor in possessing many year-books which he had never seen. The original cases, on the other hand, of the reigns of Richard II., Edward II., Edward I., and Henry III., which are to be found only in Fitzherbert, preserve to this work a reputation entirely its own. Several in other reigns, and particularly about his own time, are not taken from any book we have, so that Fitzherbert's, though in general an abridgment, is also in many parts an original work.

Fitzherbert's *Natura Brevium,* like his other performance, is an improvement of a more ancient work of the same nature and title. It is remarkable that this treatise on the nature and effect of the principal writs in the Register was published at a time when those writs were, many of them, going into disuse, and soon afterwards became obsolete, so that hardly nine parts in ten of this work make a portion of our present law.

Five-mile Act. 35 Eliz. c. 2. See 5 *Reeves,* 114.

Five-minute-clause, a provision which is sometimes inserted in a separation deed, stipulating, that if the husband and wife should be at any time together for five minutes, after either of them had requested the other to retire, the deed should instantly become void.

Fixtures, things of an accessory character, annexed to houses or lands, which become, immediately on annexation, part of the realty itself, i. e. governed by the same law which applies to the land, in conformity with the maxim *quicquid plantatur solo, solo cedit.*—1 *C. L. Rep.* 280 (1854).

The application of this legal principle, however, is not uniform, as may be thus shown:—

(1) Between landlord and tenant. If the chattels be not let into the soil, they are not fixtures at all, and may be removed at will, like any other species of personal property. When the chattel is perfectly connected with the freehold, either by being let into the earth itself, or by being cemented, or otherwise united to some erection previously attached to the ground, the question then arises—when may the tenant remove such fixtures, and when not?

The general rule as to annexations made by a tenant during the continuance of his term is the following:—Whenever he has affixed anything to the demised premises during the term, he can never again sever it without his landlord's consent; the property by being annexed

to the land immediately belongs to the freeholder; and a tenant by making it a part of the freehold is considered to have abandoned all future right to it, so that it would be waste in him to remove it afterwards: it therefore falls in with his term, and comes to the reversioner as part of the land. But a tenant may so construct the erections, that they shall not be deemed fixtures; thus if he erect even buildings—as barns, granaries, sheds, and mills—upon blocks, rollers, pattens, pillars, or plates, resting on brickwork, they may be removed; for unless they be affixed to the freehold, by being let into it, or are, by means of rails, mortar, or the like, united to it, they remain merely moveable chattels.

The exceptions to the above rule are three: (*a*) In favor of trade. A tenant may safely remove such things which he has fixed to the freehold for purposes of trade or manufacture, provided the removal cause no material injury to the estate. This exception has been expressly decided to extend to furnaces, coppers, brewing-vessels, fixed vats, salt pans, and the like; to machinery in breweries, collieries, and mills, such as steam-engines, cider-mills, and the like; to buildings for trade, as a varnish-house, built on plates laid on brickwork, and a shed called a Dutch barn, formed of uprights rising from a foundation of brick. (*β*) For agricultural purposes. By 14 & 15 Vict. c. 25, s. 3, if any tenant of a farm or land shall, after the passing of the Act [24th of July 1851], with the consent in writing of the landlord for the time being, at his own cost and expense, erect any farm-building either detached or otherwise, or put up any other building, engine, or machinery, either for agricultural purposes, or for the purposes of trade and agriculture (which shall not have been erected or put up in pursuance of some obligation in that behalf), then all such buildings, engines, and machinery, shall be the property of the tenant, and shall be removable by him notwithstanding the same may consist of separate buildings, or that the same, or any part thereof, may be built in or permanently fixed to the soil, so that the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise do put the same in like plight and condition, or as good plight and condition, as the same were in before the erection of anything so removed: Provided nevertheless, that no tenant shall, under the provision last aforesaid, be entitled to remove any such matter or thing as aforesaid, without first giving to the landlord or his agent one month's previous notice in writing of his intention so to do; and thereupon it shall be lawful for the landlord, or his agent on his authority, to elect to purchase the matters and things so proposed to be removed, or any of them, and the right to remove the same shall thereby cease, and the same shall belong to the landlord; and the value thereof shall be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the landlord, who shall have so elected to purchase the same. (*γ*) For ornament and convenience. The following have been held removable:—Hangings, tapestry, and pier-glasses, whether nailed to the walls or panels, or put up in lieu of panels; marble, or other ornamental chimney-pieces; marble slabs, window blinds; wainscot fixed to the walls by screws; grates, ranges, and stoves, although fixed in brickwork; iron backs to chimneys; beds fastened to the walls or ceiling; fixed tables, furnaces, and coppers, mash-tubs, and fixed water-tubs; coffee and malt-mills; cupboards fixed with holdfasts; clock-cases, iron ovens, and the like; provided the separation occasion but little or no damage. The fixtures must be moved before the tenant's term or interest expires, unless perhaps in the case of a strict tenancy at will, when the tenant may be allowed a reasonable time after the determination of his tenancy, if his interest were not terminated by his own act.—*Woodf. Land. and Ten.* 493, *et seq.*

(2) Between the heir and the personal representative of the terre-tenant. Though the fixtures will generally pass with the freehold to the heir, yet such of them as are put up for ornament, domestic use, or trade, devolve to the personal representative, provided they can be easily removed, and not essential to the enjoyment of the inheritance.

(3) Between the tenant of a particular estate and the remainder-man or reversioner, a similar rule applies as in the last case, though the right is more favorably construed.—*Amos and Ferard on 'Fixtures.'*

Flaco, a place covered with standing water.

Flagrante delicto (*in the very act of committing the crime*).

Flecta, a feathered or fleet arrow.

Fledwite, or **Flightwite** [fr. *flyth,* Sax., flight, and *wite,* punishment], a discharge from amerciaments, where a person having been a fugitive came to the peace of our lord the king, of his own accord, or with license.

Fleet [fr. *fleot,* Sax., an estuary], a place where the tide flows, a creek, an inlet of water, hence Northfleet, Purfleet; also a company of ships or navy; also a prison in London, so called from a river or ditch formerly in its vicinity, now abolished by 5 & 6 Vict. c. 22.

Fleet-books. The books of the old Fleet prison are not, it is said, admissible in evidence to prove a marriage, for they are not made under public authority. But perhaps on a question of pedigree, they are evidence to show

the name by which a woman passed when she was married there. These books are said to have been purchased by the government, and to be deposited in the Consistory Court of London. They contain the original entries of marriages solemnised in the Fleet prison from 1686 to 1754.—1 *Stark. Evid.* 244.

Flem [fr. *flean*, Sax., to kill], an outlaw.

Flemene frit, Flemenes frinthe, Flymena frynthe, the reception or relief of a fugitive or outlaw.

Flemeswite, the possession of the goods of fugitives.—*Fleta*, lib. 1, c. xlvii.

Flet, house; home.

Fleta, *seu Commentarius Juris Anglicani,* a treatise upon the whole law, as it stood at the time this author wrote. It is divided into six books; the first whereof treats of the rights of persons, and of pleas of the Crown; the second, of courts and officers; the third, of methods of acquiring titles to things; the fourth and fifth, of actions grounded upon a seisin, and of writs of entry; the sixth, of a writ of right. The author of this work has followed Bracton in the manner and matter of it, having adopted his plan, and in many instances transcribed whole pages from him. He did not, however, confine himself to Bracton as his sole guide, but had also an eye to Glanville. Many obscure passages in those writers are illustrated by Fleta. It seems as if the author wrote with both these treatises, particularly Bracton's, before him; and that his design was to give a concise account of the law, with the alterations which had been made by parliament since Bracton wrote; applying such parts as had been left untouched by him, and dilating upon others that had been passed over with too little attention. Thus Fleta serves as an appendix, and often as a commentary, to Bracton. But if Fleta contains much which is not to be found in Bracton, it is deficient in much more which abounds in that author; most of the subjects so minutely discussed by Bracton being passed over in a very brief manner, so that with all its new matter this volume is not more than one-third of the size of Bracton. The writer of this commentary seems to have followed his master Bracton in his acquaintance with the canon and civil laws; though he is less frequent in the use of them, and then it is in a manner less likely to mislead the reader. The author was wholly an imitator. As he followed Bracton in the design of his work, he has copied the *Proœmium* from Glanville *verbatim*; and, after all, the idea was borrowed from that prefixed to the Institutes of Justinian.

This book was written after the thirteenth year of Edward I., and not much later; at least the statutes towards the latter part of this reign are not mentioned, though that of Westminster II. is frequently quoted. The occasion of the title of this book is given by the author himself, who says it was written during his confinement in the Fleet prison. From that circumstance it has been conjectured that he might be one of those lawyers who, for malpractice in their office as judges, were punished with imprisonment and pecuniary penalties. Appended to Fleta is a small French tract entitled *Fet Assavoir.*—2 *Reeves*, p. 279.

Fletwit or **Flitwit.** See FLEDWITE.

Flit, treason.

Flitchwite, a fine on account of brawls and quarrels.

Florin, a coin of the value of two shillings.

Flotages, such things as by accident swim on the top of great rivers.

Flotsam or **Floatsam,** goods floating upon the sea which belong to the Crown, unless claimed by the true owners thereof within a year and a day.

Flumina et portus publica sunt, ideoque jus piscandi omnibus commune est.—(Rivers and ports are public, therefore the right of fishing is common to all.)

Flyma, a runaway; fugitive; one escaped from justice, or who has no 'hlaford.'—*Anc. Inst. Eng.*

Flyman-frymth, the offence of harbouring a fugitive, the penalty attached to which was one of the rights of the Crown.—*Anc. Inst. Eng.*

F. O. B. free on board, a term frequently inserted in contracts for the sale of goods which are to be conveyed by ship, meaning that the cost of shipping them will be paid by the buyer. When goods are so sold in London the buyer is considered as the shipper, and the goods when shipped are at his risk. See *Cowas-Jee* v. *Thompson*, 5 *Moore P. C. C.* 165; *Browne* v. *Hare*, 3 *H. & N.* 484, and 4 *Ibid.* 822; *Green* v. *Sichel* 29, *L. J.* (*C. P.*) 213.

Focage, fog, or rank after-grass, not eaten in summer.

Focage, housebote, or firebote.

Focale, a right to take firewood.

Fodder, food for horses or cattle; also, among the Feudists, a prerogative of the prince to be provided with corn and other meat for his horses by his subjects, in his wars or other expeditions.

Fodertorium, provisions to be paid by custom to the royal purveyors.

Fœdus, a league or compact.

Fœmina viro co-operta (*a married woman*). *Fœminæ non sunt capaces de publicis officiis. Jenk. Cent.* 237.—(Women are not admissible to public offices.)

But a woman may be elected to the office of sexton, *Olive* v. *Ingram*, 7 *Mod.* 263; *Str.* 1114, *S. C.* Or governor of a workhouse, and act by deputy, *Anon.* 2 *Lord Raym.* 1014. Or an overseer, *Rex* v. *Stubbs*, 2 *T. R.* 395.

The shrievalty of Westmoreland is hereditary in the family of the Earl of Thanet, and descends as well to females as males.—*Harg.*; *Co. Litt.* 326 n.

Fœneration, the act of putting out money to usury.

Fœnus nauticum (*nautical usury*), a contract for the repayment of money borrowed, not on the ship and goods only, but on the mere hazard of the voyage itself, with a condition to be repaid with extraordinary interest.

Fœsa, grass; herbage.

Fœticide, criminal abortion. It may be said of all the means resorted to in order to effect this abominable crime, that they are uncertain in their operation upon the fœtus, that they always endanger the life of the mother, and that they sometimes destroy the mother without affecting the fœtus. See ABORTION.

Foiterers, vagabonds.

Folc-land, the land of the folk or people. It was the property of the community. It might be occupied in common or possessed in severalty; and in the latter case, it was probably parcelled out to individuals in the *folc-gemot* or court of the district; and the grant sanctioned by the freemen who were there present. But, while it continued to be folc-land, it could not be alienated in perpetuity; and therefore, on the expiration of the term for which it had been granted, it reverted to the community, and was again distributed by the same authority. Spelman describes folc-land as *terra popularis, quæ jure communi possidetur—sine scripto* (Gloss. Folcland). In another place he distinguishes it accurately from bocland: *Prædia Saxones duplici titulo possidebant: vel scripti authoritate, quod* bocland *vocabant, vel populi testimonio, quod* folcland *dixere* (Ib. Bocland).

Folcland was subject to many burthens and exactions from which bocland was exempt. The possessors of folcland were bound to assist in the reparation of royal vills, and in other public works. They were liable to have travellers and others quartered on them for subsistence. They were required to give hospitality to kings and great men in their progresses through the country, to furnish them with carriages and relays of horses, and to extend the same assistance to their messengers, followers, and servants, and even to the persons who had charge of their hawks, horses, and hounds. Such at least are the burthens from which lands are liberated, when converted by charter into bocland.

Folcland might be held by freemen of all ranks and conditions. It is a mistake to imagine, with Lambarde, Spelman, and a host of antiquaries, that it was possessed by the common people only. Still less is Blackstone to be credited, when, trusting to Somner, he tells us it was land held in villenage by people in a state of downright servitude, belonging, both they and their children and effects, to the lord of the soil, like the rest of the cattle or stock upon the land (2 *Bl. Com.* 92). A deed published by Lye shows the incorrectness of these statements (*Anglo-Saxon Dict.* app. ii. 2). Alfred, a nobleman of the highest rank, possessed of great estates in bocland, beseeches King Alfred in his will to continue his folcland to his son Æthelwald; and if that favor cannot be obtained, he bequeaths in lieu of it to his son, who appears to have been illegitimate, ten hides of bocland at one place, or seven at another. From this document it follows, first, that folcland was held by persons of rank; secondly, that an estate of folcland was of such value that seven or even ten hides of bocland were not considered as more than equivalent for it; and lastly, that it was a life-estate, not devisable by will, but at the disposal of the king upon the death of the holder.

It appears also from this document, that the same person might hold estates both in bocland and in folcland; that is to say he might possess an estate of inheritance, of which he had the complete disposal, except so far as it was limited by settlement; and with it he might possess an estate for life, revertible to the public after his decease. In the latter times of the Anglo-Saxon government, it is probable there were few persons of condition who had not estates of both descriptions. Every one was desirous to have grants of folcland, and to convert as much of it as possible into bocland. Money was given, and favor exhausted for that purpose. In many Saxon wills we find petitions similar to that of Alfred; but in none of them is the character of the land, which could not be disposed of without consent of the king, described with the same precision. In some wills, the testator bequeaths his land as he pleases, without asking leave of anyone (*Somner's Gavelkind*, 88, 211; *Hickes, Pref.* xxxii.; *Diss. Epist.* 29, 54, 55, 59; *Madox Formul.* 395); in others, he earnestly beseeches the king that his will may stand, and then declares his intentions with respect to the distribution of his property (*Lambarde, Kent*, 540; *Hickes, Diss. Epist.* 54; *Gale*, i. 457; *Lye's Appendix*, ii. 1, 5; *Heming*, 40); and, in one instance, he makes an absolute bequest of the greater part of his lands, but solicits the king's consent to the disposal of a small part of his estate (*Hickes, Diss. Epist.* 62). There can be no doubt that bocland was devisable by will, unless its descent had been determined by settlement; and a presumption therefore arises, that where the consent of the king was necessary, the land devised was not bocland, but folcland. If this inference be admitted, the case of Alfred will not be a solitary instance, but common to many of the principal Saxon nobility.

That folcland was assignable to the thegns, or military servants of the state, as the stipend or reward for their services, is clearly indicated in the celebrated letter of Bede to Archbishop Egbert (*Smith's Bede*, 305, 312). In that letter, which throws so much light on the internal state of Northumberland, the venerable author complains of the improvident grants to monasteries, which had impoverished the government, and left no lands for the soldiers and retainers of the secular authorities, on whom the defence of the country must necessarily depend. He laments this mistaken prodigality, and expresses his fears that there will be soon a deficiency of military men to repel invasion; no place being left where they can obtain possessions to maintain them suitably to their condition. It is evident from these complaints, that the lands so lavishly bestowed on the church had been formerly the property of the public, and at the disposal of the government. If they had been boclands, it could have made no difference to the state whether they belonged to the church or to individuals, since in both cases they were beyond its control, and in both cases were subject to the usual obligations of military service. But, if they formed part of the folcland, or property of the public, it is easy to conceive how their conversion into bocland must have weakened the state, by lessening the fund out of which its military servants were to be provided.

A charter of the eighth century conveys to the see of Rochester certain lands on the Medway, as they had been formerly possessed by the chiefs and companions of the Kentish kings. (*Textus Roffens*, 72, *Ed. Hearne; Kemble, Cod. Diplom.* No. cxi.) In this instance folcland, which had been appropriated to the military service of the state, appears to have been converted into bocland, and given to the church.—*Allen's Inquiry into the Rise and Progress of the Royal Prerogative in England*, 143–149.

Folc-mote, or **Folk-mote** [fr. *folk*, Sax., people, and *mote*, meeting], a general assembly of the people to consider of and order matters concerning the commonwealth; also any kind of popular or public meeting.—*Somner; Spelm.; Brady's Glos.* 48; *Termes de la Ley.*

Folc-right, or **Folk-right**, the *jus commune*, or common law, mentioned in the laws of King Edward the Elder, declaring the same equal right, law, or justice to be due to persons of all degrees.

Foldage, and **Foldcourse**. See FALDAGE.

Folgarii, menial servants.

Folgere, a freeman, who has no house or dwelling of his own, but is the follower or retainer of another (*heorthfæst*), for whom he performs certain predial services.—*Anc. Inst. Eng.*

Folgoth, official dignity.

Folio (abbrev. fol.), a certain number of words; in conveyances, &c. amounting to seventy-two, and in parliamentary proceedings to ninety; also in printing, the figure at the top or bottom of a page.

Folkland, see FOLCLAND.

Foot, twelve inches.

Foot of a fine, the conclusion of it, including the whole matter, and reciting the parties, day, year, and place, and before whom it was acknowledged or levied.

Foot-geld, an amerciament for not expeditating or cutting out the balls of dogs' feet in the forest.—*Manw.* p. i. p. 86.

Forage, hay and straw for horses, particularly in the army.

Foragium, straw when the corn is thrashed out.

Forbalka, a balk or ridge of land lying forward or next to the highway.—*Old Records.*

Forbannitus, a pirate.—*Leg. Ripuar.*

Forbarre, to deprive one of a thing for ever.

Forbatudus, the aggressor slain in combat.

Force, any unlawful violence offered to things or persons. It is either *simple*, as entering upon another's possession, without doing any other unlawful act; *compound*, when some other violence is committed, which of itself alone is criminal; or *implied*, as in every trespass, rescous, or disseisin.

All force is contrary to law; it is, therefore, lawful to repel force by force: *quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum est.*—(That which is otherwise good and just, if it be obtained by force or fraud is bad and unjust.)—3 *Rep.* 78.

Force and arms [*vi et armis*, Lat.], words usually inserted in an indictment, though not absolutely necessary.—14 & 15 *Vict.*, c. 100, s. 24. They were also formerly inserted in a declaration for trespass, but are now unnecessary.—15 & 16 *Vict.* c. 76, s. 49.

Forces, the military and naval services of the country.

Forcible detainer, refusing to restore another's goods, after sufficient amends tendered, the original taking having been lawful; for which injury the remedy usually resorted to is trover. But if the original taking were unlawful, it is a criminal offence against the public peace, and a misdemeanor punishable by imprisonment and ransom at the pleasure of the Crown.—4 *Bl. Com.* 156.

Forcible entry, a taking possession with a strong hand and with violence, which is both a civil and a criminal injury. The civil injury is remedied by immediate restitution of the ejected possessor, the criminal injury, being a breach of the peace, is punished by a fine.—3 *Step. Com.* 338.

Ford, a shallow place in a river.

Fordol [fr. *fore*, Sax., before, and *dæle*, a

portion], a butt or headland, jutting out upon other land.

Forecheapum, præ-emption, forestalling the market.

Fore-cited, quoted before or above.

Foreclosure. A mortgagee, or any person claiming an interest in the mortgage under him, can compel the mortgagor, after breach of the condition, to elect either to redeem the pledge, or that his equity of redemption be extinguished. This is effected by filing a short bill for a foreclosure.

The 15 & 16 Vict. c. 86, s. 48, enables the court in any suit for the foreclosure of the equity of redemption in any mortgaged property, upon the request of the mortgagee or of any subsequent incumbrancer, or of the mortgagor or any person claiming under them respectively, to direct a sale of such property, instead of a foreclosure of such equity of redemption, on such terms as the court may think fit to direct, and if the court shall so think fit, without previously determining the priorities of incumbrances, or giving the usual or any time to redeem; provided that if such request shall be made by any such subsequent incumbrancer, or by the mortgagor, or by any person claiming under them respectively, the court shall not direct any such sale, without the consent of the mortgagee or the persons claiming under him, unless the party making such request shall deposit in court a reasonable sum of money, to be fixed by the court, for the purpose of securing the performance of such terms as the court may think fit to impose on the party making such request. The court will not make a decree for sale instead of the common foreclosure decree without the mortgagor's consent, unless the mortgagee can make out a case for departing from the usual course.

A mortgagee can come into equity to foreclose although a power of sale is given to him in the mortgage-deed.

A mortgagee of a copyhold estate who is not in possession, may bring his suit against the mortgagor, before admittance, for a foreclosure, and after he has obtained a decree, his course is to proceed by ejectment for possession of the mortgaged premises; if no surrender have been made, and the mortgagor be foreclosed, he will be ordered (at the expense of the mortgagee) to surrender the estate.

The decree in a foreclosure suit as between mortgagee and mortgagor directs a reference to the Chief Clerk, to take an account of the principal and interest due on the mortgage, and to tax the plaintiff's (the mortgagee's) costs of the suit, and upon the defendant (the mortgagor's) paying to the plaintiff what shall be found due to him for principal, interest, and costs, within six calendar months after the Chief Clerk shall have made his report, at such time and place as the Chief Clerk shall fix, the plaintiff is ordered to reconvey the premises, free and clear from incumbrances done by him, or any claiming under him, and to deliver up all deeds, &c. upon oath; but in default of payment at such time and place as aforesaid, it is ordered that the defendant be absolutely foreclosed from all equity of redemption in the mortgaged premises. The order also directs the production of books, upon oath; the usual examination upon interrogatories; and gives the parties liberty to apply.

If the mortgagee is in possession, the decree contains a direction for the Chief Clerk to take an account of the rents and profits of the mortgaged premises received by the plaintiff, or by any other person or persons by his order or for his use, or which he, without his wilful default, might have received thereout, and orders that what shall be found due on such account of rents and profits be deducted out of what shall be found due to the plaintiff for principal, interest, and costs.

If the mortgage-money is not paid, the plaintiff or his attorney thereunto lawfully appointed upon an affidavit of having duly attended, and of the nonpayment of the money, is entitled on motion to an order as of course, that the defendant do from henceforth stand absolutely debarred and foreclosed of and from all right, title, suit, and equity of redemption of, in, or to the said mortgaged premises.

The utmost indulgence is extended to the mortgagor in enabling him to pay the money, so as to prevent an absolute foreclosure; the time fixed has been extended four times, and that although the third was expressed to be peremptory, there being a fair prospect that the mortgagor would be able to obtain the money within the extended time. Some ground must be assigned for enlarging the time, and it is enlarged only on the terms of first paying the interest and costs already certified, and when these have been paid subsequent interest is to be computed on the principal only.

A decree for foreclosure against an infant defendant gives the infant a day to show cause *within six months* after attaining majority; but the only cause that can be shown is error in the decree, for he may neither reopen the account nor redeem the mortgage.—2 *Tud. L. Cas.* 764–767.

Foregift, a premium for a lease.

Foregoers, royal purveyors.

Fore-hand Rents, or **Fines,** a species of rent, the payment of which is generally stipulated for by a covenant in the lease. It is sometimes called a fore-gift or income, but more commonly a fine. It is a premium given by a lessee at the time of taking his lease, and has been considered as an improved rent.—*Woodf. Land. and Tent.* 311.

Foreign Attachment, a custom which prevails in the city of London, whereby a debt owing to a defendant sued in the Court of the Mayor or Sheriff, may be attached in the hands of the debtor. The custom was certified by the Recorder of London in the reign of Edw. IV. to be, that if a plaint be affirmed in London before, &c. against any person, and it be returned *nihil*, if the plaintiff will surmise that another person within the city is a debtor to the defendant in any sum, he shall have garnishment against him to warn him to come in and answer whether he be indebted in the manner alleged; and if he comes and does not deny the debt, it shall be attached in his hands, and after four defaults recorded on the part of the defendant, such person shall find new surety to the plaintiff for the said debt, and judgment shall be that the plaintiff shall have judgment against him, and that he shall be quit against the other after execution sued out by the plaintiff. See *Com. Dig.*, 'Attachment of Privilege;' *Turbill's case*, 1 *Waund. by Williams*, 67, and notes; *Locke* or *Ashley on Foreign Attachment*; and 1 *Chitt. Arch. Prac. by Pren.* 699. See GARNISHMENT.

Foreign Bill of Exchange, a bill drawn or payable abroad. Before 19 & 20 Vict. c. 97, a bill drawn in one part of the United Kingdom, as England, on a person in another part, as Ireland or Scotland, was deemed a foreign bill; but s. 7 of that act enacts that 'every bill of exchange or promissory note drawn or made in any part of the United Kingdom of Great Britain and Ireland, the Islands of Guernsey, Jersey, Alderney and Sark, and the Islands adjacent to any of them, being part of the dominions of Her Majesty, and made payable in, or drawn upon any person resident in, any part of the said United Kingdom and Islands, shall be deemed to be an inland bill; but nothing herein contained shall alter or affect the stamp duty, if any, which but for this enactment would be payable in respect of any such bill or note.' See also 19 & 20 Vict. c. 60 (for Scotland). This statute has an important effect, because by the law of merchants, the holder of a foreign bill is obliged to protest it for non-payment, and also for non-acceptance, whenever notice of such non-acceptance is necessary. By the common law the acceptance of an inland bill must be in writing, whilst that of a foreign bill might be verbal; but now, by 19 & 20 Vict. c. 97, s. 6 (and c. 60, s. 11 for Scotland), no acceptance of any bill of exchange, whether inland or foreign, made after Dec. 31, 1856, shall be sufficient to bind or charge any person, unless the same be in writing on such bill, or if there be more than one part of such bill, on one of the said parts, and signed by the acceptor or some person duly authorized by him. As to the stamp duty on foreign bills drawn, negotiated, or presented for payment in the United Kingdom, see 17 & 18 *Vict.* c. 83, ss. 3-6. See *Chitty*, *Byles*, or *Bayley on Bills.*

Foreign bought and sold, a custom in London, which, being found prejudicial to sellers of cattle in Smithfield, was abolished.

Foreign Courts, the proceedings of a foreign court are proved by copies under the seal of such court, proof being given that the seal affixed is the seal of such court. If a court have no seal, then proof by an exemplification under the hand of the Chief Judge of the court (his handwriting being proved) will be received. The law of a foreign country, if written, can be proved here only by the production of some authenticated copy; if unwritten, then by the parol evidence of a witness of competent skill. As to taking evidence here in matters pending before foreign tribunals, see 19 & 20 *Vict.* c. 113.

Foreign Enlistment Act, the 59 Geo. III. c. 69, which enacts that, if any natural born subject of Great Britain (without license obtained under the royal sign manual, or by order in council, or by proclamation) shall accept any military commission, or enlist as a soldier or a sailor in any foreign service, or shall go to any foreign country with an intent so to enlist, or shall endeavour to procure any other person so to enlist; and if any person within the realm shall fit out any armed vessel for the service of any foreign state, or shall issue any commission for any such vessel, or shall alter the number of guns of such vessel, or be concerned in augmenting the force of any foreign armed vessel arriving in this country; such offenders shall be guilty of a misdemeanor, and may be punished with fine or imprisonment, or both. A ship having on board such a person may be prevented from proceeding on her voyage; and the master thereof, if he know that such a person is on board, may be fined 50*l.* for every such person. See the proclamation gazetted May 14, 1860, as to the non-interference of British subjects in the war between the States of America.

Foreign Lotteries. See 6 & 7 *Wm. IV.* c. 66, and 8 & 9 *Vict.* c. 74.

Foreign plea, a plea objecting to the jurisdiction of a judge, on the ground that he has not cognizance of the subject matter of the suit.

Foreigners, aliens. They are amenable to our laws whilst residing amongst us, and it is no defence for a foreigner charged with a crime committed in England, that he did not know he was doing wrong, the act not being criminal in his own country.—*R.* v. *Esop.* 7 *C. & P.* 456. As to the enlistment of foreigners in Her Majesty's forces, see 18 Vict. c. 2.

Foreign Funds. See FUNDS.

Forejudger [fr. *forisjudicatio*, Lat.], a judgment whereby a person is deprived of, or put by, the thing in question. To be forejudged the court is when an officer or attorney of any court is expelled the same for some offence, or for not appearing to an action.

Foreman, the presiding member of a jury.

Forensic, belonging to courts of justice.

Forensic Medicine, the science which applies the principles and practice of the different branches of medicine to the elucidation of doubtful questions in a court of justice. It comprehends, in a more extensive sense, *medical police*, or those medical precepts which may prove useful to the legislature or the magistracy. This science is also termed *medical jurisprudence*, *legal medicine*, and *state medicine*. Consult the works of Taylor, Guy, or Beck, on the subject.

Foreschoke [*derelictum*, Lat.], forsaken; disavowed.

Forest [fr. *foresta*, Ital.], an incorporeal hereditament, being the right or franchise of keeping, for the purpose of venary and hunting, the wild beasts and fowls of forest, chase, park, and warren (which means in effect all animals pursued in field sports), in a certain territory or precinct of woody ground and pasture set apart for the purpose, with laws and officers of its own, established for protection of the game. *Manw. For. Laws.* The *Charta de Foresta*, confirmed in Parliament 9 Hen. III. disafforested many forests unlawfully made. Some of the royal forests still exist, as New Forest in Hampshire, Windsor, and Richmond.

A forest is, in general, a royal possession, though it is capable of being vested in a subject. A forest is a right which the owner thereof (whether sovereign or subject), may have either in his own lands or the lands of another, differing from other incorporeal hereditaments, which are rights exercised over another's lands. The owner of a forest is also considered (notwithstanding the general rule, that title cannot be made to things *feræ naturæ*) as having a qualified property in the wild animals of chase and venary there found, as long as they continue therein.—1 *Step. Com.* 673.

Forest Courts, fallen into absolute desuetude. They were instituted for the government of the royal forests in different parts of the kingdom, and for the punishment of all injuries done to the deer or venison, to the vert or greensward, and to the covert in which such deer were lodged. They consisted of the courts of attachments, regard, *sweinmote*, and justice-seat. The court of *attachments*, *woodmote*, or forty days' court, was held before the verderors of the forest once in every forty days, to inquire into all offences against vert and venison. The court of *regard*, or survey of dogs, held every third year, for the expeditation of mastiffs. The court of *sweinmote*, held before the verderors thrice in every year, the sweins or freeholders within the forest composing the jury. It inquired into the oppressions and grievances committed by the officers of the forest, and tried presentments certified from the court of attachments against offences in vert and venison. The court of *justice-seat*, held before the chief justice in eyre, or chief itinerant judge, or his deputy, to hear and determine all trespasses within the forest, and all claims of franchise, liberties, and privileges, and all pleas and causes whatsoever therein arising. This was a court of record; but since the Revolution, in 1688, the forest laws have fallen into total disuse.—3 *Step. Com.* 471 n.

Forestage, the duty paid to the sovereign by a forester.—*Encyc. Lond.*

Forestalling the market, buying up merchandize on its way to market, or dissuading persons to bring their goods there, or persuading them to enhance the price when there. It was deemed an offence against public trade, but abolished by 7 & 8 Vict. c. 24.

Forethought felony, murder.

Forfang, or **Forfeng** [fr. *fore*, Sax., before, and *fangen*, to buy], the taking of provisions from any person in fairs or markets before the royal purveyors were served with necessaries for the sovereign. Also the seizing and rescuing of stolen or strayed cattle from the hands of a thief or of those having illegal possession of it; also the reward fixed for such rescue.

Forfeiture, a penalty for an offence or unlawful act, or for some wilful omission of a tenant of property, whereby he loses it, together with his title, which devolves upon others.

Forfeiture results from the following circumstances:

(1) Treason, misprision of treason, felony, murder, *præmunire*, and striking or threatening a judge.

By attainder, consequent upon actual sentence in treason, a man forfeits to the crown all his lands and tenements of inheritance of freehold tenure, whether fee-simple or fee-tail, and all his rights of entry on freehold lands and tenements, which he had at the time of the offence committed, or at any time afterwards, to be for ever vested in the crown; and also the profits of all freehold lands and tenements which he had in his own right for life or years, so long as such interest shall subsist.

By misprision or concealment of treason, the profits of lands are forfeited during life.

By attainder for *felony*, the offender forfeits the profits of all estates of freehold during life; and by attainder for *murder*, the offender moreover forfeits, after his death, all his freehold

lands and tenements in fee simple (but not those in tail), to the crown for a year, day, and waste.

By *præmunire*, which see.

By striking any person in the Superior Courts at Westminster, or drawing a weapon upon a judge there presiding, the offender forfeits the profits of his lands during his life.

It is to be observed that copyholds, as well for treason as murder, are forfeited to the lord, and not to the crown.

The forfeiture begins from the day of the commission of the treason, so as to nullify all intermediate sales, incumbrances, and transfers. By 5 & 6 Edw. VI. c. 11, the wife of a man attainted of treason forfeited her dower.

A person sometimes executes a conveyance of his realty in order to avoid a forfeiture; it is almost needless to remark that such a conveyance is fraudulent, and absolutely void.

The royal pardon converts the offender into a new man, freeing him from all penalties and forfeitures relating to the offence forgiven.

(2) Conveyance contrary to law, as transferring a freehold to an alien, who may take lands, but cannot hold them; wherefore upon office found the crown is entitled to the land.

(3) Alienation in mortmain, or to any kind of corporation (which was supposed to hold property in a dead hand locked up from all change or transfer), was prohibited under pain of forfeiture to the lord. The crown may, however, grant a license, which will avoid this forfeiture.—7 & 8 *Wm. III.* c. 37; 3 & 4 *Vict.* c. 60; and 6 & 7 *Vict.* c. 37, s. 12.

(4) Disclaimer, which is a tenant's denial of his landlord's title, either by refusing to pay rent, or denying any binding obligation to pay it, or by setting up a title either in himself or any other person. This operates a forfeiture of all interest in such tenant. Before the 8 & 9 Vict. c. 106, if a tenant of a particular estate attempted to pass by feoffment a larger interest in the property than he possessed, it would have caused a forfeiture of his estate; but this act (s. 4) has converted a feoffment into an innocent conveyance, which only transfers that interest which a tenant may lawfully transfer, so that this kind of forfeiture is altogether exploded.

(5) Breaches of covenants or conditions contained in a lease or other instrument, when it is expressly stipulated that they shall occasion forfeiture; however, a forfeiture, under these circumstances, may be waived by the person entitled to take advantage of it, either by his express declaration, or by any act inconsistent with it, or admitting a continuing tenancy, as by receiving rent accrued due since the breach, or distraining for the same, or by encouraging the tenant to make subsequent improvements; but he must have fully known of the act of forfeiture at the time of waiver, otherwise it will be no waiver. Subsequent breaches are not waived by a prior act of dispensation.

(6) Waste, which is a lasting damage to the freehold and inheritance. Waste is now seldom insisted on as a forfeiture, but is redressed by an action for damages occasioned by it.

(7) Breach of copyhold customs.

(8) Bankruptcy and Insolvency: which shifts the title of the insolvent to his assignees for the the benefit of creditors.

Besides the grounds of forfeiture mentioned above, there are two, which obtain in ecclesiastical property, viz.: (1) lapse; and (2) simony.

As to the power of Courts of Common Law to relieve against forfeiture incurred by non-payment of rent, or breach of covenant to insure against loss or damage by fire, see *C. L. P. A.* 1860; 23 & 24 *Vict.* c. 126; and *Accident*, *ante*, p. 17.

Forfeiture of Marriage, an ancient writ which lay against him who, holding by knight's service, and being under age and unmarried, refused to marry the woman whom the lord offered him without his disparagement, and married another.—*F. N. B.* 431; *Reg. Orig.* 163.

Forgabulum, or **Forgavel,** a quit-rent; a small reserved rent in money.

Forgery [fr. *forger*, Fr., or *fingo*, Lat.], the *crimen falsi*, or the false making or alteration of an instrument, which purports on the face of it to be good and valid for the purposes for which it was created, with a design to defraud.

The offence of forgery was at common law a misdemeanor, but certain forgeries were by statute made felonious. Many of these statutes were consolidated by 11 Geo. IV. and 1 W. IV. c. 66, which is now repealed, and the statute law of England and Ireland has been consolidated and amended by 24 & 25 Vict. c. 98. See as to the forgery of the Great Seal, Privy Seal or Privy Signet, the Sign-Manual, the Seals of Scotland or the Great Seal of Ireland (s. 1); transfers of stock, &c., and powers of attorney relating thereto, or attestation to such powers (ss. 2, 4); false entries in books of the public funds (s. 5); clerks of banks making out false dividend warrants (s. 6); forgery of India bonds (s. 7); of Exchequer bills, bonds, debentures, &c. (s. 8); of bank notes, bank bills, &c. (s. 12); of deeds, bonds, wills, bills of exchange or promissory notes, orders or receipts, &c. for money or goods (ss. 20–23); of debentures (s. 26); of proceedings of courts of record, copies of certificates, process of courts not of record, and instruments made evidence by statute (ss. 27, 28, 29); of court rolls (s. 30); of registers of deeds (s. 31); of orders of justices, recognizances, affidavits, &c. (s. 32); of name of accountant-general or of any officer of any

court, or of officer of Banks of England and Ireland (s. 33); of marriage licenses or certificates (s. 35); of registers of births, marriages, deaths, or burials (ss. 36, 37). The statute also provides for the punishment of numerous offences which, though not amounting to forgery, facilitate, or are steps towards the commission of, that crime, or are of a somewhat similar nature, e. g.: the false personation of owners of stock, &c., and transferring stock or receiving dividends (s. 3); making plates in imitation of those used for Exchequer bills, &c. (s. 9); making paper in imitation of that used for Exchequer bills (s. 10); having in possession paper, plates, dies, &c., used for Exchequer bills (s. 11); purchasing or receiving forged bank notes, bank bills, &c. (s. 13); making or having in possession moulds for making paper, or paper with certain marks thereon similar to those on the notes of the Banks of England or Ireland, or of other banks (ss. 14, 15, 18); engraving on plates anything purporting to be a note or part of a note of such banks, or any words, figures, &c. resembling the words, figures, &c. upon such notes, or having in possession such plates (ss. 16, 17); engraving on plates, notes, or parts of notes, purporting to be the notes, &c. of foreign states, or having in possession such plates, or uttering or having impressions of such plates (s. 19); drawing, making, accepting, endorsing, or signing bills, notes, and receipts, &c. without authority (s. 24); obliterating crossings on cheques (s. 25); falsely acknowledging recognizances (s. 34); demanding property on forged instruments (s. 38).

The 9 Geo. IV. c. 32, provided (even before the late change of law, by which interested parties are now allowed to be competent witnesses) that the party whose name is forged may be a witness to prove that the writing is not his. But proof of forgery by comparison of handwriting is not admissible.

It is not necessary to set forth a copy or a *fac simile* of the forged instrument in the indictment, a description of it being sufficient. Nor to allege or prove an intent to defraud a particular person.—24 & 25 *Vict.* c. 98, ss. 42, 44. The capital punishment, in all cases of forgery, is abolished, and the punishment is now penal servitude, the length of which varies according to the nature of the offence, from life to three years, or imprisonment for not more than two years. See *Roscoe's Crim. Evid.* 466, *et seq.*

The following is a list of statutes, many of which are either specially or virtually repealed, containing provisions against forgery in particular cases:—

Forgery as to *Records*, &c.: 8 Rich. II. c. 4; 8 Hen. VI. c. 12; 2 & 3 Anne, c. 4; 5 & 6 Anne, c. 18; 7 Anne, c. 20; 8 Geo. II. c. 6; 52 Geo. III. c. 143; 1 & 2 Vict. c. 94; 14 & 15 Vict. c. 99, s. 17.

As to *Public Funds* and *Stocks*: 9 Geo. I. c. 12; 35 Geo. III. c. 66; 37 Geo. III. c. 46; 48 Geo. III. c. 142; 49 Geo. III. c. 64; 52 Geo. III. c. 129; 5 Geo. IV. c. 53; 10 Geo. IV. cc. 24, 50; 5 Vict. c. 8; 5 & 6 Vict. c. 66.

As to *Securities of Public Companies*: 9 Anne, c. 21; 6 Geo. I. cc. 4, 11, 18; 39 Geo. III. c. 83; 1 Wm. IV. c. 66.

As to *Stamps*: 10 Anne, c. 19; 12 Anne, st. 2, c. 9; 3 Geo. I. c. 7; 6 Geo. I. c. 4; 4 Geo. III. c. 37; 13 Geo. III. cc. 52, 56; 24 Geo. III. sess. 2, c. 53; 52 Geo. III. c. 143; 54 Geo. III. cc. 133, 144; 55 Geo. III. c. 184; 1 Geo. IV. c. 58; 5 Geo. IV. c. 52; 7 & 8 Geo. IV. c. 28; 9 Geo. IV. c. 18; 2 & 3 Wm. IV. c. 120; 3 & 4 Wm. IV. c. 97; 6 & 7 Wm. IV. c. 69; 3 & 4 Vict. c. 96; 4 & 5 Vict. c. 58; 5 & 6 Vict. c. 35; 6 & 7 Vict. c. 86; 7 Vict. c. 19; 7 & 8 Vict. c. 22; 14 & 15 Vict. c. 99, s. 17.

As to *Official Documents*: 2 & 3 Anne, c. 4; 12 Geo. I. c. 32; 4 Geo. II. c. 18; 32 Geo. II. cc. 14, 55; 23 Geo. III. c. 70; 42 Geo. III. c. 116; 46 Geo. III. cc. 45, 69, 75, 76; 48 Geo. III. c. 82; 50 Geo. III. c. 41; 52 Geo. III. c. 143; 53 Geo. III. c. 151; 54 Geo. III. cc. 133, 151; 57 Geo. III. c. 34; 1 Geo. IV. c. 35; 3 Geo. IV. c. 86; 5 Geo. IV. c. 113; 6 Geo. IV. cc. 78, 113; 7 Geo. IV. c. 16; 7 & 8 Geo. IV. cc. 28, 53; 10 Geo. IV. cc. 24, 50; 11 Geo. IV. and 1 Wm. IV. c. 20; 2 Wm. IV. cc. 16, 34; 2 & 3 Wm. IV. cc. 1, 106, 120, 125; 3 & 4 Wm. IV. cc. 51, 97; 4 & 5 Wm. IV. c. 15; 5 & 6 Wm. IV. cc. 24, 45, 51; 6 & 7 Wm. IV. cc. 5, 85, 86; 7 Wm. IV. & 1 Vict. cc. 23, 86; 1 Vict. c. 36, s. 34; 2 & 3 Vict. c. 51; 3 & 4 Vict. cc. 92, 96; 5 Vict. c. 8; 5 & 6 Vict. cc. 35, 66; 6 & 7 Vict. c. 86; 7 Vict. c. 19; 8 & 9 Vict. c. 113; 12 & 13 Vict. c. 106, s. 273; 14 & 15 Vict. c. 99, s. 17; 16 & 17 Vict. cc. 2, 131, s. 52; 18 & 19 Vict. c. 42.

Forinsecum manerium, that part of a manor which lies without the town, and is not included within the liberties of it.—*Paroch. Antiq.* 351.

Forinsecum servitium, the payment of extraordinary aid.—*Ken. Glos.*

Forinsecus, outlawed, or on the outside.

Forisbanitus, banished.—*Mat. Par.* 1245. *Forisfacere*, i. e. *extra legem seu consuetudinem facere.*—*Co. Litt.* 59.—(Forisfacere, i. e. to do something beyond law or custom.)

Forisfactura, forfeit.

Forisfamiliation, the putting a person into the possession of land in his father's lifetime.—1 *Reeves*, 110.

Forler-land, land in the diocese of Hereford, which had a peculiar custom attached to it, but which has been long since disused, although the name is retained.—*But. Surv.* 56.

Forma legalis forma essentialis.—10 *Co.* 100. (Legal form is essential form.)

Formâ non observatâ infertur adnullatio actus.—12 *Co.* 7.—(Form not being observed, a nullity of the act is inferred.)

Formalities, robes worn by the magistrates of a city or corporation, &c., on solemn occasions.—*Encyc. Lond.*

Formedon, a writ in the nature of a writ of right, which was the remedy for a tenant-in-tail on a discontinuance. It was of three kinds: (1) In descender; (2) in remainder; (3) in reverter.—3 *Reeves*, 4. Abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Formella, a certain weight of above 70 lbs., mentioned in 51 Hen. III.

Formulary, a form, a precedent.

Fornagium [fr. *fournage*, Fr.], the fee taken by a lord of his tenant, who was bound to bake in the lord's common oven (*in furno domini*); or for a permission to use his own.—*Plac. Parl.* 18 *Edw. I.*

Fornication, the act of incontinency in single persons; if either party be married, it is adultery. The Spiritual Court takes cognizance of the offence, and by 27 Geo. III. c. 44, the suit must be instituted within eight months, and not at all after the marriage of the parties offending.

Forprise, an exception or reservation; also an exaction; or a taking beforehand.

Forschel, a strip of land lying next to the highway.

Forschoke, forsaken.

Forses [*catatudæ*, Lat.], waterfalls.—*Cam. Brit.*

Forspeaker, an attorney or advocate in a cause.—*Blount.*

For-speca, For-spreca, prolocutor, paranymphus.—*Anc. Inst. Eng.*

Forstellarius est pauperum depressor, et totius communitatis et patriæ publicus inimicus.—3 *Inst.* 196.—(A forestaller is an oppressor of the poor, and a public enemy of the whole community and country.)

Fortalice, a fortress or place of strength, which anciently did not pass without a special grant.—11 *Hen. VII.* c. 18.

Forthcoming, *action of*, a process in the nature of a foreign attachment.—*Scotch Law.*

Forthwith, when a defendant is ordered to plead *forthwith*, he must plead within twenty-four hours. When a statute enacts that an act is to be done 'forthwith,' it means that the act is to be done within a reasonable time.—1 *Chit. Arch. Prac. by Pren.* 161. See INSTANTER.

Fortia, power, dominion, or jurisdiction.—*Leg. Hen. I.* c. 29.

Fortifications. Acts for defraying the expenses of constructing fortifications for the protection of the Royal Arsenals and Dockyards, and the ports of Dover and Portland, and of erecting a central arsenal.—23 & 24 *Vict.* c. 109, and 25 & 26 *Vict.* c. 78. See also 23 & 24 *Vict.* c. 112, 'An act to make better provision for acquiring lands for the defences of the realm.'

Fortility, a fortified place; a castle; a bulwark.

Fortior est custodia legis quam hominis.—2 *Rol. Rep.* 325.—(The custody of the law is stronger than that of man.)

Fortior et æquior est dispositio legis quam hominis.—*Co. Litt.* 234.—(The disposition of the law is stronger and more equal than that of man.)

Fortlett, a place or fort of some strength; a little fort.—*O. N. B.* 45.

Fortuna, treasure-trove.

Fortunam faciunt judicem.—*Co. Litt.* 167. (They make fortune a judge.)

Fortune-tellers, persons pretending or professing to tell fortunes; are punishable as rogues and vagabonds.—5 *Geo. IV.* c. 83, s. 2.

Fortunium, a tournament or fighting with spears; and an appeal to fortune therein.—*Mat. Par.* 1841.

Forty-days' Court, the court of attachment in forests, or wood-mote court. See FOREST.

Forum, a court; the court to the jurisdiction of which a party is liable. *Forum competens*, a court having jurisdiction over the suit; *forum incompetens*, a court not having such jurisdiction.

Forum originis [Lat.], the court of the country of a man's domicile by birth.

Forwarding Merchant, a person who receives and forwards goods, taking upon himself the expenses of transportation, for which he receives a compensation from the owners, but who has no concern in the vessels or wagons by which they are transported, and no interest in the freight, and is not deemed a common carrier; but he is a mere warehouseman and agent.—*Story's Bailments*, 509.

Fossa, a ditch full of water, wherein women committing felony were drowned; also a grave. See FURCA.

Fossagium, the duty levied on the inhabitants for repairing the moat or ditch round a fortified town.

Fossway [fr. *fossus*, Lat., digged], one of the four ancient Roman ways through England. Trevisa describes it thus: 'The first and gretest of the foure weyes is called *fosse*, and stretcheth oute of the south into the north, and begynneth from the corner of Cornewaille, and passeth forth by Devenshyre, by Somersete, and forth besides Tetbury, upon Cotteswold, beside Coventre, unto Leycester, and so forth, by wylde pleynes towards Newerke, and endeth at Lincoln.'—*Polychron*, l. 1, c. xiv.

Fosterland, lands allotted for the maintenance of a person.

Fosterlean, the remuneration fixed for the rearing of a foster-child.

Foujdar, Fojedar, Phousdar, Fogedar,

under the Mogul government a magistrate of the police over a large district, who took cognizance of all criminal matters within his jurisdiction, and sometimes was employed as receiver-general of the revenues.—*Indian.*

Foujdarry, the office of a *Foujdar.*

Foujdarry-court, a tribunal for administering criminal law.—*Indian.*

Foundation, the founding or building of a college or hospital. The incorporation of a college or hospital is the very foundation; and he who endows it with land or other property is the founder.

Foundling-hospitals, charitable institutions which exist in most countries, for taking care of infants forsaken by their parents, such being generally the offspring of illegal connections.

Fourcher, to divide.

Fourching, the act of delaying legal proceedings.

Fourierism. Of all the forms of Socialism, that commonly known as Fourierism, manifests the greatest skill in its construction, and the greatest foresight of objections. This system does not contemplate the abolition of private property, nor even of inheritance; on the contrary, it avowedly takes into consideration, as an element in the distribution of the produce, capital as well as labor. It purposes that the operations of industry should be carried on by associations of about two thousand members, combining their labor on a district of about a square league in extent, under the guidance of chiefs selected by themselves. In the distribution a certain minimum is first assigned for the subsistence of every member of the community whether capable, or not, of labor. The remainder of the produce is shared in certain proportions, to be determined beforehand, among the three elements—labor, capital, and talent. The capital of the community may be owned in unequal shares by different members, who would in that case receive, as in any other joint-stock company, proportional dividends. The claim of each person on the share of the produce apportioned to talent is estimated by the grade or rank which the individual occupies in the several groups of laborers to which he or she belongs; these grades being in all cases conferred by the choice of his or her companions. The remuneration, when received, would not of necessity be expended or enjoyed in common; there would be separate *ménages* for all who preferred them, and no other community of living is contemplated, than that all the members of the association should reside in the same pile of buildings, for saving of labor and expense, not only in building but in every branch of domestic economy; and in order that, the whole buying and selling operations of the community being performed by a single agent, the enormous portion of the produce of industry, now carried off by the profits of mere distribution, might be reduced to the smallest amount possible.—1 *Mill's Pol. Eco.* 260.

Foutgeld. See FOOTGELD.

Fowls of warren. According to Coke they are the partridge, quail, rail, pheasant, woodcock, mallard, heron, &c. According to Manwood they are the pheasant and partridge only. *Co. Litt.* 233 *a*; *Manw.* 95.

Fox's Act, 32 Geo. III. c. 60, which secured to juries, upon the trial of indictments or informations for libel, the important right of pronouncing a general verdict of guilty or not guilty upon the whole matter in issue, and were no longer bound to find a verdict of guilty on proof of the publication of the paper charged to be a libel, and of the sense ascribed to it in the indictment or information.

Foy [fr. *foi*, Fr.], faith; allegiance.

Fraction of a day, the law makes no fraction of time, but in cases of necessity and for the purposes of justice; when, therefore, a thing is to be done upon one day, all that day is allowed to do it in.

Fractitium, arable land.

Fractura naviun, wreck of shipping at sea.

Frampole, profitable, *sed qu.*

Franchilanus, a freeman.

Franchise, an incorporeal hereditament, synonymous with liberty. A royal privilege or branch of the Crown's prerogative, subsisting in the hands of a subject. It arises either from royal grants, or from prescription, which presupposes a grant. The kinds are almost infinite, but the principal are bodies-corporate, the right to hold court-leets, fairs, markets, ferries, forests, chases, parks, warrens, fisheries. The remedy for disturbance is an action on the case.

Also, the right of voting at an election for a member of parliament.

Franchise Prisons, abolished by 21 & 22 Vict. c. 22.

Francigena, a foreigner.

Francus bancus; consuetudo est quod uxores maritorum defunctorum habeant francum bancum suum de terris sockmanorum tenentium nomine dotis.—*Co. Litt.* 110.—(Free-bench; it is a custom that wives of deceased husbands have their free-bench from the lands held in socage in the name of dower.)

Frangenti fidem, fides frangatur eidem.—(Let faith be broken to him who breaketh faith.)

Frank, a letter upon which no postage was payable. Members of parliament, peers, &c., formerly had the privilege of franking their letters. It was abolished upon the introduction of the penny postage by 3 & 4 Vict. c. 96.

Frank-almoigne, free alms. A spiritual tenure whereby religious corporations, aggregate or sole, held lands of the donor to them

and their successors for ever. They were discharged of all other except religious services, and the *trinoda necessitas*. It differs from tenure by divine service, in that the latter required the performance of certain divine services, whereas the former, as its name imports, is free. This tenure is expressly excepted in the 12 Car. II. c. 24, s. 7, and therefore subsists, in some few instances, at this day.

Frank-bank. See FREE-BENCH.

Frank-chase, a liberty of free chase.

Frank-fee, freehold lands exempted from all services, but not from homage.

Frank-ferm, lands or tenements changed in the nature of the fee by feoffment, &c., out of knight service, for certain yearly acknowledgments.—*Britton*, c. lxiv.

Frank-fold. See FOLDAGE.

Frank-law, the benefit of the fee and common law of the land.

Franklin, a steward; a bailiff of land.

Frank-marriage [*in libero maritagio*, Lat.], a species of entailed estates, now grown out of use, but still capable of subsisting.

When tenements are given by one to another, together with a wife, who is a daughter or cousin of the donor, to hold in frank-marriage, the donees shall have the tenements to them and the heirs of their two bodies begotten, i. e. in special tail. For the word *frank-marriage*, *ex vi termini*, both creates and limits an inheritance, not only supplying words of descent, but also terms of procreation. The donees are liable to no service except fealty, and a reserved rent would be void, until the fourth degree of consanguinity be past between the issues of the donor and donee, when they were capable by the law of the church of intermarrying.—*Litt.* s. 19.

Frank-pledge, a surety to the sovereign for the good behaviour of freemen. Living under frank-pledge has been termed living under law. *Fleta*, i. 47. See LEET.

Frank-tenement [*liberum tenementum*, Lat.], a freehold estate.

Frassetum, a wood or wood-ground where ash-trees grow.—*Co. Litt.* 4 *b*.

Frater consanguineus, a brother by the father's side.

Frater fratri uterino non succedet in hæreditate paternâ.—(A brother shall not succeed an uterine brother in the paternal inheritance.)

This maxim is now superseded; for, by 3 & 4 Wm. IV. c. 106, s. 9, it is enacted that the half-blood shall inherit next after any relation in the same degree of the whole blood and his issue, where the common ancestor is a male, and next after the common ancestor where a female, so that the brother of the half-blood, on the part of the father, shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half-blood on the part of the mother, shall inherit next after the mother.

Frater nutricius, a bastard brother.

Frater uterinus, a brother by the mother's side.

Fraternities, bodies corporate.

Fratres conjurati, sworn brothers, or companions for the defence of their sovereign, or for other purposes.

Fratriage, a younger brother's inheritance.

Fratricide, the killing of a brother or sister.

Fraud, all deceitful practices in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rule of common honesty. It is condemned by the common law, and punishable according to the heinousness of the offence.

Lord Hardwicke has enumerated five species of fraud; 1st, frauds arising from facts and circumstances of imposition, which is the plainest case; 2nd, fraud may be apparent from the intrinsic value, and subject of the bargain itself, such as no man in his senses, and not under delusion, would make on the one hand, and as no honest or fair man would accept on the other, which are inequitable and unconscionable bargains, and of such even the common law has taken notice; 3rd, fraud which may be presumed from the circumstances and condition of the parties contracting; and this goes farther than the rule of law, which is, that fraud must be proved, not presumed; but it is wisely established in the Court of Chancery, to prevent taking surreptitious advantages of the weakness or necessity of another, which, knowingly to do, is equally against conscience as to take advantage of his ignorance; 4th, fraud may be collected or inferred in the consideration of a court of equity, from the nature and circumstances of the transaction, as being an imposition and deceit on other persons not parties to the fraudulent agreement; and 5th, fraud in what are called catching bargains with heirs, reversioners, or expectants in the lifetime of the parents, which indeed seem to fall under one or more of the preceding heads.

It is, however, impossible to lay down a general definition that shall completely comprehend fraud, and any rule that may be established cannot, from the very nature of fraud, be invariable. Fraud is infinite. '*Crescit in orbe dolus.*' The ingenuity of mankind is ever anxious, ever striving to entangle in its meshes the unwary and the inexperienced, and were courts of equity to prescribe the limits of their relief against fraud, or to define strictly the species of evidence receivable in support of it, their decrees would be ineffectual and continually eluded by man's ever active ingenuity; to afford, therefore, complete protection, new principles must be created to meet new species of fraud.

Equity has concurrent jurisdiction with courts of law in most cases of fraud; but there are a few cases of fraud which are not cognizable by Equity:—(1) Fraud in obtaining or suppressing a will, for if the will be of realty the proper tribunal for contesting its validity or establishment is a Common Law Court. If in the course of a suit the validity of a will be impeached, the court will direct an issue *devisavit vel non*, for its determination by a Common Law judge and jury. But if the will be of personalty, the Probate Court has exclusive jurisdiction. It may be material to remark, however, that though Equity cannot set aside a will for fraud, it will convert the person practising the fraud, if he claim a benefit under the will, into a trustee (at least to the extent of such benefit), for the person injured by the fraud. (2) Criminal fraud, for penal laws are not administrable in the Court of Chancery. (3) The Statute Law, 9 & 10 Wm. III. c. 15, appears to have ousted the jurisdiction of Equity in the case of fraudulent awards, for where the submission to arbitration is made a rule of a Common Law Court, such a court has now ample authority to set aside such an award, upon a motion supported by affidavits. And (4) generally where a fraud respects personalty and sounds merely in damages, the remedy is at law only, especially when an adequate and ample reparation can there be made to the injured party, the ascertainment of damages being the peculiar province of a jury.

The following ten general rules govern Equity in redressing a fraud:—

(1) The rule of law as to fraud is considered as a good rule in Equity, i. e. that fraud is never to be presumed; it must be proved either expressly, or by necessary implication from the intrinsic nature of the transaction. *Dolum non nisi perspicuis indiciis probari convenit*; but in some cases that may be fraud in Equity (where fraud may be established by presumptive evidence) which is not so at law. Equity will, on grounds of public policy, declare void transactions which have taken place under circumstances where, independently of other considerations, from the condition of the parties, and the difficulty which must exist of obtaining positive evidence as to the fairness of the transaction, they are peculiarly open to fraud and undue influence.

(2) An impeached deed cannot be supported by evidence of considerations wholly different from those alleged in it.

(3) A person who enables another to commit a fraud is himself responsible for its consequences.

(4) A married woman who commits a fraud, renders her property liable to its consequences.

(5) If the principal in a fraud be released, parties who would have been secondarily liable cannot be proceeded against.

(6) A deed cannot be set aside *partim* for fraud; it must be set aside *in toto*, and a fraudulent deed will thus be set aside, though innocent persons are interested under it.

(7) Wherever a contract is void, either by a positive law or upon principles of public policy, it cannot be confirmed; but where it is voidable only, a deliberate confirmation by the parties who could have avoided it, will establish its validity.

(8) There is no statute of limitations which bars the remedy for a concealed fraud, since no length of time can sanctify it, but its redress should be sought within six years from the knowledge of the facts constituting the fraud, or from the time when such knowledge might have been acquired by reasonable diligence; and as to fraud relating to realty, relief will be withheld, if twenty years have been suffered to elapse from the acquisition of its knowledge.

(9) The remedy for fraud does not die with the person, but relief may be obtained against the representative of its deceased perpetrator.

(10) Equity admits parol evidence to vary, alter, or explain written instruments on the ground of accident, mistake, or fraud. It is an exception to the rule excluding the reception of verbal evidence against written agreements. But it is obvious, that the exception and also the rule stand upon the same ground of policy, the suppression of fraud and the promotion of general good faith and confidence.

If an instrument be obtained from persons ignorant of their rights, but whose rights are known to the party obtaining the instrument, a court of equity will relieve, even though no fraud or imposition has been practised.

Suppressio veri (suppression of truth), or *suggestio falsi* (suggestion of falsehood), in solemn conveyances, releases, or agreements, will afford a sufficient ground for setting them aside.

There are a variety of cases where a person standing by, and by silence contributing to a fraud, has been compelled to remedy the mischief his fraudulent silence has occasioned.

There is no case where mere inadequacy of price, independent of other circumstances, has been held sufficient to set aside a transaction. A bargain may be hard and unconscionable, and yet valid, unless the inadequacy of price is such as '*shocks the conscience*,' and amounts in itself to conclusive evidence of fraud in the transaction.

A voluntary conveyance (unless obtained by imposition or fraud, as from a person of weak intellect), is good against the party making it, though cancelled, and against all subsequent acts of the donor, whether by deed or will, though the devise be for the payment of debts, for the court 'will not loose the fetters the party

hath put upon himself; but he must lie down under his own folly.' But as against purchasers as well of equitable as legal estates for a valuable consideration, even where the purchase was made with notice of the prior settlement, and also as against those who where creditors at the time of the making of it, a voluntary conveyance is void.—27 *Eliz.* c. 4.

A settlement, however, though voluntary at first, and therefore bad as against creditors and purchasers, may afterwards become good, even against them; as, where the object of the settlement sells to another, or where a father settles land on a daughter, and a person marries her in confidence of such settlement, in either case the settlement may be enforced.

Although drunkenness is a kind of insanity whilst it lasts, yet as it is caused by a man's voluntary act, it is no excuse for crime, and in strictness of law a man cannot avoid contracts made, or acts done by him, when drunk. Courts of equity, however, will relieve from a contract made or act done by a person when in such a state of drunkenness as to be utterly deprived of the use of his reason and understanding, for then there can be no deliberate consent, without which no contract or act ought to be binding by the law of nature. Indeed such a contract would be held void in a court of law, at all events if the other party to it was aware of the condition of the drunken person.—*Gore* v. *Gibson*, 13 *M. & W.* 623.

When a contract is made or act is done by a person drunk, but the drunkenness is not such as to deprive him entirely of the use of his reason and understanding, courts of equity will not relieve unless the drunkenness was brought about by contrivance or management, or some unfair advantage was taken of the intoxication. Weakness of mind, if it be not such as to render the person *non compos*, is not *per se* sufficient ground for setting aside an act or contract, but inasmuch as it renders a person liable to imposition, it is a material ingredient in ascertaining whether there has been fraud or undue influence; and if the nature of the act or contract justify the conclusion that a person of weak mind has not exercised a deliberate judgment, but that he has been imposed upon, circumvented, or overcome by cunning or artifice, or by undue influence, equity will set aside the act or contract. See 1 *Fonbl. Eq.* 67; *Story's Eq. Jurisp.* s. 234, *et seq.*; *Butler* v. *Mulvihill*, 1 *Bligh*, 137.

Where deeds are set aside for fraud, they will generally be permitted to stand as a security for what is really due.—*Wharton* v. *May*, 5 *Ves.* 59; 1 *Madd. Prin. of Equity*, tit. 'Fraud.'

Fraud, constructive, such acts or contracts as, though not originating in any actual evil design, or contrivance to perpetrate a positive fraud or injury upon other persons, yet, by their tendency to deceive or mislead other persons, or to violate public or private confidence, or to impair or injure the public interests, are deemed equally reprehensible with positive fraud, and therefore are prohibited by law, as within the same reason and mischief, as acts and contracts originating *malo animo*.

Thus in order to prevent injustice and shut out all inducement to perpetrate a wrong, certain transactions are held to be fraudulent, because they are contrary to some general policy, or to some fixed artificial legal principle, as marriage-brokerage-bonds, and contracts in general restraint of trade. Other transactions again growing out of some special confidential or fiduciary relation between the parties, or some of them, are watched with especial jealousy and solicitude, because they afford the power and the means of taking undue advantage or of exercising undue influence over others: such are transactions between parent and child, attorney and client, principal and agent or surety, guardian and ward, trustee and *cestui que* trust, partners, &c. Others again are of a mixed character, combining, in some degree, the ingredients of the preceding, with others of a peculiar nature; but they are chiefly prohibited, because they operate substantially as a fraud upon the private rights, interests, duties, or intentions of third parties; or unconscientiously compromise, or injuriously affect the private interests, rights, or duties of the parties themselves, such as secret composition-deeds, voluntary conveyances, &c.—1 *Story's Eq. Jurisp.* 213.

Frauds and Perjuries, *Statute of*, 29 Car. II. c. 29, c. 3 (A.D. 1677). This famous statute is said to have been framed by Sir Matthew Hale, Lord Keeper Guilford, and Sir Lincoln Jenkins, an eminent civilian. Lord Nottingham used to say of it that 'every line was worth a subsidy,' and it has been said that at all events the explanation of every line has cost a subsidy, no statute having been the subject of so much litigation. 'This statute,' remarks Mr. Chancellor Kent, 2 *Com.* 494, n. *d.*, 'carries its influence through the whole body of American civil jurisprudence, and is in many respects the most comprehensive, salutary, and important legislative regulation on record, affecting the security of private rights.'

The main object of the statute was to take away the facilities for the commission of fraud and the temptation to commit perjury which arose from the enforcement of merely verbal obligations, the proof of which depended entirely upon unwritten evidence. Its principal enactments are:—That parol conveyances, leases, &c. of land, unless put in writing and signed by the parties making the same, or their

agents lawfully authorised by writing, shall have the effect of leases at will only except in the case of a lease for not more than three years, reserving as rent two-thirds of the annual value (ss. 1 & 2). That grants and surrenders shall be by deed or writing signed by the party granting or surrendering, or his agent authorised by writing (s. 3). That no action shall be brought to charge an executor or administrator upon any special promise to answer damages out of his own estate; or to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, or any interest in or concerning them; or upon any agreement that is not to be performed within one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, is in writing and signed by the party to be charged, or some other person thereunto by him lawfully authorised (s. 4). That all declarations and creations of trust of lands shall be in writing, except trusts arising by implication or construction of law (ss. 7 & 8). That grants and assignments of trusts shall be in writing (s. 9). That lands shall be liable to the judgment, &c. of *cestui que* trust, and held free from incumbrances of the trustees; and trusts, in fee simple, shall be assets in the hands of the heirs of the *cestui que* trust (s. 11). That the day of inquiry or judgment shall be entered upon the margin of the roll, and judgments as against purchasers shall only relate to such time (ss. 14 & 15). That writs of execution shall bind the property of goods only from the time of their delivery to the sheriff (s. 16). That 'no contract for the sale of any goods, wares, and merchandise for the price of 10*l.* or upwards shall be good except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain or in part of payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by the contract, or their agents thereunto lawfully authorised' (s. 17).

The statute also contained important provisions as to the making, revocation, &c. of wills devising land, and as to nuncupative wills, &c., which have been repealed by the Wills Act, 1 Vict. c. 26.

Fraudulent Conveyances, *Statutes against*, 13 Eliz. c. 5, A.D. 1570, made perpetual by 29 Eliz. c. 5. It enacts that every conveyance of lands, hereditaments, goods, and chattels, or of any lease, rent, common, or other profit or charge, out of lands, &c. by writing or otherwise, and every bond, suit, judgment, and execution to be had or made with the intent to defraud creditors or others of their actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries, and reliefs, shall be deemed (only as against that person, his heirs, executors, administrators, and assigns, whose actions, &c. are or shall be any way disturbed, delayed, or defrauded) to be utterly void.

The 27 Eliz. c. 4, s. 2, made perpetual by 39 Eliz. c. 18, enacts that every conveyance of lands, tenements, or hereditaments whatsoever, had or made with the intent and purpose to defraud and deceive any person or persons, bodies politic or corporate, who shall purchase the same, shall be deemed and taken (only as against that person or persons, body politic or corporate, his and their heirs, successors, executors, administrators, and assigns), to be utterly void, frustrate, and of none effect. Provided that the act shall not extend or be construed to defeat or make void any conveyance, &c. made for good consideration and *bonâ fide*. See *Twyne's case*, 1 *Smith's L. C.* 1.

The deeds which are rendered void by these statutes are of two sorts:—(1) Deeds made with an express intent to defraud creditors or subsequent purchasers. (2) Deeds made upon good but not valuable considerations, which are usually called voluntary conveyances.—*Roberts' Essay on Fraud. Conv.*

Fraunc, or **Fraunke Ferme.** See FRANKFERM.

Fraus est celare fraudem.—1 *Vern.* 270.—(It is fraud to conceal fraud.)

Fraus est odiosa et non præsumenda.—*Cro. Car.* 550.—(Fraud is odious and not to be presumed.)

Fraus et dolus nemini patrocinari debent.—3 *Co.* 78.—(Fraud and deceit ought not to benefit any person.)

Fraus et jus nunquam cohabitant.—*Wing.* 680.—(Fraud and justice never dwell together.)

Fraus latet in generalibus.—(Fraud lies hid in general expressions.)

Fraus legis (fraud of law), using legal proceedings with a felonious purpose.

Fraus meretur fraudem.—*Plow.* 100.—(Fraud merits fraud.)

Fraxinetum, a wood of ash trees.—*Co. Litt.* 4 *b.*

Fray. See AFFRAY.

Fred, peace.

Fredstole, or **Fridstoll,** sanctuaries, seats of peace.—*Gibson's Camden.*

Fredum, a composition anciently paid by a criminal to be freed from prosecution, of which the third part was lodged in the Exchequer.

Fredwit, a liberty to hold courts and make amerciaments.

Free-bench [*sedes libera*, Lat.], a widow's

dower out of copyholds to which she is entitled by the custom of some manors. It is regarded as an excrescence growing out of the husband's interest, and is indeed a continuance of his estate.

The term *freebench* is equally applicable to the estate which, by the custom of some manors, a husband takes in his wife's copyhold lands after her death, and anciently it was indiscriminately applied to that and to the widow's dower, but now the estate of the husband is called his curtesy, while the term freebench is confined to that of the widow. The etymology of the word may be thus traced. Upon a wife or husband acceding to the estate, upon the death of a deceased husband or wife, she or he immediately became a tenant of the manor, and entitled to sit on the homage as one of the *pares curiæ*, and hence was called a *bencher*.

Since freebench is only claimable by special custom, the estate which a widow is to take, both as to its quantity, quality and duration, must be such as the custom prescribes. It is generally a third for her life, as at common law, but it is sometimes a fourth part only, and sometimes but a portion of the rent. In many manors, the wife takes the whole for her life, in others she takes the inheritance. Frequently the customary right is *durante viduitate*, and in some cases it is confined to her chaste widowhood. In the manors of East and West Emborne, and the manor of Chadleworth in Berkshire, the widow, if found guilty of incontinency, loses her freebench, unless she comes into court, riding backwards upon a black ram, repeating certain ridiculous words. (See COPYHOLD.) The same custom prevails in the manor of Torre in Devon.

Freebench differs from dower at the common law, in that the former, unless the particular custom declares it to be otherwise, does not attach, even in right, till the actual decease of the husband; whereas the right to dower at the common law attaches immediately on marriage, and the widow is entitled to dower in lands of which the husband was seised *at any time during the coverture*. As the right of the wife to freebench does not attach till the husband's death, any alienation by him alone, to take effect in his lifetime, though without the concurrence of the wife, whether it be by surrender in court, by forfeiture, or in consequence of enfranchisement, effectually bars the claim of the widow. And even if the husband make a lease for years, though by license of the lord, the widow shall not avoid it. But in this case, it must be remarked that her claim to freebench is not defeated by reason of the husband's *not* dying seised (though it should seem to be so urged in some of the books), as he would most indisputably die seised in the present instance, he being the copyholder, and not the lessee, and moreover the possession of the lessee at common law should be the possession of the lessor; and, therefore, it should seem that the widow would not in this case be barred only *quoad* the lease, and consequently be entitled on its expiration. By special custom, however, the widow shall have her freebench, notwithstanding such lease, though without prejudice to it, she receiving the rent, &c. And if the husband contract for the sale of his copyhold, and die without any actual surrender, a court of equity will compel the widow to relinquish her freebench. A *fortiori*, if the husband actually surrender, and die before the admittance of the surrenderee, she shall be barred: for the subsequent admittance of the surrenderee, though after the death of the husband, relates to the time of the surrender, and so precedes the title of the wife.

So if the husband become a bankrupt, and die after the execution of the bargain and sale by the commissioners, and before the admittance of the vendee, the widow of the bankrupt shall not be entitled to her freebench.

And as it is so repeatedly said that the husband must die seised, at least by relation, in order to enable the widow to claim, it may be proper here to observe, that there can be no disseisin of a copyhold; and, consequently, though a person should enter with strong hand into the copyhold premises, yet the copyholder would continue tenant to the lord; and, therefore, if the husband was, *before such entry*, seised of the premises, he would, *notwithstanding such entry*, continue seised; and consequently such entry would not defeat the title of the wife.—2 *Wat. Cop.* 82, *et seq.*

The Dower Act, 3 & 4 Wm. IV. c. 105, does not affect equitable copyholds, but only freeholds.

The widow of a purchaser or heir at law, who dies before admittance to his copyhold, is nevertheless dowable, since the admittance has reference back to the contract or ancestor's decease.

A jointure before marriage, in lieu of dower and thirds out of any lands of freehold and inheritance, is a bar in equity to freebench, which is a customary right *nomine dotis*; so is a devise with the same intent.

When a widow is dowable by custom, her estate has all the incidental qualities of dower at common law. Since the wife's estate is a continuation of that of her husband, she holds of the lord, and is not in need of admittance, except by special custom, or, at least, it will be sufficient if she challenge her admittance. Admittance, however, is not dispensed with in gavelkind lands, or where the widow only takes a portion of the husband's copyhold lands, and then the heir must assign her freebench before her entry, and he could be compelled to do so by

plaint in the nature of a writ of dower, duly levied in the manor court.

Formerly the remedy for freebench was by a plaint in the manor court, which was unaffected by 3 & 4 Wm. IV. c. 27, but by the Common Law Procedure Act 1860, 23 & 24 *Vict.* c. 126, s. 26, the plaint is abolished, and in lieu thereof an action may be brought by writ of summons issuing out of the Court of Common Pleas, upon which is to be endorsed a notice that the plaintiff intends to declare for freebench.

Free-board, land claimed in some places, more or less, beyond or without the fence, said to be two feet and a half.—*Mon. Ang.* t. 2, p. 141.

Free-borough men, such great men as did not engage like the frank-pledge men for their decennier.

Free-chapel, a place of worship, so called because not liable to the visitation of the ordinary. It is always of royal foundation, or founded at least by private persons to whom the Crown has granted the privilege.—1 *Burn's E. L.* 298.

Free-course, having the wind from a favorable quarter.—*Mar. Law.*

Free-fishery, a royal franchise, being the exclusive right of fishing in a public river. Grants of this description cannot now be made, the Great Charter and its confirmations prohibiting it.

Freehold, one of the two chief tenures known in ancient times by the phrase 'tenure in free socage,' and the only free lay mode of holding property. It is derived from the feudal system, but the services connected with it were always accounted honorable, and of a mild and somewhat independent character. The annihilation of the feudal severities has left this tenure unshackled, and by far the greater part of the real property in this country is, at this day, freehold. Also such an interest in lands of frank-tenement as may endure not only during the owner's life, but which is cast after his death upon the persons who successively represent him, according to certain rules elsewhere explained. Such persons are called *heirs*, and he whom they thus represent, the *ancestor*. When the interest extends beyond the ancestor's life, it is called a *freehold* of *inheritance*, and when it only endures for the ancestor's life, it is a freehold not of inheritance. An estate to be a freehold, must possess these two qualities: (1) Immobility, that is, the property must be either land or some interest issuing out of or annexed to land; and (2) a sufficient legal indeterminate duration, for if the utmost period of time to which an estate can endure be fixed and determined, it cannot be a freehold.

Free-holder, he who possesses a freehold estate.

Freehold Land Societies, designed for the purpose of enabling mechanics, artisans, and other working-men, to purchase a piece of freehold land at the least possible price, of a sufficient yearly value to entitle the owner to the elective franchise for the county in which the land is situated.—See *Stone's Build. Soc.*, p. 96, *et seq.*

Free-man [*liber homo*, Lat.], an allodial proprietor; one born or made free of certain municipal immunities and privileges. As to Freemen in London see 6 & 7 *Vict.* c. 18, s. 20.

Free-masons, secret societies formed, as it is supposed, for mutual assistance and the promotion of friendship and good fellowship. They are protected by law. See 39 *Geo. III.* c. 79, ss. 5, 7; and 57 *Geo. III.* c. 19, s. 26.

Free-men's roll, a list of all persons admitted burgesses, or freemen of those rights which are reserved by the Municipal Corporation Act (5 & 6 Wm. IV. c. 76), as distinguished from the burgesses newly created by the act, and entitled to the rights which it confers, who are entered on the burgess-roll. See 1 & 2 *Vict.* c. 35.

Free-services, such as were not unbecoming the character of a soldier or a freeman to perform, as to serve under his lord in the wars, to pay a sum of money, or the like.

Free-ships, neutral ships.

Free-warren, a royal franchise, granted by the Crown to a subject for the preservation or custody of beasts and fowls of warren.

Freight, the sum paid by a merchant or other person chartering a ship or part of a ship, or sending goods in a general ship, for the use of such ship or part, or the conveyance of such goods during a specified voyage or for a specified time. The freight is most commonly fixed by the charter-party, or bill of lading, but in the absence of any formal stipulation on the subject, it would be due according to the custom or usage of trade. In the absence of an express contract to the contrary, the entire freight is not earned until the whole cargo be ready for delivery, or has been delivered to the consignee, according to the contract for its conveyance.—*McCull. Comm. Dict.*; *Maude and Pollock on Shipping.*

Freighter, he who loads goods on board a ship.

Frend-wite [fr. *freond*, Sax., friend, and *wite*, mulct], a fine exacted of him who harboured an outlawed friend.

Frequentia actûs multum operatur.—4 *Co.* 78.—(The frequency of an act operates much.)

Fresca, fresh water.

Fresh disseisin, that disseisin which a person might formerly seek to defeat of himself, and by his own power, without resorting to the law; as where it was not above fifteen

days old, or of some other short continuance.—*Brit.* c. v.

Fresh-fine, a fine that had been levied within a year.

Fresh-force, a force newly done in any city, borough, &c.

Fresh suit, or **pursuit,** such a present and earnest following of a robber as never ceases from the time of the robbery until apprehension. The party pursuing will then have back again his goods, which otherwise are forfeited to the Crown.

Frettum frectum, the freight of a ship; freight-money.

Fretum Britannicum, the straights between Dover and Calais.

Friar [*frater*, Lat., brother], an order of religious persons, of whom there were four principal branches, viz.: (1) Minors, Grey Friars, or Franciscans; (2) Augustines; (3) Dominicans, or Black Friars; (4) White Friars, or Carmelites, from whom the rest descend.

Fribourgh, or **Frithburgh,** the Norman term for frank-pledge.

Fribusculum, a temporary separation between husband and wife.—*Civil Law.*

Friendless man, an outlaw, because he was denied all help of friends.

Friendly Societies, associations supported by subscription for the mutual relief and maintenance of its members or their wives, children, relations, and nominees, against certain casualties, as those of sickness, infancy, advanced age, widowhood, &c. The statute governing them is 18 & 19 *Vict.* c. 73., amended by 23 & 24 *Vict.* c. 58. See 21 & 22 *Vict.* c. 101, & 23 *Vict.* c. 13, and 23 & 24 *Vict.* c. 137.

Friendly suit, one brought by a creditor in chancery against an executor or administrator, which is really a suit by the executor or administrator, in the name of a creditor against himself, in order to compel the creditors to take an equal distribution of the assets.—2 *Wm. Exs.* 1731. Also a suit instituted by agreement between the parties to obtain the opinion of the court upon some doubtful question in which they are interested.

Friling, or **Freoling** [fr. *freoh*, Sax., free, and *ling*, progenies], a freeman born.

Friscus, fresh uncultivated ground.—*Mon. Angt.* t. 2, p. 56.

Frith-borg, frank-pledge.

Frithbreach, the breaking of the peace.

Frithgar, the year of jubilee, or of meeting for peace and friendship.

Frithgilda guildhall; a company or fraternity for the maintenance of peace and security; also a fine for breach of the peace.

Frithman, a member of a company or fraternity.

Frith-socn, or **Frithstol,** an asylum; sanctuary.

Frithsoke, Frithsoken, the right of liberty of frank-pledge.

Frith-splot, or **Frith-geard,** a spot or plot of land, encircling some stone, tree, or well, considered sacred, and therefore affording sanctuary to criminals.

Frodmortel, or **Freomortel,** an immunity for committing manslaughter.

From excludes the day from which the time is to be reckoned.—1 *Chit. Arch. Prac. by Pren.* 160.

Fructus augent hæreditatem.—*D. A.* 3, 20, 31.—(Fruits enhance an inheritance.)

Fructus industriales (*emblements*).

Frumgyld, the first payment made to the kindred of a person slain, the recompense for his murder.

Frumstol, original or paternal dwelling.—*Anc. Inst. Eng.*

Frusca terræ, waste and desert lands.

Frussura, a breaking; ploughing.

Frustrà est potentia quæ nunquam venit in actum.—2 *Co.* 51.—(The power which never comes into act is in vain.)

Frustrà expectatur eventus cujus effectus nullus sequitur.—5 *Co. Eccl. L.*—(An event is vainly expected from which no effect follows.)

Frustrà feruntur leges nisi subditis et obedientibus.—7 *Co.* 13.—(Laws are made in vain unless to those subject and obedient.)

Frustrà fit per plura, quod fieri potest per pauciora.—*Jenk. Cent.* 68.—(That is done vainly by many things which might be done by less.)

Frustrà legis auxilium quærit qui in legem committit.—(Vainly does he who offends against law seek the help of law.)

Frustrà petis quod statim alteri reddere cogeris.—*Jenk. Cent.* 256.—(Vainly you beg that which you will be immediately forced to restore to another.)

Frustrà probatur quod probatum non relevat. (That is vainly proved which, being proved, would not aid the matter in question.)

Frustum terræ, a piece or parcel of land. *Co. Litt.* 5 *b.*

Frutectum, Frutetum, Fruticetum, a place where shrubs or herbs grow.

Frymith, Fyrmth, the affording harbour and entertainment to any one.—*Anc. Inst. Eng.*

Frythe, a plain between woods.—*Co. Litt.* 5 *b.*

Fuage. See FUMAGE.

Fuer, flight. It is of two kinds: (1) *fuer in fait,* or *in facto,* where a person does apparently and corporally flee; (2) *fuer in ley,* or *in lege,* when being called in the county-court he does not appear, which legal interpretation makes flight.

Fuero jurgo, a code of Spanish law, said to be the most ancient in Europe.

Fuga catallorum, a drove of cattle.

Fugacia, a chase.

Fugam fecit (*he has made flight*), said of a person who is found by inquisition to have fled for felony, &c., upon which forfeiture of goods took place. Obsolete.—7 & 8 *Geo. IV.* c. 28, s. 5.

In Scotland, when a criminal does not obey the citation to answer, the court pronounces sentence of fugitation against him, which induces a forfeiture of goods and chattels to the Crown.

Fugatio, a privilege to hunt.—*Blount.*

Fugatores carrucarum, wagoners, who drive oxen without beating or goading.—*Fleta,* l. 2, c. lxxviii.

Full Age. See AGE.

Fullum aquæ, a fleam or stream of water.

Fumage, Fuage, or **Fouage** (vulgarly called *smoke-farthings*), a tax paid to the sovereign for every house that had a chimney. It is probable that the *hearth-money,* imposed by 13 & 14 Car. II. c. 10, took its origin hence. This hearth-money was declared a great oppression, and abolished by 1 W. & M. st. 1, c. 10; but a tax was afterwards laid upon all houses, except cottages, and upon all windows, by 7 Wm. III. c. 18.

Function [fr. *fungor,* Lat., to perform], employment; discharge of office.

Functus officio (*having discharged a duty*).

Fundatio est quasi fundi datio; et appellatione fundi ædificium et ager continentur.—10 *Co.* 33.—(Foundation is, as it were, a giving of revenue or fund; and under the term 'fundus,' building and land are comprised.)

Fundi patrimoniales (*lands of inheritance*).

Funditores, pioneers.

Funds, *public,* the name given to the public funded debt due by government.

The practice of borrowing money in order to defray a part of the war expenditure began, in this country, in the reign of William III. In the infancy of the practice, it was customary to borrow upon the security of some tax, or portion of a tax, set apart as a fund for discharging the principal and interest of the sum borrowed. This discharge was, however, very rarely effected. The public exigencies still continuing, the loans were, in most cases, either continued, or the taxes were again mortgaged for fresh ones. At length the practice of borrowing for a fixed period, or, as it is commonly termed, upon *terminable* annuities, was almost entirely abandoned, and most loans were made upon *interminable* annuities, or until such time as it might be convenient for government to pay off the principal.

In the beginning of the funding system, the term '*fund*' meant the taxes or funds appropriated to the discharge of the principal and interest of loans; those who held government securities, and sold them to others, selling, of course, a corresponding claim upon such fund. But after the debt began to grow large, and the practice of borrowing upon interminable annuities had been introduced, the meaning attached to the term '*fund*' was gradually changed, and instead of signifying the security upon which loans were advanced, it has, for a long time, signified the principal of the loans themselves.

The different funds or stocks constituting the public debt are the following:—

(I.) Funds bearing interest at three per cent.

(*a*) *Three per Cent. Consols, or Consolidated Annuities.*—This stock forms by far the largest portion of the public debt. It had its origin in 1751, when an act was passed consolidating (hence its name) several separate stocks bearing an interest of three per cent. into one general stock.

(*b*) *Three per Cent. Reduced Annuities.*—This fund was established in 1757. It consisted, as the name implies, of several funds which had previously been borrowed at a higher rate of interest; but by an act passed in 1749, it was declared that such holders of the funds in question as did not choose to accept in future a reduced interest of three per cent. should be paid off, an alternative which comparatively few embraced.

(*c*) *New Three per Cent. Annuities.*—This fund, which came into existence in 1854, in pursuance of an arrangement made in 1844, consists of several funds which had previously paid a higher rate of interest, viz.: (1) *The Three-and-a-Half per Cent. Annuities* of 1818. (2) *The Reduced Three-and-a-Half per Cent. Annuities* of 1824. (3) *The New Three-and-a-Half per Cent. Annuities,* arising from the reduction and conversion of other stock in 1830 and 1834.

(*d*) *Debt due to the Bank of England.*—This consists of the sum of 11,015,100*l.* lent by the Bank to the public at three per cent. This must not be confounded with Bank capital, on which the shareholders receive dividends.

(II.) Funds bearing other than three per cent. interest.

(*a*) *New Five per Cent. Annuities,* created in 1830, redeemable in 1873, amounting to 423,603*l.*

(*b*) *New Three-and-a-Half per Cent. Annuities,* amounting to 240,746*l.*

(*c*) *New Two-and-a-Half per Cent. Annuities,* amounting to 2,981,038*l.* Funds (*b*) and (*c*) were created in the year 1854, when Government paid off the holders of the South Sea Old and New Three per Cent. Annuities, and the Three per Cent. Annuities of 1726 and 1751, giving the holders the option of being paid off or taking stock in either of these two funds upon certain terms.

Dividends on Consols, New Two-and-a-Half per Cents., New Three-and-a-Half per Cents., and New Five per Cents., are payable January 5th and July 5th. Dividends on the Reduced Three per Cents. and New Three per Cents. are payable April 5th and October 10th.

(III.) Annuities:

(*a*) *Long Annuities.*—These annuities were created at different periods, but they all expired together in 1860. They were chiefly granted by way of premia or douceurs to the subscribers to loans. Payable on April 5th and October 10th.

(*b*) *Annuities per* 4 *Geo. IV.* c. 22.—This annuity is payable to the Bank of England, and is commonly known by the name of the 'Dead Weight' annuity. It expires in 1867. It is equivalent to a perpetual annuity of 470,319*l.* 10*s.*

(*c*) *Annuities per* 48 *Geo. III.*, 10 *Geo. IV.* c. 24, and 3 & 4 *Wm. IV.* c. 14.—These acts authorized the commissioners for the reduction of the national debt to grant annuities for terms of years, and life annuities, accepting in payment either money or stock, according to rates specified in tables to be approved by the lords of the treasury. No annuities are granted on the life of any nominee under fifteen years of age, nor in any case not approved by the commissioners. Annuities for terms of years not granted for any period less than ten years. These annuities are transferable, but not in parts or shares. They are payable January 5th and July 5th, or April 5th and October 10th, according to the date of their purchase.

Foreign Funds.—Exclusive of the funded and unfunded debt due by the British Government, more than nineteen-twentieths of which is held by British subjects, our countrymen are also large creditors of foreign states.

Fundus. The primary signification of this word appears to be, the bottom or foundation of a thing; and its elementary part (*fud*) seems to be the same as that of *βυθ-ός*, and *πυθ-μήν*, the *n* in *fundus* being used to strengthen the syllable. The conjectures of the Latin writers as to the etymology of *fundus* may be safely neglected. *Fundus* is often used as applied to land, the solid *substratum* of all man's labors.—*Smith's Dict. of Antiq.*

Funeral charges. An executor or administrator should bury the deceased testator or intestate in a manner suitable to the estate he has left, and the expense of the burial will be allowed before all other debts and charges; but if the personal representative be extravagant, he commits a *devastavit*, for which he will be answerable to the creditors or legatees.

Fungibiles res, a term applied in the civil law to things of such a nature as that they could be replaced by equal quantities and qualities, because *mutuâ vice funguntur*, they replace and represent each other, thus a bushel of wheat. A particular horse would not be *fungibilis res.*—*Sand. Just.* 425.

Fungibles, moveable goods, which may be estimated by weight, number, or measure; such as corn, wine, or money.

Furandi, animus (*an intent of stealing*).

Furca [fr. *farkah*, Heb., to divide], the gallows.

Furcam et flagellum (*the gallows and whip*), the meanest of all servile tenures, when the bondman was at his lord's disposal, both life and limb.

Furigeldum, a mulct paid for theft.

Furiosity, madness, as distinguished from *fatuity* or idiotcy.

Furiosus absentis loco est. Non multùm distant à brutis qui ratione carent.—4 *Co.* 126.—(A madman is like a man who is absent. Those who want reason are not far removed from brutes.)

Furiosus solo furore punitur.—*Co. Litt.* 247.—(A madman is punished by his madness alone.)

Furiosus stipulare non potest nec aliquid negotium agere, qui non intelligit quid agit.—4 *Co.* 126.—(A madman who knows not what he does cannot make a bargain, nor transact any business.)

Furlong [fr. *furlang*, A.S.; *furlongus, ferlingus, ferlingum*, low Lat.], quasi *a furrow long*, that is bounded or terminated by the length of a furrow; i.e. *quod uno progressu aratrum describit antequam regreditur*; this equals 40 perches (or poles), each equal to 217½ feet, or the eighth part of a mile.—*Spelman Gloss., Arch.* Also, as *Mins.* says, the eighth part of an acre. *Stadium* and *quarentena terræ* are sometimes used for a furlong.—*Co. Litt.* 5 *b.*

Furnagium. See FORNAGIUM.

Furst and Fondung, time to advise or take counsel.

Further Advance, or **Charge,** a second or subsequent loan of money to a mortgagor by a mortgagee, either upon the same security as the original loan was advanced upon, or an additional security. Equity considers the arrears of interest on a mortgage security converted into principal, by agreement between the parties, as a further advance.

Further Assurance, *Covenant for*, one of the usual agreements entered into by a vendor for the protection of the vendee's interest in the subject of purchase. It seems to be confined to an assurance by way of conveyance, and not to extend to further obligations to be imposed on the covenantor by way of covenant.—*St. Leon. V. and P.* 500; *Woodfall's Land. and Ten.* 515.

Further consideration, as to setting down a cause for. See *Smi. Ch. Pr.* 629, *et seq.*

Further directions, when a Master ordinary in Chancery has made a report in pursuance of a decree or decretal order, the cause is again set down before the judge who made the decree or order, that it may be proceeded with and completed. Where a Master makes a separate report, or one not in pursuance of a decree or decretal order, a petition for consequential directions should be presented, since the cause cannot be set down for further directions under such circumstances.

Further maintenance of the action, plea to the. See PUIS DARREIN CONTINUANCE.

Furtum [fr. *furvum*, Lat., black, or *fraus* or *ferre*, taking away; or φῶρ, Gk., a thief, fr. φερεῖν, to carry away], theft; robbery. It is *manifestum et nec manifestum.*—*Sand. Just.* 501, *et seq.*, where other kinds are enumerated; and see 2 *Reeves*, 40.

Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat.—3 *Inst.* 107.—(Theft is the fraudulent handling of another's property, with an intention of stealing, against the will of the proprietor, whose property it was.)

Furtum non est ubi initium habet detentionis per dominum rei.—3 *Inst.* 107.—(It is not theft where the commencement of the detention arises through the owner of the thing.)

Future Estates, expectancies, which are, at the common law, of two kinds: reversions and remainders.

Future Uses. See CONTINGENT USES.

Fuz, or **Fust** [Celt.], a wood or forest.

Fyht-wite, one of the fines incurred for homicide.

Fyrd, Fyrdung, the military array or land force of the whole country. Contribution to the fyrd was one of the imposts forming the *trinoda necessitas.*

Fyrd-wite, the fine incurred by neglecting to join the fyrd; one of the rights of the Crown. *Anc. Inst. Eng.*

G.

Gabel [fr. *gabelle*, Fr.; *gabella*, Ital.; *gafel*, Sax.], an excise, a tax on moveables; a rent, custom, or service.—*Co. Litt.* 213.

Gabulus denariorum, rent paid in money.—*Seld. Tit.* 321.

Gaffoldgild, the payment of custom or tribute.—*Scott.*

Gaffoldland, property subject to the gaffoldgild, or liable to be taxed.—*Ibid.*

Gafol, rent.

Gage [fr. *gage*, Fr.], a pledge, pawn, or caution; anything given in security.

Gage, *Estates in,* those held *in vadio* or pledge. They are of two kinds: (1) *vivum vadium,* or living pledge, or vifgage; (2) *mortuum vadium,* or dead pledge, better known as mortgage.

Gager de deliverance, when he who has distrained, being sued, has not delivered the cattle distrained; then he shall not only avow the distress, but *gager deliverance,* i. e. put in surety or pledge that he will deliver them.—*F. N. B.* 67.

Gager del ley (*wager of law*).

Gainage [fr. *gainagium*, Lat.], the gain or profit of tilled or planted land, raised by cultivating it; and the draught, plough, and furniture for carrying on the work of tillage by the baser kind of *sokemen* or *villeins.*—*Bract.* l. 1, c. ix.

Gainery [fr. *gaignerie*, Fr.], tillage or the profit arising from it, or from the beasts employed therein.—*Stat. West.* 1, cc. 16, 17.

Gale [fr. *gavel*, Sax., a rent or duty], a periodical payment of rent.—*Spelm.* voce '*gabellum.*'

Galli-halfpence, a kind of coin which, with suskins and doitkins, were forbidden by 3 Hen. V. c. 1.

Gallivolatium [fr. *gallus*, Lat., cock], a cock-shoot, or cock-glade.

Gallon, a liquid measure, containing 231 cubic inches, or 4 quarts.

Gallows [it is used by some in the singular, but more generally in the plural. *Golgo*, Goth; *gealga*, Sax.; *galge*, Dut.; fr. *agælwan*, Sax., to fright], a beam laid over either one or two posts, on which malefactors are hanged.—*Encyc. Lond.*

Game [fr. *gaman*, Sax.], all sorts of birds and beasts that are objects of the chase. The term is defined by 1 & 2 Wm. IV. c. 32, as including hares, pheasants, partridges, grouse, heath or moor-game, black-game, and bustards; but some of its provisions are also directed to woodcocks, snipes, quails, landrails, and conies.

This act repeals the Qualification Act of 22 & 23 Car. II. c. 25, and many others relating to game, and provides that the right to kill game upon any land shall be vested in the owners of such land (mere occupiers for short terms excepted), or in any person who may have their grant or permission for the purpose. But it requires all persons killing or taking game to take out a yearly certificate, and all uncertificated persons selling it, a yearly license; and it contains penal provisions for the better preservation of game, and for the protection of land from unlawful trespasses in sporting.

As to the certificate, see 52 *Geo. III.* c. 93; 54 *Geo. III.* c. 141; 7 & 8 *Geo. IV.* c. 49; 1 & 2 *Wm. IV.* c. 32; 2 & 3 *Vict.* c. 35, and 23 & 24 *Vict.* c. 90. As to the killing of hares by the occupiers of enclosed lands, without a

certificate, see 11 & 12 *Vict.* c. 29, and 23 & 24 *Vict.* c. 90. As to taking or killing hares or rabbits in a warren in the night, see 24 & 25 *Vict.* c. 96, s. 17. See generally *Locke on the Game Laws*; 1 *Step. Com.* 164, 674; ii. 19, *et seq.*; iv. 366, 577. See also POACHING, *post.*

Gamekeepers. As to their appointment and authority, see 1 & 2 *Wm. IV.* c. 32, s. 13.

Gaming, or **Gambling**, the art or practice of playing and following up any game, particularly those of chance, as cards, dice, &c.

The 32 Hen. VIII. c. 9, s. 11, prohibits the keeping of any common house for dice, cards, or any unlawful games, under penalties of 40*s.* for every day of so keeping the house, and 6*s.* 8*d.* for every time of playing therein; and the 30 Geo. II. c. 24, s. 14, inflicts punishment of the same kind, as well upon the master of any public house wherein laborers or servants are permitted to game, as upon the laborers and servants themselves. As to the forfeiture of public-house licenses, see 9 *Geo. II.* c. 61. By 12 Geo. II. c. 28; 13 Geo. II. c. 19; and 18 Geo. II. c. 34, the games of faro, basset, ace of hearts, hazard, passage, roly-poly, and roulette, and all other games with dice, except backgammon, are prohibited under a penalty of 200*l.* for him that shall erect the same, and 50*l.* a time for the players. The 8 & 9 Vict. c. 109, repeals so much of the 32 Hen. VIII. c. 9, as prohibits bowling, tennis, or other games of mere skill. It also provides that the owner or keeper of any common gaming-house, and every person having the care or management thereof, and also every banker, croupier, and other person in any manner conducting the business of any common gaming-house, shall, on conviction by the oath of one witness, before two justices of the peace, be liable, in addition to the penalties of the act of Hen. VIII. to pay such penalty (not more than 100*l.*) as shall be adjudged by such justices, or, in their discretion, may be committed to the house of correction, with or without hard labor, for not more than six calendar months, with a proviso that nothing therein contained shall prevent any proceeding by indictment; but that, on the other hand, no person who shall be so summarily convicted shall be liable to be proceeded against by indictment for the same offence. Also, that every person who shall have been concerned in any unlawful gaming, and who shall be examined as a witness before any justice of the peace, or on the trial of any indictment or information against the owner, or keeper, or person having the care of any common gaming-house, touching such unlawful gaming, and who shall make true discovery thereof to the best of his knowledge, and receive from the court a certificate of his having done so, shall be freed from all criminal prosecutions, forfeitures, and disabilities for anything done in respect of such unlawful gaming. With respect to the game of billiards, in particular, it is provided that the justices of the peace at the special sessions, called the general annual licensing meeting, may grant annual billiard licenses to such persons as in their discretion they may deem fit to keep public billiard tables and bagatelle boards, or instruments used in any game of the like kind. Severe penalties are imposed on persons keeping such tables or boards without being duly licensed, or allowing play between one and eight o'clock in the morning on any day, or at any time on Sunday, Christmas-day, or Good Friday, or on any day of public fast or thanksgiving. Every person who shall, by fraud, or unlawful device, or ill practice in play, betting, or wagering at any game, win any sum of money or valuable thing, shall be deemed guilty of obtaining the same by a false pretence, and be punished accordingly; and all contracts, whether by parol or in writing, by way of gaming or wagering, shall be null and void; and no suit at law or in equity shall be brought to recover from a stakeholder a deposit on a wager, provided that such enactment shall not be deemed to apply to any subscription towards a plate or prize at any lawful game, sport, pastime, or exercise. See also 17 & 18 *Vict.* c. 38, 'An Act for the Suppression of Gaming Houses.'

The 5 & 6 Wm. IV. c. 41 (amending 9 Anne, c. 14), enacts that all notes, bills, or mortgages given for money won at play, shall be deemed to be given on an illegal consideration, and are consequently void between the original parties, but they are not void in the hands of indorsees or purchasers for valuable consideration, without notice.

Gaming was forbidden by the Roman laws, both during the times of the republic and under the emperors.—*Cic. Philip*, ii. 23; *Cod.* 3, tit. 33. Hence Horace (*Carm.* iii. 24), alluding to the progress of effeminate and licentious manners, says, that boys of rank, instead of riding and hunting, now showed their skill in playing with the hoop, or even at games of chance, although they were illegal (*vetita legibus alea*). Gaming was also condemned by public opinion. *In his gregibus*, says Cicero (*in Cat.* ii. 10), *omnes aleatores, omnes adulteri, omnes impuri impudicique versantur.* To detect and punish excesses of this description belonged to the office of the ædiles (*Martial*, xiv. 1).

Games of chance were, however, tolerated in the month of December at the Saturnalia, which was a period of general relaxation (*Martial*, iv. 14; *Gellius*, xviii. 13), and among the Greeks, as well as the Romans, old men were allowed to amuse themselves in this manner.—*Eurip. Med.* 67; *Civ. Senect.* 16; *Juv.* xiv. 4.

Ganancial [Sp.], a species of community in property enjoyed by husband and wife, the

property being divisible between them equally on a dissolution of the marriage.—1 *Burge, Confl. Laws*, 418.

Gangiatori, officers whose business it is to examine weights and measures.—*Scotch term.*

Gang-week [fr. *gangan*, Sax., to go], the time when the bounds of the parishes are lustrated or gone over by the parish officers—rogation-week.—*Encyc. Lond.*

Gantelope [fr. *gant*, Dut., all; and *loopen*, to run], a military punishment, in which the criminal running between the ranks receives a lash from each man.—*Encyc. Lond.*

Gaol [fr. *gaola*, Lat.; *geole*, Fr., a cage for birds], a prison; a strong place for the confinement of offenders against the law.

There must be maintained one common gaol at the expense of every county of England and Wales; and at the expense of every county and division having a distinct commission of the peace, at least one house of correction.

Every prison (subject to a few exceptions to which the prison acts do not extend) must have a resident keeper, and resident matron to superintend the female prisoners, as also a visiting chaplain and surgeon, and must be visited three times a-year by two or more justices of the peace appointed at the quarter sessions for that purpose. These visitors are to make reports to every session as to the state of the prison and prisoners within their jurisdiction, which are to be the basis of a general report from the quarter-sessions, to be drawn up and transmitted annually by the chairman to a principal Secretary of State, and to be afterwards laid before both Houses of Parliament.

Besides the ordinary gaols and houses of correction in counties and boroughs, the following are particular, subject to separate and specific regulations, viz. the Queen's Prison, the Millbank Prison, the Parkhurst Prison, and the Pentonville Prison.—3 *Step. Com.* 240.

As to gaol fees, see 14 Geo. III. c. 20; 55 Geo. III. c. 50; and 8 & 9 Vict. c. 114.

Gaol delivery, a commission to the Judges, &c. empowering them to try and deliver every prisoner who may be in gaol when they arrive at the assize town, whenever or before whomsoever indicted, or for whatever crime committed. See ASSISE.

Gaoler, the master or keeper of a prison; one who has the custody of a place where prisoners are confined; the servant of the sheriff, who is responsible for his conduct.

Garb, a bundle or sheaf of corn; a handful. *Fleta*, l. 2, c. xii.

Garbales decimæ, tithes of corn.

Garbler of spices, an ancient officer in the city of London, who may enter into any shop, warehouse, &c. to view and search drugs and spices, and garble and make clean the same; or see that it be done.—6 *Anne*, c. 16.

Garcio stolæ (*groom of the stole*).

Garciones, servants who follow a camp.—*Wals.* 242.

Gard [fr. *garde*, Fr.], wardship, care, custody.

Gardia, custody.—*Lib. Feud.*

Garlanda, a chaplet, coronet, or garland.

Garnestura, victuals, arms, and other implements of war, necessary for the defence of a town or castle.—*Mat. Par.* 1250.

Garnish, money paid by a prisoner on his going to prison. Forbidden by 4 Geo. IV. c. 43, s. 12, r. 23. Also, warning an heir; repealed by 6 Geo. IV. c. 105, s. 13.

Garnishee, a person warned not to pay money which he owes to another person, when the latter is indebted to the person warning or giving notice.

Garnishment, warning not to pay money, &c. to a defendant, but to appear and answer to a plaintiff-creditor's suit. It usually arose in cases of detinue thus:—If a defendant alleged that certain deeds were delivered to him by the plaintiff and another person upon condition, such defendant prayed that the other person might be warned to plead with the plaintiff, as to whether the conditions were performed or not, he the defendant being willing to deliver the property to the person entitled to it; thereupon a process of garnishment, monition, or notice issued, and all parties were brought before the court, that the cause might be thoroughly and justly determined. It was nearly allied to the proceedings in interpleader.—3 *Reeves' Hist. Eng. Law*, 448. See FOREIGN ATTACHMENT.

By the C. L. P. A. 1854, it is enacted, that it shall be lawful for any creditor who has obtained a judgment in any of the superior courts to apply to the court or a judge for a rule or order that the judgment-debtor should be orally examined as to any and what debts are owing to him, before a master of the court, or such other person as the court or judge shall appoint; and the court or judge may make such rule or order for the examination of such judgment-debtor, and for the production of any books or documents; and the examination shall be conducted in the same manner as in the case of an oral examination of an opposite party before a master under this act (s. 60).

It shall be lawful for a judge, upon the *ex parte* application of such judgment-creditor, either before or after such oral examination, and upon affidavit by himself or his attorney stating that judgment has been recovered, and that it is still unsatisfied, and to what amount, and that any other person is indebted to the judgment-debtor and is within the jurisdiction, to order that all debts owing or accruing from such third person (hereinafter called the garnishee) to the judgment-debtor shall be attached to answer the judgment-debt; and by the same or any subsequent order it may be

ordered that the garnishee shall appear before the judge or a master of the court, as such judge shall appoint, to show cause why he should not pay the judgment-creditor the debt due from him to the judgment-debtor, or so much thereof as may be sufficient to satisfy the judgment-debt (s. 61).

Service of an order that debts due or accruing to the judgment-debtor shall be attached, or notice thereof to the garnishee, in such manner as the judge shall direct, shall bind such debts in his hands (s. 62).

If the garnishee does not forthwith pay into court the amount due from him to the judgment-debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment-debtor, or if he does not appear upon summons, then the judge may order execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment-debt (s. 63).

If the garnishee disputes his liability, the judge, instead of making an order that execution shall issue, may order that the judgment-creditor shall be at liberty to proceed against the garnishee by writ, calling upon him to show cause why there should not be execution against him for the alleged debt, or for the amount due to the judgment-debtor if less than the judgment-debt, and for costs of suit; and the proceedings upon such suit shall be the same, as nearly as may be, as upon a writ of revivor issued under 'The Common Law Procedure Act 1852' (s. 64).

Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the judgment-debtor to the amount paid or levied, although such proceeding may be set aside or the judgment reversed (s. 65).

In each of the superior courts there shall be kept at the masters' office a debt-attachment-book, and in such book entries shall be made of the attachments and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and the mode of keeping such books shall be the same in all the courts, and copies of any entries made therein may be taken by any person, upon application to any master (s. 66).

The costs of any application for an attachment of debt under this act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court or a judge (s. 67).—1 *Chit. Arch. Prac. by Pren.* 699.

Garnisture, a furnishing or providing.

Garranty. See GUARANTY.

Garson, a menial servant.—*Toland.*

Garsummune, a fine or amerciament.

Garter [fr. *gardus*, Wel.; *jartier*, Fr., from *gar*, the binding of the knee], a string or ribbon by which the stocking is held upon the leg; the mark of the highest order of knighthood, ranking next after the nobility.

This military order of knighthood is said to have been first instituted by Richard I. at the siege of Acre, where he caused twenty-six knights who firmly stood by him to wear thongs of blue leather about their legs. It is also said to have been perfected by Edward III. and to have received some alterations, which were afterwards laid aside, from Edward VI. The badge of the order is the image of St. George, called the George, and the motto is *Honi soit qui mal y pense.*

Garth [same as girth, fr. *gyrdan*, A. S., to surround, to enclose], an enclosure about a house, church, &c.; a backside; a close; a dam or wear.

Gas, for regulating measures used in sale of, see 10 & 12 *Vict.* c. 11; 22 & 23 *Vict.* c. 66; 23 & 24 *Vict.* cc. 125 & 146; and 24 & 25 *Vict.* c. 79.

Gastaldus, a temporary governor of the country.—*Blount.*

Gaudies, double commons.—*University term.*

Gaudy [fr. *gaudium*, Lat.], a feast, a festival, a day of plenty.—*Ibid.*

Gauge, *railway.* See 9 & 10 *Vict.* c. 57.

Gauger, a surveying officer under the Board of Excise.

Gaugetum, a gauge or gauging; a measure of the contents of any vessel.

Gavel. See GABEL.

Gavelcester [*sextarius vectigalis*, Lat.], a certain measure of rent-ale. See OAKGAVEL; TOLCHESTER.

Gavelet [fr. *gaveletum*, Lat.], an ancient and special kind of *cessavit*, used in Kent and London for the recovery of rent. Obsolete. The statute of Gavelet is 10 Edw. II.—2 *Reeves*, c. xii., p. 298.

Gavelgeld, payment of tribute or toll.

Gavelkind. No legal term (not excepting the words 'session' or 'parliament') has more engaged the attention of legal antiquaries, or produced more learned discussion, than the derivation of the word 'gavelkind.' It has been treated of by Camden, Spelman, Lambarde, Coke, Somner, and Robinson, and has also received the deep consideration of many other profound and learned men, whose opinions upon the subject are divisible into two classes:—First, those which are founded on the *nature of the land in point of descent*; and, secondly, those founded on the nature of the *services yielded by the land.* But without entering into a detailed disquisition on the merits of each opinion, which would only tend to confuse, we shall be content, as to the first division, with stating the opinion of Lord Coke (1 *Inst.*

140 *a*), where he says: 'Gavelkinde, that is, "*Gave all kinde*," for this custom giveth to all the sons alike.' This interpretation is clearly founded on the partibility of its descent, and in this opinion Coke is followed by many. But the derivation which is generally received, and which is supported by most of the names already mentioned, is drawn from the *nature of the services*, and supposes that the term 'gavelkind' is derived from the Saxon word '*gafol*,' or, as it is otherwise written, '*gavel*,' which signifies '*rent*,' or a '*customary performance of husbandry works*,' and therefore the land which yielded this kind of service, in contradistinction to knight-service land, was called 'GAVELKIND,' that is, '*land of the kind that yields rent.*' Lambarde (*Perambulations of Kent*, ed. 1656, p. 585) first advanced and promulgated this supposition, in opposition to the opinion of Lord Coke, which, until then, was generally received.

Gavelkind land descends in the right line to all the sons equally, being an exception to the law of primogeniture. In default of sons, it descends to the daughters in the ordinary manner.

It is to be remarked, that though females, claiming in their own right, are postponed to males, yet they may inherit together with males by representation. If, therefore, a man have three sons, and purchase lands held in gavelkind, and one of the sons dies in the lifetime of his father, leaving a daughter, she will inherit the share of her father; yet she is not within the words of the custom, *inter hæredes masculos partibilis*; for she is no male, but the daughter of a male coming in his stead *jure representationis.*

This custom extends also to the collateral line, for it has been resolved that where one brother dies without issue, all the other brothers shall inherit from him; and in default of brothers, their respective issue shall take *jure representationis.* But where the nephews succeed with an uncle, the descent is *per stirpes* and not *per capita*; and so from the nature of the thing it must be, where the sons of several brothers succeed, no uncle surviving, for though in equal degree, they stand in the place of their respective fathers.

The partible quality of *gavelkind* extends also to estates-tail, for if a person die seised in tail of lands held in *gavelkind*, all his sons shall inherit together as heirs of his body.

Since the 1st January, A.D. 1834, the half-blood shall inherit, the Inheritance Act, s. 9, extending to this custom; for it applies to land of every tenure (s. 1).

The other special customs of this tenure are: (1) that a wife is dowable of one-half, instead of one-third of the land; (2) that a husband will be tenant by the courtesy, whether there be issue born or not, but only of one-half so long as he remains unmarried; (3) that gavelkind lands are not liable to escheat for felony, the maxim being, 'The father to the bough, the son to the plough,' although they are for treason or want of heirs; and (4) that an heir in gavelkind at fifteen years may make a contract and sell his estate for money; but the livery upon the feoffment (the only deed which can be adopted) must be made by the heir in person; for, being under age, he cannot, by the common law, appoint an attorney.

Gavelkind, before A.D. 1066, was the general custom of the realm; the feudal law of primogeniture superseded it. It was retained in Kent, because, according to the historical legend, the Kentish men surrounded William I. with a moving wood of boughs, just after the slaughter at Hastings, and for that service obtained a confirmation of their ancient rights.

By 34 & 35 Hen. VIII. c. 26, all *gavelkind* lands in Wales were made descendible to the heir according to the common law; from which it would appear that the tenure likewise obtained in that principality.

And even in Kent, lands belonging to various persons have been disgavelled by statute, especially the 31 Hen. VIII. c. 3, and made descendible according to the course of the common law. This can be only effected by Act of Parliament. Gavelkind is met with occasionally in a modified form in copyholds.

Primâ facie all land in Kent is gavelkind, except such as is disgavelled by particular statutes (which should always be noticed in transactions relating to Kentish property); and as to such land the custom is never pleaded, but is presumed, and the courts are bound to take judicial notice of it.—1 *Mod.* 98.

Gavelman, a tenant liable to tribute.—*Blount.*

Gavelmed, the duty or work of mowing grass or cutting meadow-land, required by the lord from his customary tenants.—*Somn.*

Gavelwerk, the personal labor of customary tenants.

Gazette [fr. *gaza*, treasure; or *gazza*, a magpie, typical of its gossiping nature; or *gazetta*, the name of a coin, about a farthing, for which it was sold], the official newspaper of the government, said to have been first published at Oxford in 1665; on the removal of the court to London, the title was changed to the London Gazette. It is published on Tuesdays and Fridays, and contains all the acts of state, and proclamations; also dissolutions of partnership, and notices of proceedings in bankruptcy. It is evidence of such governmental proceedings as it contains.—5 *T. R.* 436.

Gazetteer, an officer appointed to publish

news by authority, whom Steele calls the lowest minister of state.

Gebocced [Ang.-Sax.], conveyed.

Geburscrip, neighbourhood or adjoining district.

Geburus [fr. *gebure*, Sax., a farmer], an inhabitant of the same gebureship or village.

Geld, a mulct, compensation, value, price. *Angeld* is the single value of a thing; *twigeld*, double value, &c.

Geldable, taxable.

Gemot, a mote or moot, meeting, public assembly. The various kinds were—

(1) The *folc-gemot*, or general assembly of the people, whether it was held in a city or town, or consisted of the whole shire. It was sometimes summoned by the ringing of the moot-bell. Its regular meetings were annual.

(2) The *shire-gemot*, or county court which met twice during the year.

(3) The *burg-gemot*, which met thrice in the year.

(4) The *hundred-gemot*, or hundred court, which met twelve times a year in the Saxon ages; but afterwards a full, perhaps an extraordinary, meeting of every hundred was ordered to be held twice a year. This was the sheriff's tourn, or view of frank-pledge.

(5) The *halle-gemot*, or the court-baron.

(6) The *wardemotus*.—*Anc. Inst. Eng.*

Genealogy [fr. γενεά, Gk., and λόγός], history of the succession of families; enumeration of descent in order of succession; pedigree.—*Encyc. Lond.*

Genearch [fr. γενεά, Gk., and ἀρχός], the head of a family.

Geneath, a hind or farmer.

Gener, a son-in-law.

General agent, a person who is authorised by his principal to execute all deeds, sign all contracts, or purchase all goods required in a particular trade, business, or employment.

General Council, the assembly of the Parliament of the United Kingdom.

General demurrer, a pleading at common law, which excepts to the sufficiency of a pleading in general terms, without showing specifically the nature of the objection. It is resorted to when the objection is to matter of substance.—*Step. Plead.* 152.

General Gaol Delivery. See GAOL DELIVERY.

General Inclosure Act. The 41 Geo. III. c. 109, which consolidates a number of regulations as to the enclosure of common fields and waste lands. See INCLOSURE ACTS.

General issue, a plea simply traversing *modo et formâ* the allegations in the declaration.

By r. 21 H. T. 1853, in every case in which a defendant shall plead the general issue, intending to give the special matter in evidence, by virtue of an Act of Parliament, he shall insert in the margin of the plea the words 'by statute,' together with the year or years of the reign in which the act or acts of Parliament upon which he relies for that purpose were passed, and also the chapter and section of each of such acts, and shall specify whether such acts are public or otherwise, otherwise such plea shall be taken not to have been pleaded by virtue of any Act of Parliament, and such memorandum shall be inserted in the margin of the issue, and of the nisi prius record. But see 6 & 7 *Vict.* c. 97, s. 3; *Chit. Arch. Prac. by Pren.* 254–274, 1262, 1266, 1267, 1270, 1292.

In criminal proceedings, the general issue is 'not guilty,' which is pleaded *vivâ voce* by the prisoner at the bar.

General lien, a right to detain a chattel, &c. until payment be made, not only of any debt due in respect of the particular chattel, but of any balance that may be due on general account in the same line of business. A general lien being against the ordinary rule of law, depends entirely upon contract, either express or implied, from the special usage of the particular trade, or the previous course of dealing between the parties. See LIEN.

General Quarter Sessions of the Peace, *the Courts of*, tribunals held in every county before two or more justices of the peace, one of whom must be of the *quorum*, once in every quarter of a year, which, by 11 Geo. IV. and 1 Wm. IV. c. 70, s. 85, is appointed to be in the first week after the 11th of October, the first week after the 28th of December, the first week after the 31st of March, and the first week after the 24th of June. When holden otherwise than quarterly, they are called 'The General Sessions of the Peace.' To prevent, however, the interference of the spring assizes with the April quarter sessions, the justices of the Epiphany sessions may, if they see occasion, name two of their body to fix some day for holding the next general quarter sessions, not earlier than the 7th of March, nor later than the 22nd of April.—4 & 5 *Wm. IV.* c. 47. By virtue of 34 Edw. III. c. 1, they had jurisdiction to try all felonies and misdemeanors within their respective counties, but their jurisdiction has been narrowed by subsequent statutes, and is now confined to the trial of the smaller felonies and misdemeanors, and especially offences relating to game, highways, ale houses, bastard children, the settlement and provision for the poor, servants' wages, and apprentices. They also hear appeals from the decisions of justices of the peace not made in sessions. The 5 & 6 Vict. c. 38, defines the jurisdiction of justices in general and quarter sessions. The 7 & 8 Vict. c. 71., amended by 22 & 23 Vict. c. 4., provides for the general

sessions of the peace in Middlesex.—9 & 10 *Vict.* c. 25. See 4 *Step. Com.* 397.

General ship, a ship employed by the owners on a particular voyage in the conveyance of the goods of a number of persons unconnected with each other.

General tail, an estate-tail where one parent only is specified, whence the issue must be derived, as to A. and the heirs of his body. See TAIL.

General verdict, the decision of the jury, when they find the point in issue generally. A general verdict is sometimes found for the plaintiff, subject to a special case, stating the facts for the opinion of the court above.—1 *Chit. Arch. Prac. by Pren.* 448, 453.

General warrant, a process which used to issue from the office of the secretary of state, to arrest (without naming any persons in particular) the author, printer, and publisher of such obscene and seditious libels as were particularly specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons.—*Com. Jour.* 22nd April, 1766.

Generale, the usual commons in a religious house, distinguished from *pietantiæ*, which on extraordinary occasions were allowed beyond the commons.

Generale dictum generaliter est interpretandum. Generalia verba sunt generaliter intelligenda.—3 *Inst.* 76.—(A general saying is to be interpreted generally. General words are to be understood generally.)

Generale nihil certum implicat.—2 *Co.* 33.—(A general expression implies nothing certain.)

Generale tantum valet in generalibus quantum singulare in singulis.—11 *Co.* 59.—What is general prevails as much amongst things general as what is particular amongst things particular.

Generalia præcedunt, specialia sequuntur. Reg. Br.—(Things general precede, things special follow.)

Generalia specialibus non derogant.—*Jenk. Cent.* 120.—(Things general do not take from things special.)

Generalia sunt præponenda singularibus.—(General are to be placed before particular things.)

Generalibus specialia derogant.—(Things special take from things general.)

Generalis clausula non porrigitur ad ea quæ antea specialiter sunt comprehensa.—8 *Co.* 154.—(A general clause does not extend to those things which are before specially provided.)

Generals of Orders, chiefs of the several orders of monks, friars, and other religious societies.

Generatio, the issue or offspring of a mother-monastery.

Gens, race, nation, great family.

Gentleman [fr. *gentilhomme*, Fr.; *gentilhuomo*, Ital., i. e. *homo gentilis*, Lat.; a man of ancestry, however high his rank]. All persons above yeomen: whereby noblemen are truly called gentlemen.—*Smith de Rep. Ang.* l. 1, cc. xx., xxi. Consult the *Origin of Gentlemen*, from *Leyden's Complaynt of Scotland*, repub. 1801.

The word was not employed as a legal addition until about the time of Henry V.

The gentry may be divided into three classes:

(I.) They who derive their stock with arms from their ancestors, are gentlemen of blood and coat armour. They are of course the most noble who can prove the longest uninterrupted continuance of nobility in the families of both their parents.

(II.) They who are ennobled, by knighthood or otherwise, with the grant of a coat-of-arms, are gentlemen of coat-armour, and give gentility to their posterity. Such have been scornfully designated '*gentlemen of paper and wax.*'

(III.) They who by the exercise of a liberal profession or by holding some office, are gentlemen by reputation, although their ancestors were ignoble, as their posterity remains after them. These are not really gentlemen, though commonly accounted such.—2 *Step. Com.* 636 638.

Gentleman Usher, one who holds a post at Court to usher others to the presence, &c.

Gentlewoman, a woman of birth above the common; an addition of a woman's state or degree.

Genus, in logic, the first of the universal ideas, and is when the idea is so common that it extends to other ideas which are also universal: as incorporeal hereditament is *genus* with respect to a *rent*, which is *species*. *Genus summum* is that which holds the uppermost class in its predicament; or it is that which may be divided into several species, each whereof is a genus in respect to other species placed below.—*Woolley's Introd. to Logic*, 45; and 1 *Mill's Log.* 133.

Geoponics [fr. γῆ, Gk., land, and πόνος, labor], the science of cultivating the ground; agriculture.

George-Noble, a gold coin of Hen. VIII. value 6*s.* 8*d.*—*Leake.*

George, St., *Knight of.* See GARTER.

Germ, a generation.

German [fr. *germain*, Fr.; *germanus*, Lat.], brother; one approaching to a brother in proximity of blood: thus the children of brothers and sisters are called cousins-german.

Gerontocomium [fr. γέρων, Gk., an old man, and κομέω, to take care of], an almshouse or hospital for old people.—*Encyc. Lond.* Their managers are called *gerontocomi.*

Gersumarius, finable; liable to be amerced at the discretion of the lord of a manor.

Gestation. See BIRTH.

Gestio pro hærede (*behaviour as heir*), conduct by which the heir renders himself liable for his ancestor's debts, as by taking possession of title-deeds, receiving rents, &c.—*Scotch phrase.*

Gestu et Fama, an ancient and obsolete writ, resorted to when a person's good behaviour was impeached.

Gewineda, the ancient convention of the people to decide a cause.—*LL. Æthel.* c. i.

Gewitnessa, the giving of evidence in our ancient British law.—*Brompton.*

Gewrite, writings, deeds, or charters.

Ghirdawar, Girdwar, an overseer of police, under whom the *goyendas* or informers act.—*Indian.*

Gibbet [fr. *gibet*, Fr.], a gallows; the post on which malefactors are hanged, or on which their bodies are exposed. It differs from a common gallows in that it consists of one perpendicular post, from the top of which proceeds one arm; except it be a double gibbet, which is formed in the shape of the Roman capital T.—*Encyc. Lond.*

Gift. The old text-writers make a *gift* (*donatio*) a distinct species of deed, and describe it as a conveyance applicable to the creation of an estate-tail; while a feoffment they strictly confine to the creation of a fee-simple estate. The operative verb is 'give,' which no longer implies any covenant in law (8 & 9 Vict. c. 106, s. 4), and the deed requires living of seisin. It was in consequence of entails being thus originally created that the grantor was called the donor, the grantee in tail the donee, and the entail the gift or donation, the issue taking *per formam doni.* It is almost obsolete.

A gift is now understood to be a voluntary conveyance, without binding consideration, and therefore void in certain cases. A gift is likewise applied to gratuitous transfers of personalty and *donationes mortis causâ.*

Gifta aquæ, the stream of water to a mill.

Giftoman [*Swed.*], the right to dispose of a woman in marriage.

Gilbert's Acts, the 17 Geo. III. c. 53, and the 22 Geo. III. c. 83, which empower parishes, with the consent of two-thirds in number and value of the owners or occupiers, and with the approbation of two justices of the peace, to appoint guardians to act in lieu of overseers, in all matters relative to the relief and management of the poor, and also to enter into voluntary unions with each other for the more convenient accommodation, maintenance, and employment of paupers.

Gild, a tax, tribute, or contribution; a society or fraternity constituted for mutual protection and benefit. Consult *Das Gildenwesen im Mittelalter, von Dr. W. E. Wilda.*

Gilda mercatoria, a mercantile meeting or assembly.

Gildable, liable to pay a gild.

Gildmerchant, merchants who have privilege to hold pleas of land among themselves.—*Scott.*

Gildrent, certain payments to the Crown from any gild or fraternity.

Gill, one-fourth of a pint measure.

Girantem [fr. *girare*, Ital.], the drawer.—*Merc. Law.*

Gisement, cattle taken in to graze at a certain price; also the money received for grazing cattle.

Gisetaker, a person who takes cattle to graze.

Gisle, a pledge. *Fredgisle,* a pledge of peace. *Gislebert,* an illustrious pledge.—*Gibs. Camden.*

Gist of Action [fr. *giste*, Fr., *gesir*, to lie; *jaceo*, Lat.], the cause for which an action lies; the ground and foundation of a suit, without which it is not maintainable.

Gladiolum, a little sword or dagger; also a kind of sedge.

Gladius [*jus gladii*, Lat.], a supreme jurisdiction.

Glaive, a sword, lance, or horseman's staff, one of the weapons allowed in a trial by combat.

Glanville, the author of a book entitled *Tractatus de Legibus et Consuetudinibus Regni Angliæ,* which is supposed to have been the first undertaking of the kind in any country of Europe. Though perhaps it was not written by that Ranulphus de Glanvillâ who was *justitiarius Angliæ* under Henry II., yet it seems to be wholly written about the year 1181. It is little more than a sketch, as far as the plan of it goes, and is confined to proceedings in the King's Court. A translation of Glanville, with notes, was published in 1812, by Mr. Beames. See *Hale's Hist.* 168, and n. *a*; and 1 *Reeves,* p. 221.

Glass, *Excise on,* repealed by 8 & 9 Vict. c. 6.

Glass-men, wandering rogues or vagrants.—1 *Jac. I.* c. 7.

Glavea, a hand dart.

Gleaning, Leasing, or **Lesing.** It is decided that no right exists at common law for the poor to enter on a person's land and glean after harvest.—*Steel* v. *Houghton,* 1 *H. Bl.* 51.

Glebæ ascriptitii, villein-socmen, who could not be removed from the land while they did the service due.—*Bract.* c. 7; 1 *Reeves,* p. 269.

Glebariæ, turfs dug out of the ground.

Gliscywa, a fraternity.

Glebe, the land possessed as a part of the revenue of an ecclesiastical benefice. By s. 5 of 5 & 6 Vict. c. 54, it is provided that the commissioners appointed to carry into effect the

commutation of tithes shall have power to ascertain and define the boundaries of the glebe-lands of any benefice, or, with consent of the ordinary and patron, to exchange the glebe-lands for other lands within the same or any adjoining parish, or otherwise conveniently situated.—See 17 & 18 *Vict.* c. 84.

Glomerells, commissioners appointed to determine differences between scholars in a school or university, and the townsmen of the place.

Glossa viperina est quæ corrodit viscera textus. 11 *Co.* 34.—(It is a poisonous gloss which corrupts the essence of the text.)

Gloucester, Statute of, 6 Edw. I. c. 1, A.D. 1278.

Glove Silver, extraordinary rewards given to officers of courts, &c.; money given by the sheriff of a county in which no offenders are left for execution to the clerk of assize and judges' officers.

Gloves. It is an ancient custom on a maiden assize, when there is no offender to be tried, for the sheriff to present the judge with a pair of white gloves.

Glyn [fr. *glyn*, Erse; *gleen*, Scot.], a hollow between two mountains; a valley.—*Co. Litt.* 5 *b.*

God-bote, an ecclesiastical or church fine paid for crimes and offences committed against God.

God-gild, that which is offered to God or his service.

God-penny, earnest money given to a servant when hired.

Golda, a mine.

Gold-mines, a branch of the ordinary revenue of the kingdom. By 1 W. & M. st. 1, c. 30, and 5 W. & M. c. 6, amended by 55 Geo. III. c. 134, it is enacted, that no mines of copper, tin, iron, or lead, shall be looked upon as royal mines, notwithstanding gold or silver may be extracted from them in any quantities; but that the sovereign or persons claiming royal mines under his authority may have the ore (other than tin ore in the counties of Devon and Cornwall), paying for the same a price stated in the act.—2 *Step. Com.* 569.

Goldsmith's Notes, bankers' cash notes (i. e. promissory notes given by a banker to his customers as acknowledgments of the receipt of money), were originally called in London goldsmiths' notes, from the circumstance that all the banking business in England was originally transacted by goldsmiths. Such notes are now seldom issued except by country bankers, their use having been superseded by the introduction of cheques.—*Chitty on Bills*, 351.

Goldwit, or **Goldwich,** a golden mulct.

Goliardus, a jester or buffoon.—*Mat. Par.* 1229.

Gomashtah, a factor, commissioner, or agent. *Indian.*

Good abearing. See ABEARANCE.

Good behaviour, *Security for.* The exercise of preventive justice, which consists in being bound with one or more sureties in a recognizance or obligation to the Crown, and taken in some court, or by some judicial officer; whereby the parties acknowledge themselves to be indebted to the Crown in the sum required, with the condition to be void and of none effect if the party shall demean and behave himself well, or be of good behaviour, either generally or specially for the time therein limited; as for one or more years, or for life; and if the condition of such recognizance be broken, by any misbehaviour, the recognizances become forfeited or absolute; and the party and his sureties become the Crown's absolute debtors, for the several sums in which they are respectively bound.—4 *Step. Com.* 371. See ABEARANCE.

Good consideration, as distinguished from *valuable* consideration—a consideration founded on motives of generosity, prudence, and natural duty; such as natural love and affection.

Goods and Chattels, the generic denomination of things personal, as distinguished from things real, or lands, tenements, and hereditaments.

Goodwill, the advantage or benefit which is acquired by a business, beyond the mere value of the capital, stock, funds or property employed therein, in consequence of the general public patronage and encouragement which it receives from constant or habitual customers, on account of its local position or reputation for skill or affluence, or punctuality, or from other accidental circumstances, or even from ancient partialities or prejudices.

Goole, a breach in a seawall or bank; a passage worn by the flux and reflux of the sea.

Gooroo guru, a spiritual guide.—*Indian.*

Gorce, or **Gors,** a wear, pool, or pit of water. *Termes de la Ley.*

Gore, a narrow slip of land.

Gossipred, compaternity, spiritual affinity.—*Canon Law.*

Gote, a ditch, sluice, or gutter.

Government, that form of fundamental rules and principles by which a nation or state is governed.—*Locke on Government; Paley's Polit. Phi.; Smith's Wealth of Nations; Montesquieu's Spirit of Laws.*

Government Annuity Societies, formed under 3 & 4 Wm. IV. c. 14. Their purpose is to enable the industrious classes to make provisions for themselves by purchasing, on advantageous terms, a government annuity for life or term of years. Societies regularly constituted under this act are empowered to be the medium for such contracts, in favor of any persons whom they deem to be proper objects of the intended benefit. The trustees or managers of the society act as the agents of the Commissioners for reduction of the national debt in this transaction, and the expense of the purchaser (who is relieved from all stamp

duties) is limited to a very trivial amount. The annuity is charged on the consolidated fund, and made payable half-yearly upon the draft of the trustees, supported (in the case of life annuity) by proof of the existence and identity of the nominee. It may either be immediate or deferred, so as to commence at any future period to be named by the purchaser. If deferred, it may be purchased either by a single sum paid in the first instance, or by annual payments; and supposing the purchaser to live until its commencement, he becomes entitled to an annuity equivalent to the value of all his payments, with the accumulation of compound interest. If, on the other hand, in the case of a deferred life-annuity, he dies before its commencement, or (having agreed to pay by annual instalments) becomes incapable before that time of continuing the payments, the whole money that has been actually paid is returned, exclusive of interest, to his representatives or to himself, as the case may be. In the case of a life-annuity, whether immediate or deferred, which has come into possession, this advantage is also given to a purchaser—that on the death of the person on whose life the annuity depended, the purchaser or his representatives become entitled, over and above the arrears, to a sum equal to one-fourth of the annuity, provided it be claimed within two years after the decease. All annuities under this act are declared to be personal estate, are exempt from taxes and other charges, and are incapable of being sold or assigned, so as to pass the interest of the party entitled during his lifetime, unless in the case of his bankruptcy or insolvency; but where that happens, they are to be repurchased by government at a valuation, and the value paid over for the benefit of the creditors. The annual amount of annuity to be granted to any one person is not to be less than 4*l.* nor more than 30*l.*, and no purchase can be made for the life of a person under the age of fifteen. Inhabitants of a parish forming themselves into a society for the purposes contemplated by the act are entitled to claim its benefits, provided that the rector, vicar, or minister of the parish for the time being, or a resident justice of the peace, be one of the trustees, and provided that there be no savings' bank legally established in the parish, under 9 Geo. IV. c. 92. But if there be a savings' bank there of that description, a separate society for the purpose is unnecessary, and not authorised by the act; for in that case any two of the trustees or managers of the savings' bank may contract for government annuities, in favor of any person to whom they may think proper to extend the benefit, who is either a depositor in the savings' bank, or entitled in their opinion to become a depositor therein. Through whichever of these media annuities are purchased, all transactions relative to them are to be subject in either case (as far as possible) to the regulations made by 9 Geo. IV. c. 92, and 7 & 8 Vict. c. 83, as to savings' banks.

Government, *Offences against.* They are treason; misprision of treason; discharging fire-arms or missiles, &c., at the queen; scandal against the sovereign; præmunire; contempts against the title of the sovereign, or the crown's ecclesiastical supremacy; contempts against the royal palaces; mal-administration in high offices; selling public offices; offences relating to the coin; embezzling or destroying royal stores or ships of war; serving foreign states; desertion or seducing to desert; refusing or neglecting to take the requisite oaths upon appointment by the crown to an office; administering unlawful oaths, or being engaged in illegal societies; and contempts against the prerogative.—4 *Step. Com.* 232–283.

Goyenda, an inferior officer of police; a spy, informer.—*Indian.*

Grace, a faculty, license, or dispensation; also general and free pardon by act of parliament.

Grace, *Days of,* time of indulgence and respite granted to an acceptor for the payment of his bill of exchange. It was originally a gratuitous favor (hence the name), but custom has rendered it a legal right.

The number of these days varies according to the ancient custom or express law prevailing in each particular country, as follows:—

	Days
Altona. Sundays and holydays included, and bills falling due on a Sunday or holyday, must be paid, or in default thereof, protested on the day previous	12
America	3
Amsterdam. Abolished since the Code Napoleon	none
Antwerp. The same	none
Barcelona	14
Berlin. When bills including them do not fall due on a Sunday or holyday, in which case they must be paid or protested the day previous	3
Bilboa	14
Brazil, Rio Janeiro, Bahia, including Sundays, &c. as in the last case	15
Bremen	8
Cadiz	6
Dantzic	10
Denmark	8
England	3
France. Abolished by the Code Napoleon, *Livre* 1, tit. 8, s. 5, pl. 135; 1 *Pardess,* 189. Ten days were formerly allowed.—*Pothier,* pl. 14, 15	none
Frankfort on the Main. Except on bills drawn at sight, Sundays and holydays not included	4
Geneva	5

	Days
Genoa. Abolished by the Code Napoleon	none
Germany	8
Gibraltar	14
Hamburg. Same as Altona	12
Ireland	3
Leghorn	none
Leipsic	none
Lisbon and *Oporto*, 15 days on local, and 6 on foreign bills; but, if not previously accepted, must be paid on the day they fall due	6 or 15
Madrid	14
Malta	13
Naples. Abolished by the Code Napoleon	none
Palermo	none

Petersburg. Bills drawn after date are entitled to 10 days' grace; those drawn at sight, to only 3 days; and those at any number of days after sight, none whatever. But bills received and presented after they are due, are, nevertheless, entitled to 10 days' grace. In these days of grace are included Sundays and holydays, as also the day when the bill falls due, on which days they cannot be protested for non-payment; but, on the morning of the last day of grace, payment must be demanded, and, if not complied with, the bill must be protested before sunset . . . . 10, 3, &c.

Rio de Janeiro, Bahia, and other parts of *Brazil.* Days of grace on foreign bills are 15, including holydays and Sundays, and if due on any such day must be paid, or in default thereof protested on the previous day 15

Rotterdam. Abolished by the Code Napoleon . . . . . none

Scotland 3

Spain. Vary in different parts of Spain, generally 14 days on foreign, and 8 on inland bills; at *Cadiz* only 6 days' grace. When bills are drawn at a certain date, fixed or precise, no days of grace are allowed. Bills drawn at sight are not entitled to any days of grace; nor are any bills, unless accepted prior to their maturity . . . (but vary) 14

Sweden 6

Trieste. Three days on bills drawn after date, or any term after sight, not less than 7 days, or payable on a particular day; but bills presented after maturity must be paid within twenty-four hours. Sundays and holydays are included in the days of grace, and if the last day of grace fall on such a day, payment must be made, or the bill protested on the first following open day 3

Venice. Six days, in which Sundays, holydays, and the days when the bank is shut, are not included 6

Vienna. Same as Trieste . . . 3

Wales 3

Chitty on Bills, p. 258.

The law of the place where the bill is payable governs the allowance or non-allowance of the days of grace. They are to be calculated exclusive of the day when the bill would otherwise become due. They are counted consecutively and in direct succession, without any deduction or allowance, on account of Sundays or holydays or other non-secular days intermediate between the first and the last; and whenever the last day of grace occurs on a Sunday or other holyday, the bill becomes due and payable, not on the succeeding, but on the preceding day. In England, days of grace are allowed on all bills, whether they are payable at a certain time after date, or after sight, or even at sight. But bills payable on demand are immediately payable on presentment, without any grace days; and so are bills not expressing the time of payment; for then, in legal contemplation, they are payable on demand.—*Story on Bills*, 385.

Gradient, moving by steps; the deviation of railways from a level surface to an inclined plane.

Graduates, scholars who have taken degrees in an university.

Gradus [Lat.] (*a step or degree*).

Gradus Parentelæ, a pedigree; a table of relationship.

Graffer, a notary, or scrivener.

Graffio gravio, a land-grave or earl.

Graffium, a writing-book, register, or cartulary of deeds and evidences.

Grail, a gradual or book containing some of the offices of the Romish Church.

Grain, the twenty-fourth part of a penny-weight.—*Troyweight.*

Grain, poisoned, Act prohibiting the use of, 26 & 27 Vict. c. 113.

Grainage, an ancient duty in London under which the twentieth part of salt imported by aliens was taken.

Grammar Schools, *Endowed.* See 3 & 4 *Vict.*, c. 77.

Grammatica falsa non vitiat chartam.—9 *Co.* 48.—(False grammar does not vitiate a deed.)

Granatarius, an officer who kept the corn-chamber in a religious house.

Grand Assize, a peculiar species of trial by jury introduced in the time of Henry II. giving the tenant or defendant in a writ of right the alternative of a trial by battle, or by his peers. Abolished by 3 & 4 Wm. IV. c. 42, s. 13.

Grand Cape. See CAPE.

Grand Coustumier of Normandy, an ancient book of great authority, containing the ducal customs of Normandy, probably compiled

since the time of Richard I.—*Hale's Hist. Com. Law*, c. vi.

Grand days, those days in the terms which are solemnly kept in the Inns of Court and Chancery, i. e. Candlemas Day in Hilary; Ascension Day in Easter; St. John Baptist's Day in Trinity; and All Saints' Day in Michaelmas; which are *dies non juridici.*

Grand distress, *Writ of*, formerly issued in the real action of *quare impedit*, when no appearance had been entered after the attachment; it commanded the sheriff to distrain the defendant's lands and chattels in order to compel appearance (3 *Step. Com.*, 4th edit. 675). It is no longer used, 23 & 24 Vict. c. 126, s. 26 having abolished the action of *quare impedit*, and substituted for it the procedure in an ordinary action.

Grand Jury, an inquisition composed of not less than twelve nor more than twenty-three good and lawful men of a county, returned by the sheriff to every session of the peace, and every commission of oyer and terminer and of general gaol delivery, who inquire, present, do and execute all those things which on the part of our lady the queen shall then and there be commanded them. Grand jurymen ought to be freeholders, but to what amount is uncertain.

The grand jury are previously instructed in the articles of their inquiry, by a charge from the judge who presides upon the bench. They then withdraw to sit, and receive indictments, which are preferred to them in the name of the queen, but at the suit of any private prosecutor, and they are only to hear evidence on the part of the prosecution: for the finding of an indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to inquire upon their oaths whether there be sufficient cause to call upon the party accused to answer it.

When the grand jury have heard the evidence, if they think it a groundless accusation, they endorse upon the bill of indictment, 'not a true bill' or 'not found;' the bill is then thrown out, and the party accused discharged without further answer. But a fresh bill may afterwards be preferred to a subsequent grand jury. If, however, they are satisfied of the truth of the accusation, they then endorse 'a true bill;' the indictment is then said to be found, and the party stands indicted. A majority of the grand jury must agree, i. e. not less than twelve.—4 *Step. Com.* 439.

By 19 & 20 Vict. c. 54, the foreman of a grand jury is empowered to administer the oath to witnesses who need not be sworn in open court.

Grand larceny, stealing to above the value of twelve pence. Abolished by 7 & 8 Geo. IV. c. 29, s. 2.

Grand serjeanty, an ancient holding by military service. See TENURE.

Grange [Fr.], a farm furnished with barns, granaries, stables, and all conveniences for husbandry.—*Co. Litt.* 5 *a.*

Grangearius, a keeper of a grange or farm.

Grangia [low Lat.], a grange.—*Co. Litt.* 5 *a.*

Grant [fr. *garantir*, Fr., Junius and Skinner; but Minshew thinks *gratuito*, or perhaps *gratia, gratificor*, Lat.], a common law conveyance, operating by transmutation of possession.

This deed was originally confined to the transfer of incorporeal hereditaments and expectant estates, of which livery of seisin could not be given. But the distinction between property lying in livery and property lying in grant, so far as regards the conveyance of the immediate freehold of it, is abolished by 8 & 9 Vict. c. 106, s. 2, which provides that real property, of what kind soever, shall be transferable as well by grant as by livery. The operative verb is 'grant,' which, by s. 4 of the same statute, is not to imply any covenant in law in respect of any hereditaments except by force of any Act of Parliament. Railway Acts provide that the operative word 'grant' in conveyances to and by the company shall imply the usual covenants for title; and under the Acts 6 Anne, c. 35, s. 30, and 8 Geo. II. c. 6, s. 35, relating to the registration of deeds in the East and North Riding of Yorkshire, the verbs 'grant,' 'bargain,' and 'sell,' will amount to express covenants for title, unless especially restrained by particular words. This provision is extended by 6 Anne, c. 35, s. 34, to the West Riding, where the consideration-money exceeds 50*l.*

This conveyance has become the usual mode of transferring realty. It is the better opinion that a corporation can convey by grant.

The stamp duty on the old bargain and sale, or lease for a year, preserved by 4 & 5 Vict. c. 21, and 8 & 9 Vict. c. 106, was repealed by 13 & 14 Vict. c. 97, s. 6.

A grant of personalty is more properly termed an assignment or a bill of sale.

The Queen's grants are matters of record, and are either letters-patent or writs close.

Grantee, he to whom any grant is made.

Grantor, he by whom a grant is made.

Grant to uses, this is the common grant with uses superadded, and has become the favorite mode of transferring realty.

Grantz, grandees.

Grass-hearth, the feudal service of turning up the earth with a plough.

Grasson, or **Grassum,** a fine paid upon the transfer of a copyhold estate.

Grass-week, rogation-week, so called in the Inns of Court and Chancery.

Gratis, without reward.

Gratis dictum, a voluntary statement.

Gratuitous deeds, instruments made without binding consideration.

Gratuitous Trustees, Act to amend the law in Scotland relative to the resignation, powers, and liabilities of, 24 & 25 Vict. c. 114, explained by 26 & 27 Vict. c. 115.

Grava, a little wood or grove.—*Co. Litt.* 4 *b.*

Gravamen, the substantial grievance or complaint.

Gravare et gravatio, an accusation or impeachment.—*Leg. Ethel.* c. xix.

Gravius est divinam quam temporalem lædere majestatem.—11 *Co.* 29.—(It is more serious to hurt divine than temporal majesty.)

Great Bedford Level. See BEDFORD LEVEL.

Great Cattle, all manner of beasts except sheep and yearlings.

Great Charter, *Magna Charta*, which see.

Great Seal [*clavis regni*, Lat.], the emblem of sovereignty, introduced by Edward the Confessor. By Art. 34 of the Union between England and Scotland (5 Anne, c. 8), it is provided that there should be one Great Seal for the United Kingdom of Great Britain, which should be used for sealing writs to summon the Parliament, and for sealing all treaties with foreign states, and all public acts of state which concern the United Kingdom, and in all other matters relating to England, as the Great Seal of England was then used; and that a seal in Scotland should be kept and made use of in all things relating to private rights or grants, which had usually passed the Great Seal of Scotland, and which only concern offices, grants, commissions, and private rights within Scotland. On the Union between Great Britain and Ireland no express provision was made by any of the Articles of Union as to the establishing one Great Seal for the United Kingdom; but various acts as to the summoning Parliament, &c. are required to be done under the Great Seal of Ireland; and by s. 3 of the Acts of Union, 39 & 40 Geo. III. c. 67 (*British*), and 40 Geo. III. c. 38 (*Irish*), it is enacted that the Great Seal of Ireland may, if his majesty shall so think fit, after the Union, be used in like manner as before the Union (except where it is otherwise provided by the Articles of Union), within that part of the United Kingdom called Ireland. As to forging these seals, see FORGERY.

Great Tithes, so called to distinguish them from tithes often granted by the name of *small* tithes to a vicar. It is difficult to define them with certainty. Thus much, however, is clear, that of the three kinds of tithes, mixed, personal, and predial, the two former are small tithes; and of the latter, it seems that tithes of corn, hay, wood, and of other herbs which are sown in large quantities, such as flax, hemp, &c., are great tithes. See *Bac. Abr. Tythes; Com. Dig., Dismes* (G); 3 *Step. Com.* 84.

Gree, satisfaction for an offence committed or injury done.

Green Cloth. The counting house of the king's household was commonly called the Green Cloth, in respect of the green cloth upon the table whereat the lord steward, the treasurer of the king's house, and other inferior officers sat:—(1) For daily taking the accounts for all expenses of the household. (2) For making provisions for the household according to the laws and statutes of the realm. (3) For making of payments for the same. (4) For the good government of the king's servants. (5) For payment of the wages of the king's servants. The officers of the counting house never held plea of anything.—4 *Instit.* 131.

Greenhew, or **Greenhue,** vert in forests, &c.—*Manw.* p. 2, c. vi., n. 5.

Green Silver, a feudal custom in the manor of Writtel in Essex, where every tenant whose front-door opens to Greenbury shall pay a halfpenny yearly to the lord, by the name of green silver or rent.

Greenwax, estreats delivered to a sheriff out of the Exchequer, under the seal of the court, which is impressed upon green wax, to be levied.—7 *Hen. IV.* c. 3.

Greenwich Hospital. See 7 & 8 Wm. III. c. 21; 10 Geo. IV. c. 26; 4 & 5 Wm. IV. c. 34; 8 & 9 Vict., c. 22; 9 & 10 Vict., cc. 9, 10; 10 & 11 Vict., c. 54; 11 & 12 Vict., c. 82; 12 & 13 Vict. c. 28; 13 & 14 Vict. cc. 24, 40; as to out-pensioners, see 19 & 20 Vict. c. 15; as to widows, 26 & 27 Vict. c. 67.

Gregorian Code. See CODEX GREGORIANUS.

Gregorian Epoch, the time from which the Gregorian calendar or computation dates, i. e. from the year 1582. See CALENDAR.

Grenville Act, 10 Geo. III. c. 16.

Gretna-Green Marriage, a marriage celebrated at Gretna in Dumfries, in Scotland. By the law of Scotland a valid marriage may be contracted by consent alone, without any other formality. When the Marriage Act, 26 Geo. II. c. 33, rendered the publication of banns or a license necessary to the validity of a marriage in England, it became usual for persons resident in England who wished to marry clandestinely to go to Gretna Green, the nearest part of Scotland, and there marry according to the Scotch law. In consequence of the frequency of such marriages, a sort of chapel was built at Gretna Green, in which the English marriage service was performed by the village blacksmith. The facility of contracting such marriages is at an end, for by 19 & 20 Vict. c. 96, s. 1, it is enacted that after the 31st day of December, 1856, no irregular marriage contracted in Scotland by declaration, acknowledgment, or ceremony shall be valid, unless one of the parties had at the date thereof his or her usual place of residence there, or had

lived in Scotland for twenty-one days next preceding such marriage, any law, custom, or usage to the contrary notwithstanding.

Greve [fr. *gerefa*, or, rather, *reve*, Sax.], power, authority.

Grimgribber [fr. *Grimoire*, Fr., a conjuring book in the old French romances, or perhaps the art of necromancy itself], the jargon used as a cover for legal sophistry.—*Div. of Purk.* 36, and notes.

Grith, peace, protection.

Grithbreche, breach of the peace.

Grithstole, a place of sanctuary.

Gronna, a deep pit or bituminous place where turfs are dug to burn.

Groom porter, an officer belonging to the royal household.

Groom of the stole [fr. στολή, Gk., a robe], an officer of the royal household, who has charge of the king's wardrobe.

Gross, absolute, entire; not depending on another.

Grosse bois, timber.

Grossement enceinte, pregnancy in its latter stages.

Gross weight, the whole weight of goods and merchandize, including the dust and dross, and also the chest or bag, &c., upon which tare and trett are allowed.

Ground-annual, a ground-rent payable before a tenement in a burgh is built; contradistinguished from *feu-annual*.

Ground-rent, a periodical payment for the privilege of building on another's land.

Ground-writ. By the C. L. P. A. 1852, c. 121, 'It shall not be necessary to issue any writ directed to the sheriff of the county in which the venue is laid, but writs of execution may issue at once into any county and be directed to and executed by the sheriff of any county, whether a county palatine or not, without reference to the county in which the venue is laid, and without any suggestion of the issuing of a prior writ into such county.'

Before this enactment a *ca. sa.* or *fi. fa.* could not be issued into a county different from that in which the venue in the action was laid, without first issuing a writ called a *ground-writ* into the latter county, and then another writ, which was called a *testatum* writ, into the former. The above enactment abolished this useless process.—1 *Chit. Arch. Prac. by Pren.* 595.

Groundage, a custom or tribute paid for the standing of a ship in a port.

Growth halfpenny, a rate paid in some places for the tithe of every fat beast, ox, or other unfruitful cattle.—*Clay. Rep.* 92.

Gruarii, the principal officers of a forest.

Guarantee, he to whom a guaranty is made.

Guarantor, he who makes a guaranty.

Guaranty, or **Guarantee**, a promise to a person to be answerable for the payment of a debt or the performance of a duty by another, in case he should fail to perform his engagement. An offer to guarantee until it be accepted is not binding. At the common law a guarantee need not have been in writing, but the Statute of Frauds, 29 Car. II. c. 3, s. 4, enacts that 'No action shall be brought whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.' This provision has been held not to apply to a promise made to the person who is liable, nor to a case in which that person's liability ceases upon the making of the promise. Guarantees, as other contracts, will not be binding, unless founded on a valid consideration. See CONSIDERATION, *ante*. Where the original debt and guaranty are contemporaneous, no other consideration is necessary than that which moves between the creditor and the original debtor; but if a guaranty be made in respect of a debt already incurred, there must be a new consideration to support it, but the consideration need not move directly between the person giving and the person receiving the guaranty. It is sufficient if the person for whom it is given receive a benefit, or if the person for whom it is given receive, or may receive, a detriment. A consideration need not be expressed, for if it can be fairly implied from the language used, it will ordinarily be sufficient. In the case of guarantees great inconvenience had resulted from the construction put upon the above section, viz., that the consideration for the promise of the guarantor must appear upon the written instrument. To remedy this was passed 19 & 20 Vict. c. 97, which enacts, that no special promise to be made by any person, after the passing of the Act, (29th July, 1856), to answer for the debt, default, or miscarriage of another person, being in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing or by necessary inference from a written document (s. 3). The consideration must, however, exist. No promise to answer for the debt, default, or miscarriage of another made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default, or miscarriage

of a firm consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise in respect of anything done or omitted to be done, after a change shall have taken place in any one or more of the persons constituting the firm, or in the person trading under the name of a firm, unless the intention of the parties, that such promise shall continue to be binding notwithstanding such change, shall appear either by express stipulation or by necessary implication from the nature of the firm or otherwise (s. 4). See SURETY.

Guardage, state of wardship.

Guardian, or **Warden of the Cinque Ports,** a magistrate who has the jurisdiction of the ports or havens, which are called the *Cinque Ports.* This office was first created amongst us, in imitation of the Roman policy, to strengthen the sea-coasts against enemies, &c.—*Camb. Br.* 238.

Guardian de l'eglise, a churchwarden.

Guardian de l'estemary, the warden of the stannaries or mines in Cornwall, &c.

Guardian of the peace, a warden or conservator of the peace.

Guardian of the poor. By 22 Geo. III. c. 83 (commonly called Gilbert's Act), parishes are authorized, with the consent of two-thirds in number and value of the owners and occupiers, and with the approbation of two justices of the peace, to appoint guardians to act in lieu of overseers, in all matters relative to the relief and management of the poor. As to their appointment under the Poor Law Amendment Act, see 4 & 5 Wm. IV. c. 76. Guardians have, by 7 & 8 Vict. c. 101, s. 31, the power of directing a pauper to be buried at the expense of the parish.

Guardian of the spiritualities, the person to whom the spiritual jurisdiction of any diocese is committed during the vacancy of the see.

Guardian of the temporalities, the person to whose custody a vacant see or abbey was committed by the Crown.

Guardianship. The custody of infants involves the voluminous subject of guardianship, or temporary parentage, which arises at the death of the father, or when the infant is taken away from its parents.

In modern times, guardians may be said to be of five kinds.

(1) *Testamentary.*

By the 12 Car. II. c. 24, s. 8, where any person has at the time of his death a child under the age of twenty-one years, and unmarried, *the father*, whether such child be born at the time of his decease, or in *ventre sa mère*, or whether such father be within the age of twenty-one, or of full age, may by deed executed [or if such father be of full age, by last will in writing, executed in the presence of two witnesses (7 Wm. IV. and 1 Vict. c. 26 s. 7)], dispose of the custody and tuition of such child until he attain twenty-one years, or any lesser time, to any person in possession or remainder, and such disposition shall be good against all persons claiming the custody or tuition of such child, as guardian in socage or otherwise; and such person to whom the custody of such child shall be so disposed or devised may maintain an action of trespass against any who shall wrongfully take away or detain him, and recover damages for the use and benefit of such child.

By ss. 9 & 10, persons to whom the custody of such children shall be so disposed are to have the custody of their lands and personal estate till twenty-one, and may bring such actions as guardians in socage may. But the act is not to alter or prejudice the custom of London, or of any other city or town corporate, or of the town of Berwick, concerning orphans, nor to operate to discharge any apprentice from his apprenticeship.

This guardianship, which supersedes all others, being a continuation of the parental authority, and a mere private office of personal trust, is not assignable, but determines at the guardian's death. If the guardian, being an unmarried woman, afterwards marry, the office is not transferred to her husband, but she nevertheless continues to act herself. The mother cannot appoint a guardian to her children under this act, though she be a widow at the time, for the statute is wholly confined to fathers; but she has the first claim upon the attention of the Court of Chancery in the selection of a guardian.

(2) *Customary.*

This guardianship is entirely local, and depends altogether upon the law of the particular place where it exists. It is found in copyhold manors, ancient corporations, and gavelkind lands. The father's authority of appointing a guardian under the 12 Car. II. c. 24, does not extend to copyhold property.

(3) *Ad litem.*

Every Court in which an infant is one of the suitors has power to appoint a guardian for the purpose of protecting such infant's interest in the proceedings instituted. See 2 *Chit. Arch. Prac. by Pren.* 1234, and *Smi. Ch. Pr.* 57.

(4) *By appointment of Chancery,*

The Court has power to appoint a guardian, as its instrument, to protect the general interests of an infant-ward, where there is no guardian already selected. The person appointed must usually be of the same religious persuasion as the infant's parents, and of a moral, solvent, capable, and humane character, residing, moreover, in England.

The Court will, if practicable, and not disadvantageous to the infant, give the preference

to the father, who is *primâ facie* and naturally entitled to the custody of his children, even as against their mother, provided the children be seven years old.

Next to the father's right is recognised that of the testamentary or statute-guardian, whose authority is hardly to be distinguished from that of the father, deriving his title, as he does, from the right of the parent by virtue of the Act of Parliament already quoted. It is, in fact, a continuation of the same trust under the same control and jurisdiction.

(5) *Guardian in tort, or by intrusion* (*tutor alienus*).

This is an implied, indirect kind of guardianship, arising from a person intruding himself into an infant's property: if he receive the profits belonging to the wronged infant, as its guardian, he must account for them in Chancery, being, by this Court, regarded as such infant's trustee.

There are five other species of guardians recognised by our law, but which have now become obsolete or comparatively rare:—

(1) *Guardian by nature* (*jure naturæ*).—To this guardianship the father has the first title, and should he not appoint one, pursuant to 12 Car. II. c. 24, then the mother, and afterwards the other ancestors, can claim it. Only an heir apparent, either male or female, can be the subject of this guardianship, which merely extends to the infant's person, and endures until majority.

(2) *Guardian in socage, or, by the common law* (*jure gentium*).—This guardianship occurs only when an infant is legally entitled in possession to socage land by descent, and is in such of the infant's next of blood, as cannot possibly become entitled to the land upon the infant's death.

There are two kinds: Guardian by right (*tutor proprius*); and (2) Guardian by possession and claim (*tutor alienus*).

It is a personal trust for the infant's benefit, both as to his person and estate, and cannot be devised or assigned or transmitted by succession, or forfeited by outlawry or attainder. On the guardian dying or becoming incapacitated, it devolves upon the next relation in blood, who can never become entitled to the land; he cannot be removed. It determines when the infant, male or female, attains fourteen (or fifteen in gavelkind land). Such guardian is superseded by the father's testamentary guardian.

A guardian *per cause de ward* exists only in socage land; it occurs where an infant in ward is guardian to another, in which case the wardship of the first infant draws after it that of the second.

(3) *Guardian for nurture* arises when the infant has neither land nor guardian, the father or mother possessing the right, for its education and governance. It cannot be assigned. It certainly continues until the age of fourteen (*Reg.* v. *Clarke*, 7 *E.* & *B.* 186); and, in the case of a female infant, has been held to continue until the age of sixteen.—*Reg.* v. *Howes*, 30 *L. J.* (*M. C.*) 47. As to the infant's property, this guardian is very much on the same footing as a stranger.

(4) *Guardian by the election of the infant.*—In the absence of a guardian the infant may, after fourteen, choose one for himself. The election is frequently made before a judge in equity, or on circuit, but this is not absolutely necessary. The infant's election does not supersede the power of Chancery to appoint another, if it should be considered more advantageous.

The advisable course is always to apply to the Court of Chancery to appoint a guardian.

(5) *Guardianship by appointment of the Ecclesiastical Court.*—The ecclesiastical courts claim the right of appointing a guardian to protect the personalty of an infant; and also to take care of the infant if there be no other guardian; but this latter claim seems not to be well founded, their authority being simply to appoint a guardian *ad litem.*—*Cham. on Inf.* pp. 72, 73.

There is no trace, in modern times, of any appointment by these courts of a guardian of the person and estate, but the name is given to those who are appointed administrators *durante minore ætate* of one who would be entitled, if of full age, to act. For further details, see *Co. Litt.* 86 *b*, with Mr. Hargrave's notes. The jurisdiction of the ecclesiastical courts in testamentary matters has been transferred to the Court of Probate.—20 & 21 *Vict.* cc. 77, 85.

By the Roman law, guardianship was of two sorts: (1) *Tutela*, and (2) *Cura*: the first lasted in males until they arrived at fourteen years of age, and in females until they arrived at twelve years of age, which were called the ages of puberty of the sexes respectively. From the time of puberty until they were twenty-five years of age, which was their full majority, they were deemed minors, and subject to curatorship. During the first period of tutelage their guardian was called tutor, and they were called pupils; during the second period, their guardian was called curator, and they were called minors. In England, the guardian performs the offices both of a tutor and a curator, under the Roman law. In France, the tutorship lasts until the full age of majority.

In treating of guardianship, two questions naturally arise: (1) Whether the authority of a guardian over the person of his ward is local, and confined to the place of his domicile, or extends everywhere? (2) Whether the authority of the guardian over the property of his ward is local, or extends everywhere? The better opinion seems to be, that the guardian's authority extends everywhere, in both cases.—*Story's Confl. of Laws*, c. xiii.

Guastald, one who has the custody of the royal mansions.

Gubernator [Lat.], a pilot or steersman.

Guest-taker, an agistor; one who took cattle into feed in the royal forests.

Guidage, a reward for safe conduct through a strange land or unknown country.

Guidon de la Mer, a treatise on maritime law, written in Rouen, then Normandy, in 1671.

Guild [fr. *gildan*, Sax., to pay or contribute], a company, fraternity, or corporation, associated for some commercial purpose.

Guildhall, the chief hall of a city or borough-town, for holding courts, and for the meeting of the corporation in order to make laws for the regulation of the city or town, and to administer summary justice.

Guildrents. See GILDRENT.

Guilt [fr. *wiglian*, *bewiglian*, *gewiglian*, A.S., to conjure, to divine, and hence to practice cheat, imposture, and enchantment; the past participle of *gewiglian* is *gewigled*, guiled, guilt. *Tooke.* Others say it is derived from *gildan*, A.S., to pay a tax, and originally signified the fine or mulct paid for an offence, and afterwards the offence itself], sin, wickedness, crime, criminality.

Guilty, having committed a crime.

Gules, the heraldic name of the color usually called red. The word is derived either from the Latin *gula*, a throat, or the Arabic *gule*, a rose. If the latter supposition be correct, the word was probably introduced by the Crusaders. Gules is denoted in engravings by numerous perpendicular lines. Heralds who blazoned by planets and jewels called it *Mars*, and *ruby*.

Gules of August [fr. *gula*, Lat., a throat], the entrance into, or the first day of that month.

Gultwit, or **Guiltwit,** amends for a trespass.

Gunge, a granary, a depôt, chiefly of grain for sale. Wholesale markets held on particular days. Commercial depôts.—*Indian.*

Gunpowder. As to the making, keeping, and carriage of gunpowder, see 23 & 24 *Vict.* c. 139; 24 & 25 *Vict.* c. 130; and 25 & 26 *Vict.* c. 98.

Gurgites, wears.

Guti and **Gotti,** Goths, Jutæ or Getæ, who left Germany and came to inhabit this island.

Gwabr merched, a payment or fine made to the lords of some manors, upon the marriage of their tenants' daughters, or otherwise on their committing incontinency. See MERCHETA MULIERUM.—*Welsh term.*

Gwalstow, a place of execution.

Gwayf, that which had been stolen and afterwards dropped in the highway for fear of a discovery.

Gylput, the name of a court held every three weeks in the liberty or hundred of Pathbew in Warwick.

Gyltwite. See GULTWIT.

Gynarcy, or **Gynæcocracy,** government by a woman; a state in which women are legally capable of the supreme command, e. g. Great Britain and Spain.

Gypsies. The first of the laws against gypsies, 22 Hen. VIII., c. 10, describes this people, who were then new-comers in this country, as 'outlandish persons calling themselves Egyptians, using no craft or feat of merchandise, who have come into this realm and go from shire to shire and place to place in great company, and used great subtle and crafty means to deceive the people, bearing them in hand, that they by palmestry could tell men's and women's fortunes; and so many times by craft and subtilty have deceived the people of their money, and also have committed many heinous felonies and robberies.' This was the description given of these wanderers. It was now enacted, that if any such persons came within the realm, they should forfeit all their goods and chattels, and should leave the kingdom within fifteen days after command so to do, upon pain of imprisonment. All sheriffs and justices of the peace were empowered to seize their property for the king's use. If they were to be tried for any felony, they were not to be entitled to the privilege of stat. 8, Hen. VI., which gave a jury *de medietate linguæ*. As to all those then within the realm, they had sixteen days to depart; and if they overstaid that time they were to be imprisoned, and forfeit all their goods and chattels. 4 *Reeves*, c. xxix., p. 290.

This statute was found not strict enough to restrain these people from coming into the kingdom; but they still resorted hither, using, as 1 & 2 Ph. & Ma. c. 4, states, 'their old accustomed devilish and naughty practices and devices, with such abominable living as it is not in any Christian realm to be permitted, named, or known.' It is therefore enacted by this last statute, that any one conveying such person into the realm shall forfeit 40*l.*; and the Egyptian so conveyed, and continuing here one month, shall be adjudged a felon without benefit of clergy or sanctuary. As to those within the realm, such as do not depart within twenty days after proclamation of that Act, shall forfeit all their goods, to be seized by any one; half to the king and half to the party seizing them: and if they do not depart in fifty days after the proclamation, it is made felony, without clergy or sanctuary. Persons who leave that way of life within the twenty days above-mentioned are to be discharged of the penalties of the act.—4 *Reeves*, c. xxx., p. 490. See VAGRANTS, and 5 *Hen. VIII.* c. 34, p. 126.

Gyves [fr. *gevyn*, Wel.], fetters or shackles for the legs.

H.

Habeas corpora juratorum (*that you have the bodies of the jurors*), a process which issued out of the Court of Common Pleas, commanding the sheriff to summon a jury. The practice was similar to the *distringas* from the Queen's Bench and Exchequer for the same purpose. It is abolished by C. L. P. A. 1852, s. 104.

Habeas Corpus Act, the 31 Car. II. c. 2, providing the great remedy for the violation of personal liberty by the writ of *habeas corpus ad subjiciendum*, which see below.

Habeas corpus ad faciendum et recipiendum (*that you have the body to do and receive*), a common law writ which issues out of any of the courts at Westminster, when a person is sued in some inferior jurisdiction, and is desirous to remove the action into the superior court. It commands the inferior judges to produce the body of the defendant, together with the day and cause of his caption and detainer, to do and receive whatever the Queen's Court shall consider in that behalf.—3 *Bl. Com.* 130.

Habeas corpus ad prosequendum (*that you have the body to prosecute*), a writ that issues when it is necessary to remove a prisoner, in order that he may be tried in the proper jurisdiction.—*Ibid.*

Habeas corpus ad respondendum (*that you have the body to answer*), a writ which formerly issued when one had a cause of action against another, who was confined by the process of some inferior court, in order to remove the prisoner, and charge him with the new cause of action in the court above.—*Ibid.* No longer used.—2 *Chit. Arch. Prac. by Pren.* 1307.

Habeas corpus ad satisfaciendum (*that you have the body to satisfy*), when a plaintiff has obtained judgment in one of the superior courts against a defendant, who is in the prison of an inferior court at the suit of another, he may, by this writ, bring up the prisoner to the superior court, in order to charge him in execution.—*Ibid.* See *C. L. P. A.* 1852, s. 127.

Habeas corpus ad subjiciendum (*that you have the body to answer*). This, the most celebrated prerogative writ in the English law, is a remedy for a person illegally deprived of his liberty. It is addressed to any person who detains another in custody, and commands him to produce the body of the prisoner, with the day and cause of his caption and detention, and to do, submit to, and receive whatever the judge or court awarding such writ shall consider in that behalf. It issues out of any of the superior courts of law and equity, both in term and vacation, and runs into all parts of the Queen's dominions. The writ is applied for either by motion to a court or application to a judge, supported by an affidavit of the facts. If a probable ground be shown that the party is imprisoned without just cause, and therefore has a right to be delivered, then this writ ought of right to be granted to every man that is committed or detained in prison or otherwise restrained, though it be by command of the Sovereign, the Privy Council, or any other power in the country. And therefore there is an absolute necessity of expressing upon every commitment the reason for which it is made, that a court upon a *habeas corpus* may examine into its validity, and, according to the circumstances of the case, may discharge, admit to bail, or remand the prisoner.

The *Habeas Corpus* Act, 31 Car. II. c. 2, enacts: (1) That on complaint and request in writing, by or on behalf of any person committed and charged with any crime (unless committed for treason or felony expressed in the warrant; or as accessory, or on suspicion of being accessory before the fact, to any felony, or upon suspicion of such felony, plainly expressed in the warrant; or unless he is committed or charged in execution by legal process), the Lord Chancellor, or any of the judges in vacation, upon viewing a copy of the warrant or affidavit that a copy is denied, shall (unless the party has neglected, for two terms, to apply to any court for his enlargement) award a *habeas corpus* for such prisoner, returnable immediately, before himself or any other of the judges; and upon the return made shall discharge the party, if bailable, upon giving security to appear and answer to the accusation in the proper court of judicature. (2) That such writs shall be endorsed, as granted in pursuance of this act, and signed by the party awarding them. (3) That the writ shall be returned and the prisoner brought up within a limited time according to the distance, not exceeding in any case twenty days. (4) That officers and keepers neglecting to make due returns, or not delivering to the prisoner or his agent, within six hours after demand, a copy of the warrant of commitment, on shifting the custody of a prisoner from one to another, without sufficient reason or authority (specified in the act), shall for the first offence forfeit 100*l.* and for the second offence 200*l.* to the party grieved, and be disabled to hold his office. (5) That no person once delivered by *habeas corpus* shall be recommitted for the same offence, on penalty of 500*l.* (6) That every person committed for treason or felony shall, if he require it, the first week of the next

term, or the first day of the next session of *oyer* and *terminer*, be indicted in that term or session, or else admitted to bail; unless the witnesses for the Crown cannot be produced at that time; and if acquitted, or if not indicted and tried in the second term or session, he shall be discharged from imprisonment for such imputed offence; but that no person, after the assizes shall be opened for the county in which he is detained, shall be removed by *habeas corpus* till after the assizes are ended; but shall be left to the justice of the judges of assize. (7) That any prisoner may move for and obtain his *habeas corpus* as well out of the Chancery and Exchequer as out of the Queen's Bench or Common Pleas, and the Lord Chancellor or judges denying the same, on sight of the warrant, or oath that the same is refused, shall forfeit severally to the party grieved the sum of 500*l*. (8) That this writ of *habeas corpus* shall run into the counties palatines, cinque ports, and other privileged places, and the islands of Jersey and Guernsey. (9) That no inhabitant of England (except persons contracting, or convicts praying, to be transported, or having committed some capital offence in the place to which they are sent) shall be sent prisoner to Scotland, Ireland, Jersey, Guernsey, or any place beyond the seas, within or without the king's dominions, on pain that the party committing, his advisers, aiders, and assistants, shall forfeit to the party grieved a sum not less than 500*l*.; shall be disabled to bear any office of trust or profit; shall incur the penalties of *præmunire*; and shall be incapable of the royal pardon.

The writ of *habeas corpus* was rendered more actively remedial by the statute of Charles II., but it is founded on the broad basis of *magna charta*, and is the principal bulwark of English liberty; and if even temporary circumstances, or the doubtful plea of political necessity, should lead men to look upon its denial with apathy, the most distinguished characteristic of our constitution will be effaced.

This statute extends only to the case of commitments for such criminal charges as can produce no inconvenience to public justice by a temporary enlargement of the prisoner; all other cases of unjust imprisonment being left to the *habeas corpus* at common law, now regulated by 56 Geo. III. c. 100, which provides:—(1) That where any person shall be restrained of his liberty (otherwise than from some criminal or supposed criminal matter, and except persons imprisoned for debt, or by process in any civil suit), any of the barons of the Exchequer of the degree of the coif, or any of the justices of either bench, shall upon affidavit showing a probable and reasonable ground for such complaint, award in vacation time a writ of *habeas corpus*, under the seal of the court whereof he is a judge, directed to the person in whose custody the party is confined, which shall be returnable immediately before himself or any other judge of the court. (2) That upon disobedience to the writ the judge before whom it is returnable may issue a warrant to arrest the party guilty of such contempt. (3) That if the writ be awarded so late in vacation that it cannot be conveniently obeyed during vacation, the same may be made returnable in the court to which the judge by whom it is awarded belongs, on a certain day in the next term. (4) That if such writ shall be awarded by the court itself of Queen's Bench, Common Pleas, or Exchequer, so late that it cannot be conveniently obeyed during the term, the same may be made returnable in the then next vacation before any of the judges. (5) That though the return to the writ may be good in law, it shall be lawful for the judge before whom it is returnable to proceed to examine into the truth of the facts, and if it appear doubtful to him whether they be true or not, it shall be lawful for such judge to let to bail the person so confined, upon his entering into a recognizance to appear in the court to which the judge belongs in the term following, which court may proceed to examine into the truth of the facts, in a summary way by affidavit, and to order and determine as to the discharge, bailing, or remanding of the party. (6) That the like proceeding for controverting the truth of the return may be had in the case where the writ shall be awarded by the court itself, or be returnable therein. (7) That the several provisions aforesaid shall extend to all writs of *habeas corpus* awarded in pursuance of the 31 Car. II. c. 2. Lastly, that the *habeas corpus*, according to this 56 Geo. III. c. 100, may run into any county palatine, or cinque port, or other privileged place, or the islands of Jersey, Guernsey, or Man, or any port, harbour, road, creek or bay upon the coast of England or Wales, lying out of the body of any county.

Besides the efficacy of the writ of *habeas corpus*, in liberating the subject from illegal confinement in a public prison, it also extends its influence to remove every unjust restraint of personal freedom in private life, though imposed by a husband or a father; but when women and infants are brought before the court by a *habeas corpus*, the court will only set them free from an unmerited or unreasonable confinement, and will not determine the validity of a marriage, or the right to the guardianship, but will hold them at liberty to choose whither they will go; and if there be any reason to apprehend that they will be

seized in returning from the court, they will be sent home under the protection of an officer. But if a child is too young to have any discretion of its own, then the court will deliver it into the custody of its parent, or the person who appears to be its legal guardian.—See 3 *Bl. Com.* 131; 4 *Step. Com.* 20; and 3 *Burr.* 1434. 25 & 26 Vict. c. 20, enacts that no writ of *habeas corpus* shall issue out of any of the courts in England into any colony or foreign dominion of the Crown where her Majesty has a lawfully established court of justice, having authority to grant and issue the said writ and to ensure the due execution thereof throughout such colony or dominion.

Habeas corpus ad testificandum (*that you have the body to testify*), a writ to bring a witness into court, when he is in custody at the time of a trial. He must be a material witness, and willing to attend. The court will not grant this writ to bring up a prisoner at war; an application must be made to the Secretary of State.—16 & 17 *Vict.* c. 30, s. 9; 1 *Chit Arch. Prac. by Pren.* 354. By 19 & 20 Vict. c. 108, s. 31, a similar power of compelling the attendance of a person in custody, in order that he may be examined, is given to a judge of a county court.

Habeas corpus cum causâ (*that you have the body with the cause*), a writ which a defendant may have to remove himself from one prison to another; also a writ to remove a cause from an inferior court into a superior court, when the defendant is in custody in the court below.—2 *Chit. Arch. Prac. by Pren.* 1306, 1309. As to *habeas corpus* in Chancery, see *Smi. Ch. Pr.* 119.

Habendum of a deed, that part of a conveyance, &c., which determines the quantity of interest conveyed; but should the quantity be expressed in the premises, then the *habendum* may lessen, enlarge, explain, or qualify, but not contradict, or be repugnant to the estate granted in the premises. See DEED.

Habentia, riches.—*Mon. Ang.* t. 1, p. 100.

Habere facias possessionem (*that you cause to have possession*), abbreviated thus, *ha. fa. po.*, a writ that issues for a successful plaintiff in ejectment, to put him in possession of the premises recovered. If the first writ be not executed, an *alias*, &c. may be sued out. The officer, if necessary, may break open outer doors, in order to give possession, or he may take the *posse comitatus* with him if he fear violence.—1 *Chit. Arch. Prac. by Pren.* 1034.

Habere facias seisinam (*that you cause to have possession*), a writ addressed to the sheriff to give seisin of a freehold estate recovered by *ejectione firmæ* or other action.—*O. N. B.* 154.

Habere facias visum (*that you cause to have view*), a writ that lay in divers cases in real actions, as in formedon, &c. where a view was required to be taken of the lands in controversy. See FORMEDON.

Habergeon, a diminutive of hauberk, a short coat of mail without sleeves.

Habit and repute, held and reputed.—*Scotch phrase.*

Habitatio. The nature of this personal servitude is not obvious. Some jurists confound it with the right to use a house; but Justinian declares it to be quite distinct, both from the *jus utendi* and the *jus fruendi.* For whilst the *jus utendi* is one and entire, the *habitatio* is a series of rights arising from day to day, so that in bequeathing it you make a separate bequest, in fact, for each day; hence, also, it was not extinguished by non-user. Justinian added the further distinction, that it might be let.—*Cum. C. L.* 95, and *Saund. Justin.* 224.

Habitations, *offences against.* They are arson; negligently setting fire to houses and buildings by servants; and burglary.

Hachia, a hack, pick, or instrument for digging.

Hackney Coaches. The provisions relating to these vehicles in the metropolis are embodied in the 1 & 2 Wm. IV. c. 22, amended by 6 & 7 Vict. c. 86, which repeals all previous acts on the subject. See also 13 & 14 *Vict.* c. 7, and 16 & 17 *Vict.* cc. 33, 127, and 23 & 24 *Vict.* c. 113.

Hadbote, a recompense for an affront offered to a priest.

Haderunga [fr. *had*, Sax., person, and *arung*, honored], respect of persons; partiality.

Hadgovel, a tax, or mulct.

Hæc fuit candida illius ætatis fides et simplicitas, quæ pauculis lineis omnia fidei firmamenta posuit.—Co. Litt. 6.—(Such was the candid faith and simplicity of that age, which included all the guarantees of faith in a very few lines.)

Hæreda [Goth.], court-leet.

Hærede abducto, an ancient writ that lay for the lord, who having by right the wardship of his tenant under age, could not obtain his person; the same being carried away by another person.—*O. N. B.* 93.

Hærede deliberando alteri qui habet custodiam terræ, an ancient writ, directed to the sheriff to require one that had the body of an heir being in ward, to deliver him to the person whose ward he was by reason of his land. *Reg. Orig.* 161.

Hærede rapto, an ancient writ that lay for the ravishment of the lord's ward.—*Reg. Orig.* 163.

Hæredem Deus facit, non homo.—Co. Litt. 7 *b.*—(God makes the heir, not man.)

Hæredes proximi, heirs begotten; children.

Hæredes remotiores, heirs not begotten as grandchildren, great grandchildren, &c. descending in a direct line *in infinitum.*

Hæredipeta, the next heir to lands.

Hæredipetæ suo propinquo vel extraneo, periculoso sane custodi, nullus committatur.—Co. Litt. 88 *b.*—(To the next heir as guardian, whether a relation or a stranger [certainly a dangerous guardian], let no one be committed.)

Hæreditas, alia corporalis, alia incorporalis; corporalis est, quæ tangi potest et videri; incorporalis quæ tangi non potest nec videri.—Co. Litt. 9.—(An inheritance is either corporeal or incorporeal: corporeal, is that which can be touched and seen: incorporeal, that which can neither be touched nor seen.) As to the division of the *hæreditas* in the Civil Law, see *Sand. Just.* 285. Hæreditas, *sensu objectivo*, comprehends the entire estate left by a deceased person, or *complexus bonorum defuncti; sensu subjectivo*, it is the *jus hæreditarium*, or right attaching thereupon.

Hæreditas est successio in universum jus quod defunctus habuerat.—Co. Litt. 237.—(Inheritance is the succession to every right which the deceased had.)

Hæreditas jacens, an estate in abeyance, in the interim between the ancestor's death and the assumption of the heir.

Hæreditas nunquam ascendit.—Glan. l. 7, c. i.—(Inheritance never ascends.)

This feudal maxim was exploded by 3 & 4 Wm. IV. c. 106, s. 6. See CANONS OF INHERITANCE.

Hæreditas, n'est pas tant solement entendue lou home ad terres ou tenements per discent d'enharitage, mes auxi chescun fee simple ou tail que home ad per son purchase puit estre dit, enheritance, pur ceo que ses heirs luy purront enheriter.—Co. Litt. 26.—(Inheritance does not only comprehend all the lands and tenements which a man has by descent from his ancestors, but, also, every fee-simple or fee-tail which he has by purchase is called inheritance, because his heir can inherit it from him.)

Hæredum appellatione veniunt hæredes hæredum in infinitum.—Co. Litt. 9.—(By the title of heirs come the heirs of heirs, to infinity.)

Hæres est alter ipse, et filius est pars patris.—3 Co. 12.—(An heir is a second self, and a son is part of his father.)

Hæres est aut jure proprietatis, aut jure representationis.—3 *Co.* 40.—An heir is so by right of property, or by right of representation.)

Hæres est eadem persona cum antecessore—pars antecessoris.—Co. Litt. 22.—(The heir is the same person with his ancestor—a part of his ancestor.)

Hæres est nomen collectivum.—1 *Vent.* 215. (Heir is a collective name.)

Hæres est nomen juris, filius est nomen naturæ. Bacon.—(Heir is a name of law, son is a name of nature.)

Hæres factus, an heir appointed; a devisee.

Hæres hæredis mei est meus hæres.—(The heir of my heir is my heir.)

Hæres hæredis succedit in universum jus quod defunctus habuit.—(An heir of an heir succeeds to the whole right which the deceased had.)

Hæres legitimus est quem nuptiæ demonstrant. Co. Litt. 7 *b.*—(He is a lawful heir whom wedlock declares.)

Hæres minor uno et viginti annis non respondebit, nisi in casu dotis.—Moor. 348.—(An heir under twenty-one years of age is not answerable, except in the matter of dower.)

Hæres natus, an heir born; an heir by descent.

Hæres non tenetur in Angliâ ad debita antecessoris reddenda, nisi per antecessorem ad hoc fuerit obligatus præterquam debita regis tantum. Co. Litt. 386.—(In England the heir is not bound to pay his ancestor's debts, unless he be bound to it by the ancestor, except debts due to the king.)

But now, by 3 & 4 Wm. IV., c. 104, he is liable.

Hæretico comburendo, an ancient writ against a heretic, who having been convicted of heresy by the bishop, abjured it, and afterwards fell into the same again, and some other, and was thereupon delivered over to the secular power in order that he might be burnt. *F. N. B.* 69.

Hafne, a haven or port.

Haga, a house in a city or borough.—*Scott.*

Hagia, a hedge.

Haia, a park enclosed.

Hailworkfolk (i. e. holyworkfolk), those who formerly held lands by the service of defending or repairing a church or monument.—*Bailey.*

Hainault, Forest of, as to its disafforesting, see 14 & 15 *Vict.* c. 43.

Haketon, a military coat of defence.

Half-blood, one not born of the same father and mother, who can now inherit by virtue of 3 & 4 Wm. IV. c. 106.

Half-brother, a brother by the father or mother's side.

Half-endeal, a moiety, or half of a thing.

Half-mark, a noble, or 6*s.* 8*d.* in money.

Half-seal, that which is used in the Chancery for sealing of commissions to delegates, upon any appeal to the Court of Delegates, either in ecclesiastical or marine causes. Abolished.

Half-tongue, a jury *de medietate linguæ*, empannelled to try foreigners.

Half-a-year, 182 days, and not six lunar months.—*Cro. Jac.* 166.

Halimass, the feast of All Saints, on the 1st of November; and one of the cross quarters of the year was computed from Halimass to Candlemas.

Halke, a hole.

Hallage, tolls paid for goods or mechandize vended in a hall.

Hallamshire, a part of the county of York, anciently so called, in which the town of Sheffield stands.

Hallmote, or **Hallimote,** a court among the Saxons answering to our court-baron; also the court held by each of the city companies in London.

Halymote, a holy or ecclesiastical court.

Halywercfolk. See HAILWORKFOLK.

Ham, a place of dwelling; a home close; a little narrow meadow.

Hambling, or **Hammelling of dogs,** expeditation.

Hamesecken, or **Homesoken,** burglary; assaulting a man in his own house.—*Scotch law.*

Hamfare, breach of the peace in a house.

Hamlet, Hemel, Hampsel, a vill or little village.

Hamma, a close joining to a house; a croft; a little meadow.

Hamsoca, or **Hamsóken.** See HAMESECKEN.

Hanaper [fr. *hanaperium,* low Lat., a hamper], a treasury, answering to our modern term, *exchequer.*

Hanaper-office, an office belonging to the common law jurisdiction of the Court of Chancery, so called, because all writs relating to the business of a subject, and their returns, were formerly kept in a hamper, *in hanaperio.*—5 & 6 *Vict.* c. 103.

Hand-borrow, a surety; a manual pledge.

Hand-fasting, betrothment.

Hand-grith, peace or protection given by the king with his own hand.

Hand-habend, a thief caught in the very fact, having the thing stolen in his hand.

Hand-sale, a custom among the northern nations of shaking hands to bind a bargain or contract.

Handsel, earnest-money.

Hanging, the mode of capital punishment which has been used in this country from time immemorial. See CAPITAL FELONIES.

The manner in which death occurs in cases of hanging is far from being perfectly understood. There is, however, considerable variety in the physiological phenomena:—(1) Apoplexy, not necessarily accompanied with rupture or extravasation, produced by pressure on the large blood-vessels leading to the head. (2) Another immediate cause of death, and about which there is hardly any dispute, is suffocation, or exclusion of air from the lungs. In many instances, it is thought that apoplexy and suffocation unite in producing the fatal termination. (3) A laceration of the trachea or larynx, or a luxation or fracture of the cervical vertebræ, from a rupture of the ligaments of the neck. The deductions drawn by Dr. Remer from actual examinations, are:—(1) The presence of ecchymosis on the neck is to be deemed a proof of death by hanging. (2) As it occasionally is wanting, its absence cannot be considered a positive proof of the contrary supposition; but (3) when it is thus wanting, death has probably been suddenly caused by apoplexy.

In every suspected case, two questions may present themselves for solution by the medical witness:—

(1) Was the individual suspended before or after death, or, in other words, had he been previously killed in some other way, and then placed in this situation to avoid suspicion?

(2) Whether the individual hanged himself, or was hanged by others.

The presumption in all these cases is favorable to the idea of suicide, since hanging is a difficult mode of perpetrating murder, unless the strength of the parties be greatly disproportionate, or the assailants be numerous and powerful. In a great majority of cases, it is proved to have been suicidal. An opinion is sometimes extremely difficult to be arrived at, as the marks left, either from homicide or suicide, may be precisely similar.—*Beck's Med. Jurisp.* 616.

Hanging in chains. In atrocious cases it was frequently usual for the court to direct a murderer, after execution, to be hanged upon a gibbet in chains near the place where the murder was committed, a practice quite contrary to the Mosaic law.—*Deut.* xxi. 23. Abolished by 4 & 5 Wm. IV. c. 26.

Hangwite, or **Hangwit,** a liberty to be quit of a felon or thief hanged without judgment, or escaped out of custody.—*Rastal.*

Hanig, customary labor.

Hanseatic, pertaining to the Hanse Towns, or to their confederacy. The Hanse Towns in Germany were certain commercial cities which associated for the protection of commerce as early as the twelfth century. To this confederacy acceded certain commercial cities in Holland, England, France, Spain, and Italy, until they amounted to seventy-two; which for centuries commanded the respect and defied the power of kings. From the middle of the fifteenth century, the power of the confederacy, though still very formidable, began to decline. This, however, was not owing to any misconduct on the part of its leaders, but to the progress of that improvement it had done so much to promote. The civilisation, which had been

at first confined to the cities, gradually extended over the contiguous country; and feudal anarchy was everywhere superseded by a system of subordination and the progress of the arts. At present it only consists of Hamburgh, Lubeck, and Bremen; and they, indeed, possess merely the shadow of their former state.

Hansgrave, the chief of a company; the head man of a corporation.

Hantelode, an arrest.

Hap, to catch.

Harbinger, an officer of the royal household.

Harbours. See PORTS. As to the improvement of harbours, docks, and piers, see 10 *Vict.* c. 27; 25 *Vict.* c. 19; 25 & 26 *Vict.* c. 69; 24 & 25 *Vict.* cc. 45, 47, 80; and 26 & 27 *Vict.* cc. 30, 81, 86 & 104.

Hard labor, a punishment said to have been introduced by 5 Anne, c. 6. It may be added in most cases to the sentence of imprisonment.

Hare, a beast of warren. As to the sale of hares in Ireland, see 26 & 27 *Vict.* c. 19.

Harness, all warlike instruments; the tackle or furniture of a ship.

Haro, Harron, an outcry after felons and malefactors.

Hasp and Staple, the form of the entry of an heir into premises situate in a royal borough in Scotland. The bailie, the town clerk, and the claimant, appear on the premises whereupon the claimant alleges his title, and proves it by witnesses, the bailie then declares him to be heir, and directs him to take hold of the hasp and staple of the door as a symbol of possession, and the heir then enters the house and bolts himself in. On his coming out, the transaction is noted and registered.—*Scotch Acts*, 1681, c. 11.

Hat-money, a small duty paid to the captain and mariners of a ship, called *primage*.

Havens [fr. *havn*, Dan.; *haven*, Du., fr. *hæfen*, A. S. from *habban*, to have or hold], that which holds or contains ships, a port or harbour. In order to secure the marine revenue, the Sovereign has the prerogative of appointing ports and havens, for persons and merchandise to pass into and out of the realm. By the feudal law all navigable rivers and havens were computed among the *regalia*, and were subject to the sovereign of the state. The English sovereign is lord of the whole shore, and the guardian of the ports and havens, which are the inlets and gates of the realm. Legal ports were undoubtedly, at first, assigned by the Crown; since to each of them a court of portmote is incident, the jurisdiction of which must flow from the royal authority; the great ports of the sea are referred to as well known and established by 4 Hen. IV. c. 20, which prohibits the landing elsewhere under pain of confiscation; and the 1 Eliz. c. 11, recites that the franchise of landing and discharging had been frequently granted by the Crown.

But though the sovereign had a power of granting the franchise of havens and ports, yet he had not a power of resumption, or of narrowing and confining their limits when once established: but any person had a right to load or discharge his merchandise in any part of the haven; whereby the revenue of the customs was much impaired and diminished, by fraudulent landings in obscure and private corners. This occasioned the 1 Eliz. c. 11; and 13 & 14 Car. II. c. 11, s. 14 (both abolished by 6 Geo. IV. c. 105), which enabled the Crown by commission, to ascertain the limits of all ports, and to assign proper wharfs and quays in each port for the exclusive landing and loading of merchandise. And by 46 Geo. III. c. 153, no pier, quay, wharf, jetty, breast, or embankment, shall be erected in or near to any public harbour without giving one month's notice to the admiralty, with a saving, however, of the privileges of the city of London.—2 *Step. Com.* 521. See 16 & 17 *Vict.* c. 107.

Haugh, or **Howgh,** a green plot in a valley.

Haur, hatred.—*Leg. W.* 1, c. 16.

Hauthoner, a man armed with a coat of mail.

Haw, a small parcel of land so called in Kent; houses.—*Co. Litt.* 5.

Haward. See HAYWARD.

Hawberk, or **Hawbert,** he who held land in France, by finding a coat or shirt of mail, with which he was to be ready when called upon. See FIEF D'HAUBERT.

Hawgh, a valley.—*Co. Litt.* 5 *b.*

Hay, a hedge or enclosure; a net to take game.

Hay-bote, a liberty to take thorns and other wood to make and repair hedges, gates, fences, &c. either by tenant for life or years; also wood for the making of rakes and forks. See BOTE.

Hayward, one who keeps a common herd of cattle of a town, and the reason of his being so called may be, because one part of his office is to see that they neither break nor cross the hedges of enclosed lands; or because he keeps the grass from hurt and destruction. He is an officer appointed in the lord's court, to look to the fields and impound cattle trespassing thereon; to see that no pound breaches be made, and if any be, to present them to the leet, &c.—*Kitch.* 46.

Hazard, an unlawful game.—4 *Step. Com.* 353.

Head-borough, the head of a borough; a high constable. King Alfred instituted tithings, so called from the Saxon, because ten freeholders and their families composed one. These all dwelt together, and were sureties or free pledges to the king for the good behaviour of each

other. One of the tithing is annually appointed to preside over the rest, and is called the tithing-man or head-borough.

Under the feodal law, he was an officer who had a principal government within his own pledge. He was also styled *borowhead*, *borsholder*, *third-borough*, *tithingman*, &c. according to the usage and diversity of speech in several places. The head-boroughs were the chiefs of the ten pledges, the other nine being denominated *hand-borows*, or inferior pledges.—*Encyc. Lond.* See CONSTABLE.

Head-courts, certain tribunals in Scotland, abolished by 20 Geo. II. c. 50.

Head-land, the upper part of land left for the turning of the plough, whence the *head-way*. *Paroch. Antiq.* 587.

Head-pence, an exaction of a certain sum collected by the Sheriff of Northumberland from the inhabitants of that county, without any account thereof to be made to the Crown. Abolished by 23 Hen. VII. c. 7.

Head-silver, dues paid to lords of leets; also a fine of 40*l.* which the Sheriff of Northumberland heretofore exacted of the inhabitants twice in seven years.

Heafod-weard, one of the services to be rendered by a thane and a geneat or villainus, but in what it consisted seems uncertain.—*Anc. Inst. Eng.*

Healfang, or **Halsfang** [fr. *hals*, Sax., neck, and *fang*, to seize], the pillory;* also a pecuniary mulct, to commute for standing in the pillory.

Healgemote, a court-baron; an ecclesiastical court.

Health, the faculty of performing all actions proper to a human body in the most perfect manner.

Injuries affecting a person's health are, where by any unwholesome practices of another, a man sustains any damage in his vigor or constitution, as by selling him bad provisions or wine, by the exercise of a noisome trade, which infects the air in his neighbourhood, or by the neglect or unskilful management of a surgeon, apothecary, or general practitioner who attends him. The remedy is by an action on the case for damages, and in cases of gross misconduct the wrong doer may be indicted.

The two principal offences against the public health are, those against the Quarantine and Vaccination Acts, and selling unwholesome provisions.—4 *Bl. Com.* c. xiii. See OFFENCE AND PUBLIC HEALTH ACT.

Hearing, the trial of a suit before a court of equity; an investigation of a controversy.

Hearsay evidence. It is a general principle in the law of evidence, that if any fact is to be substantiated against a person, it ought to be proved in his presence by the testimony of a witness sworn to speak the truth; and the reason of the rule is, because evidence ought to be given under the sanction of an oath, and the person who is to be affected by the evidence ought to have an opportunity of interrogating the witness as to his means of knowledge, and concerning all the particulars of his statement. Hearsay evidence (whether spoken or written) of a fact, therefore, is not admissible.

The following cases, however, are clearly distinguishable from hearsay evidence:—

(1) The testimony of a deceased witness, who has been examined upon oath, on the trial of a former action between the same parties, and where the point at issue was the same, is admissible on the trial of the second action, and may be proved by one who heard him give evidence; for such evidence on the former trial was not given in an extra-judicial manner, but upon oath; the parties to the suit were the same, and an opportunity was given for cross-examination. The person called to prove what a deceased witness said must undertake to repeat precisely his very words, and not merely to swear to their effect.

(2) Hearsay is often admitted in evidence, as part of the *res gesta* or transaction, which becomes the subject of inquiry; the meaning of which seems to be, that where it is necessary in the course of a cause to inquire into the nature of a particular act, or the intention of the party who did the act, proof of what the person said at the time of doing it is admissible in evidence, for the purpose of showing its true character.

The exceptions to the general rule as to the inadmissibility of hearsay evidence are the following: (1) dying declarations; (2) hearsay in questions of pedigree; (3) hearsay on questions of public right, customs, boundaries, &c.; (4) admissibility of old leases, rent-rolls, surveys, &c.; (5) admissibility of declarations against interest; (6) admissibility of rectors and vicars' books; (7) admissibility of books of tradesmen.—1 *Stark. Evid.* 24; 1 *Phil. Evid.* 229; and *Taylor Evid.*

Hearth-money, a tax levied by 14 Car. II. c. 2. It was productive of great discontent, and therefore abolished by 1 W. & M. st. 1, c. 10.

Hebbermen, fishermen or poachers below London Bridge, who fish for whitings, flounders, smelts, &c. commonly at ebbing water. Punishable by 4 Hen. VII. c. 15.

Hebberthef, the privilege of claiming the goods and trial of a thief within a certain liberty.

Hebbing-wears, a device for catching fish in ebbing water.

Hebdomad, a week; a space of seven days.

Hebdomadius, a week's man, canon, or prebendary in a cathedral church, who has the care of the choir and the officers belonging to

it, for his own week.—*Reg. Episc. Hereford MSS.*

Heccagium, rent paid to a lord of the fee for a liberty to use the engines called hecks.

Heck, an engine to take fish in the river Ouse.—23 *Hen. VIII.* c. 18.

Heda, a small haven, wharf, or landing-place. *Old Records.*

Hedagium, toll or customary dues at the hithe or wharf, for landing goods, &c. from which exemption was granted by the Crown to some particular persons and societies.

Hedge-bote, materials to make hedges, which a lessee for years, &c. may of common right take from the land leased. See BOTE.

Hegira, the epoch or account of time used by the Arabians and the Turks, who begin their computation from the day that Mahomet was compelled to escape from Mecca, which happened on Friday, July 16, A.D. 622, under the reign of the Emperor Heraclius. As the years of the Hegira consist of only 354 days, it is found by subtracting 622 from our year, and then multiplying by 365·52, and dividing by 354.

Hegumenos, the leader of the monks in the Greek Church.

Heir [fr. *heire*, old Fr.; *hæres*, Lat.], a person who succeeds by descent to an estate of inheritance. It is *nomen collectivum*, and extends to all heirs; and under heirs, the heirs of heirs are comprehended *in infinitum*.

The different kinds of heirs may be thus classed, and defined:—

(α) Heir *apparent*. He whose right of inheritance is indefeasible, provided he outlive the ancestor: as the eldest son, who must by the course of the common law be heir to his father on his death.—3 *Prest. Abst.* 5.

(β) Heir by *custom*. He who is heir by a particular and local custom, as in borough-English lands, the youngest son succeeds his father, while in gavelkind lands, all the sons inherit as parceners, and make but one heir.—*Co. Litt.* 140.

(γ) Heir by *devise*, or *hæres factus*. He who is made, by will, the testator's heir or devisee, and has no other right or interest than the will gives him.

(δ) Heir *general*, or heir *at law*. He who, after his father or ancestor's death, has a right to inherit all his lands, tenements, and hereditaments.

(ε) Heir *presumptive*. He who, if the ancestor should die immediately, would be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born; as a brother or nephew, whose presumptive succession may be destroyed by the birth of a child; or a daughter, whose present hopes may be hereafter cut off by the birth of a son.

(ζ) *Hæres sanguinis et hæreditatis*.—(Heir of the blood and inheritance.) A son who may be defeated of his inheritance by his father's displeasure.

(η) Heir *special*. An heir who is not heir at Common Law, e. g. heir by the custom of gavelkind, borough-English, or heir-in-tail.—See *Co. Litt.* 376 *b*, 386 *b*.

(θ) *Ultimus hæres*. He to whom lands come by escheat or forfeiture, for want of proper heirs, or on account of treason or felony. He is either the lord of the manor or the Crown.

In the Scotch law, heir has a more extended significance, comprehending not only those who succeed to lands, but also successors to personal property also. It distributes heirs into the following classes:—

(α) Heir *active*. He who is served heir, and has the right of action.

(β) Heir *by conquest*. He who succeeds to the deceased in lands and other heritable rights, to which the deceased did not himself succeed as heir to his predecessors; as where a father leaves an estate purchased to his second son.

(γ) Heir *of line*. He who succeeds lineally by right of blood.

(δ) Heir *male*. The nearest heir male who can succeed.

(ε) Heir *passive*. He whom the law makes liable to be heir.

(ζ) Heirs *portioners*. When women succeed, they have all equal portions.

(η) Heirs of *provision*, or heirs by *destination*. Those who succeed by virtue of a particular provision in a deed or instrument.

(θ) Heir of *tailzie*. He on whom an estate is entailed.

(ι) Heir *whatsomever*. An heir-at-law.

Heirdom, succession by inheritance.

Heiress, a female heir. Where there are several, they are called *co-heiresses*.

Heirloom [fr. *hæres*, Lat., heir, and *geloma*, Sax., goods], personal chattels, such as carriages, utensils, and other household implements, which go by the special custom of a particular place to the heir, together with the inheritance. Heirlooms, though mere chattels, cannot be devised away from the heir by will; but such devise is void, even by a tenant in fee-simple. For though the owner might during his life have sold or disposed of them, as he might of the timber on the estate, since as the inheritance was his own, he might mangle or dismember it as he pleased; yet they being at his death instantly vested in the heir by the custom, the devise (which is subsequent, and not to take effect till after his death) shall be postponed to the custom whereby they have already descended.

The term '*heirlooms*' is often applied in practice to the case where certain chattels—for

example, pictures, plate, or furniture—are directed by will or settlement to follow the limitations thereby made of some family mansion or estate. But the word is not then employed in its strict and proper sense, nor is the disposition itself beyond a certain point effectual; for the articles will in such case belong absolutely to the first person who, under the limitations, would take a vested estate of inheritance in them, supposing they had been real estate; and if he die intestate, will pass to his personal representative, and not to his heir.—*Co. Litt.* 18 *b.* 185 *b.*; 2 *Step. Com.* 238.

Heirship Moveables, those things which the law withholds from the executors and next of kin, and gives to the heir, that he may not succeed to a house and lands completely dismantled. They consist of the best of everything; furniture, horses, cows, oxen, farming utensils, &c., but do not include fungibles.—*Scotch Law.*

Hell, a place under the Exchequer chamber, where the king's debtors were confined.—*Richard. Dict.*

Helm, thatch or straw; a covering for the head in war; a coat of arms bearing a crest; the tiller or handle of the rudder of a ship.

Helowe-wall [fr. *hælan*, Sax., to cover], the end-wall covering and defending the rest of the building.

Helsing, a Saxon brass coin, of the value of a halfpenny.

Hemoldborh, or **Heimelborch** [fr. *heimilld*, O. N.; *hjemmel*, Dan., just claim to a thing; and *bohr*], a title to possession.

The admission of this old Norse term into the laws of the Conqueror it is difficult to account for; it is not found in any Anglo-Saxon law extant.—*Anc. Inst. Eng.*

Henchman, a page; an attendant; a herald.

Henedpenny, a customary payment of money instead of hens at Christmas; a composition for eggs.

Henfare, a fine for flight on account of murder.—*Domesday Book.*

Hengen, a prison for persons condemned to hard labor.—*Anc. Inst. Eng.*

Hengham (de) Radulph, author of a law-treatise composed in the reign of Edward I. It consists of two parts; one called *Summa Magna*, and the other *Summa Parva*. It seems to be a collection of notes relating to proceedings in actions.

This man had been Chief Justice, and was, for misconduct, degraded from his office, with many others of his fellow-justices. It is related that his offence was altering a record of a fine on a poor man from 13*s.* 4*d.* to 6*s.* 8*d.* This unseasonable act of humanity was punished with the penalty of 7,000 marks—a punishment which struck a terror into all future judges, made every iota of a record be thenceforward most religiously preserved, and, perhaps, contributed not a little to encourage the scruples which prevailed afterwards with regard to the minutest errors in judicial proceedings.—2 *Reeves*, 277, 281.

Lord Coke calls him Radulphus de Ingham, and says that 'he for his fine made the clock, to be heard into Westminster Hall, and the clock-house in Westminster, which cost him 800 marks.'—4 *Inst.* 255. See also 3 *Bl. Com.* 410 n.

Henghen, a prison; a house of correction.

Hengwite. See HANGWIT.

Heordfæte, or **Hudefæst**, a master of a family keeping house, distinguished from a lower class of freemen—viz. *folgeras* (*folgarii*), who had no habitations of their own, but were house-retainers of their lords.—*Anc. Inst. Eng.*

Heordpenny, Peter-pence.

Heordwerch, the service of herdsmen, done at the will of their lord.

Heptarchy [fr. ἑπτά, Gk., and ἀρχή], a government exercised by seven persons, or a nation divided into seven governments.

In the year 560, seven different monarchies had been formed in England by the German tribes, namely, that of Kent by the Jutes; those of Sussex, Wessex, and Essex by the Saxons; and those of East Anglia, Bernicia, and Deira, by the Angles. To these were added, about the year 586, an eighth, called the kingdom of Mercia, also founded by the Angles, and comprehending nearly the whole of the heart of the kingdom. These states formed together what has been designated the Anglo-Saxon Octarchy, or more commonly, though not so correctly, the Anglo-Saxon Heptarchy, from the custom of speaking of Deira and Bernicia under the single appellation of the kingdom of Northumberland.

Herald [fr. *here*, Sax., an army, and *heald*, a champion; *hérault*, *héraut*, Fr.; *herald*, Ger.; *araldo*, Ital.; because it was part of his office to charge or challenge unto battle or combat], an officer whose business it is to register genealogies, adjust ensigns armorial, regulate funerals, and anciently to carry messages between princes, and proclaim war and peace.

Heralds were anciently called *dukes at arms*, probably from the Latin *ducere ad arma*; because the conducting of affairs concerning peace and war devolved upon them, their office being to carry messages to the enemy, and to proclaim war or peace. Hence the persons of heralds were deemed sacred by the law of nations, and were received and protected by belligerent powers, as flags of truce are in the present day.

The three chief heralds are called *Kings of Arms*; of whom (1) *Garter* is the principal, instituted by Henry V. His office is to attend the knights of the Garter at their solemnities, and to marshal the funerals of the nobility. (2)

Clarenceux, King of Arms, ordained by Edward IV. so called from the Duke of Clarence. He is to marshal and dispose the funerals of the inferior nobility on the south side of the Trent. (3) *Norroy* (*North Roy*), *King of Arms*, holds a similar department on the north side of the river Trent. These two last are denominated *provincial* heralds, because they divide the kingdom between them into provinces.

Besides the kings of arms, there are six subordinate heralds, according to their original, as they were created to attend dukes and great lords in martial expeditions, i. e. *York*, *Lancaster*, *Chester*, *Windsor*, *Richmond*, and *Somerset*; the four former were instituted by Edward III. and the two latter by Edward IV. and Henry VIII. To these, upon the accession of George I. to the crown on account of his Hanoverian dominions, a new herald was added, called *Hanover* herald; and another styled *Gloucester* King of Arms.

To the superior and inferior heralds are added four others, called *marshals* or *pursuivants of arms*, who commonly succeed in the places of such heralds as die or are promoted; they are denominated *blue-mantle*, *rouge-croix*, *rouge-dragon*, and *portcullis*.

Lord Lyon's Office in Scotland, and *Ulster King of Arms* in Ireland, are distinct and independent.—*Encyc. Lond.*

Heraldry, an old and obsolete abuse of buying and selling precedence in the paper of causes for hearing. See *North's Life of Lord Keeper Guildford*, vol. i., p. 435.

Heralds' College, an ancient royal corporation, first instituted by Richard III. in 1483, situated on St. Bennet's Hill, near St. Paul's, in the city of London. The above-named heralds, together with the earl marshal and a secretary, are the members of this corporation; in all thirteen persons.

The heralds' books, compiled when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, and to register such marriages and descents as were verified to them upon oath, are allowed to be good evidence of pedigrees.—3 *Stark. Evid.* 843.

Herbagium anterius, the first crop of grass or hay, in opposition to after-math and second cutting.—*Paroch. Antiq.* 459.

Herbenger, or **Harbinger**, an officer in the royal house, who goes before, and allots the noblemen and those of the household their lodgings; also, an innkeeper.

Herbergagium, lodgings to receive guests in the way of hospitality.—*Cowel.*

Herbergare, to harbour; to entertain.

Herbergatus, spent in an inn.

Herbery, or **Herbury**, an inn.—*Cowel.*

Herce, Hercia, a harrow.—*Fleta*, l. 2, c. lxxvii.

Herciare, to harrow.

Herdewich, or **Herdewic**, a grange or place for cattle or husbandry.

Herdwerch, Heordwerch, herdsmen's work, or customary labor, done by shepherds and inferior tenants, at the will of the lord.

Herebannum, a mulct for not going armed into the field when summoned.—*Spelm.*

Herebote, the royal edict, summoning the people to the field.

Hereditaments, every kind of property that can be inherited; i. e. not only property which a person has by descent from his ancestors, but also that which he has by purchase, because his heir can inherit it from him. The two kinds of hereditaments are *corporeal*, which are tangible (in fact, they mean the same thing as land), and *incorporeal*, which are not tangible and are the rights and profits annexed to, or issuing out of land.

The enumeration of incorporeal hereditaments in Hale's *Analysis* (p. 48) is the following:—Rents, services, tithes, commons, and other profits *in alieno solo*, pensions, offices, franchises, liberties, villeins, dignities. But Blackstone enumerates ten principal kinds: advowsons, tithes, commons, ways, offices, dignities, franchises, corodies or pensions, annuities, and rents.—*Com.* i. 21.

Although the word 'hereditament' applies both to realty and personalty, yet it is in a different mode of relation. When applied to *realty* it generally denotes the *subject* of property, apart from its nature and extent; but when applied to *personalty*, it does not then denote the *subject*, but signifies some inheritable *right*, of which the subject is susceptible.

There is a third application of this word—it is used to denote inheritable *rights* relating to land, or something issuing therefrom or exercisable therein, or having some local connection or relation *distinct* from the enjoyment of the land itself. In this view of the description, hereditaments divide themselves into real, personal, and mixed, and therefore, as was said before, they are applicable to all the kinds of property.—*Fearne's Reading on the Stat. of Inrolments.*

Hereditary right to the Crown. The Crown of England, by the positive constitution of the kingdom, has ever been descendible, and so continues, in a course peculiar to itself, yet subject to limitation by Parliament; but, notwithstanding such limitation, the Crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited.—1 *Bl. Com.* chap. iii.

Herefare, a military expedition; a going to war.

Heregeld, a tribute or tax levied for the maintenance of an army.

Heremitorium, a solitary place of retirement for hermits.

Heremones, or **Hereteams,** followers of an army.

Herenach, an archdeacon.

Hereslita, Heressa, Heressiz, a hired soldier who departs without license.

Heresy [fr. *αἵρεσις*, Gk.], an opinion of private men different from that of the orthodox church.

1 Eliz. c. 1, repealed all former statutes relating to heresy, leaving the jurisdiction of heresy as it stood at common law; that is, it left the simple offence to be visited by spiritual punishment in the ecclesiastical courts. Heresy now consists only of such tenets as have been heretofore so declared:—(1) By the words of the canonical Scriptures; (2) by the first four General Councils, or such others as have only used the words of the Holy Scriptures; or (3) which shall hereafter be so declared by Parliament, with the assent of the clergy in convocation.

By 9 & 10 Wm. III. c. 32, if any person, having been educated in, or made profession of Christianity, shall, by writing, printing, teaching, or advised speaking, maintain that there are more Gods than one, or deny the Christian religion to be true, or the Holy Scriptures to be of divine authority, and be thereof convicted by two witnesses, he shall, unless he recant, incur such civil disabilities as therein mentioned, and, on a second conviction, shall also suffer imprisonment for the term of three years.

Heretic, one that adheres to and is convicted of heresy.

Heretoch [fr. *here*, an army, and *teohan*, to draw or lead], a general, leader, or commander; also a baron of the realm.

Heretum, a court or yard.

Herge [fr. *exercitus*, Lat.], offenders who joined in a body of more than thirty-five to commit depredations. *Ang.-Sax.*

Herigalds, a sort of garment.—*Cowel.*

Heriot [supposed by some to be derived fr. *here*, Sax., an army, and *geat*, provision.—*Willis*, 194. Coke derives it fr. *here*, lord, and *geat*, beste, i. e. the lord's beste.—*Co. Litt.* 185 *b.*], originally a tribute to the lord of a manor of the horse or habiliments of the deceased tenants, in order that the *militiæ apparatus* might continue to be used for the purpose of national defence by each succeeding tenant. On the decline of the military tenures, the heriot was commuted for a money payment, or for the tenant's best beast (*averium*) or dead chattel, which is most commonly compounded for.

We are told by Bracton, Fleta, and Britton (who, by the way, scarcely differ in their description), that the heriot was originally a voluntary or gratuitous bequest of the tenant. But I apprehend that this must be understood merely of the heriot of the husbandman, and not of the military heriot, since we find the latter fixed as a right, and a legal duty, at least so early as the time of Canute the Great, confirmed in that of the Conqueror, and acknowledged in the charters of Henry I., John, and Henry III. In some Saxon wills, indeed, we find express bequests of a heriot to the lord; but such instances seem only from abundant caution, that the testators might not appear unmindful of their lord, and so prevent their chattels from passing into other hands, and especially into those of the church; since it is evident, from the very bequests referred to, that, though the heriot was expressly directed to be paid, it was considered as the lord's 'right.'—2 *Wat. Cop.* p. 36; 1 *Scri. Cop.* 369.

Heriots are divided into (1) heriot service, (2) heriot custom, and (3) suit-heriot, reserved on a grant of freehold lands.

Heriot service is an express reservation by the lord in the original grant, claimable by prescription. It arises from ancient tenure, is in the nature of a rent, and lies in *render* as well as in *prender*; it is recoverable by distress. The heriot service being due by reservation, goes with the reversion to the heir or grantee, and follows the seigniory if the grant be in fee. It is said to be due upon the death of the tenant in fee-simple only, but Mr. Serjeant Scriven (1 *Cop.* 372, and the cases there quoted) thinks that this heriot may be reserved on a lease for life, and on the death of every particular tenant, whether for life or years, or even at will.

Heriot custom is due by virtue of an immemorial usage of a manor, generally upon the death of the tenant, but sometimes on alienation also, or on alienation only. A heriot on alienation is in the nature of a fine. It lies in *prender* only, therefore the lord cannot distrain for it, except, perhaps, by special custom. A heriot is only due upon the death of a *legal* tenant, and not upon the death of one entitled only to an *equitable* interest in the copyhold. No heriot is due upon the death of a wife, because she cannot have any chattels. A heriot is not due on the death of a person having only an *interesse termini*. It will be due on the death of the surrenderor of copyholds, if he die before the surrenderee's admission, the latter not becoming the lord's tenant until admittance. A heriot is due only on the death of the survivor of joint tenants, for it is payable on the death of a person who dies solely seised, and such is the rule respecting coparceners. Tenants in common being solely seised, a heriot is due to the lord on the death of each of them. When a female copyholder marries,

the husband and wife are seised in her right, and the seisin continues in the wife, if she survive; and as there is no change of tenancy on the husband's death, no heriot will accrue to the lord. Heriots are due on the death of tenants by the curtesy and in freebench, and when a widow has her freebench of a portion of the land, a heriot will be due on the death of both the heir and widow. The heriot is due in respect of the land, so that when a person dies seised of several heriot-able tenements, a heriot must be paid for each, unless a special custom exist to the contrary. The death of a bankrupt copyholder, after assignees are chosen, will not entitle the lord to a heriot.

The lord should seize immediately after the heriot accrues, as his right would be concluded by a *bonâ fide* and legal sale by the executors in market overt, whereby the property in goods so sold is effectually transferred. The lord's claim cannot be defeated by a will or gift (13 Eliz. c. 5). If a seizure cannot be effected, an action of trover or detinue is the remedy.

If the tenant have no beast for a heriot, the lord is defeated; but a bill in equity lies to discover the best beast of a tenant.

If the lord seize when no heriot is due, the remedy against him is replevin, trover, or trespass.

Herischild, military service, or knight's fee.

Heriscindium, a division of household goods.

Herislit, laying down of arms.

Heristall, a castle.

Heritable bond, a bond for money, joined with a conveyance of land or heritage, to be held by a creditor as security for his debt.—*Scotch term.*

Heritable jurisdiction, grants of criminal jurisdiction, anciently bestowed on great families in Scotland, with a view to the more easy administration of justice. Abolished by 20 Geo. II. c. 43.

Heritable rights, all rights to land, or whatever is connected with land, as mills, fishings, tithes, &c.—*Scotch phrase.*

Heritable securities in Scotland. See 23 & 24 *Vict.* cc. 15 and 80.

Heritor, a landholder in a parish.—*Scotch term.*

Hermaphrodite. See DOUBTFUL SEX.

Hermaphroditus tam masculo quam fœminæ comparatur secundum prævalentiam sexus incalescentis.—Co. Litt. 8.—(An hermaphrodite is to be considered male or female, according to the predominancy of the prevailing sex.)

Hermeneutics, the art of interpretation and construction.

Hermer, a great lord.

Hermitage, a solitary place.

Hermitorium, the chapel or place of prayer belonging to a hermitage.

Hermogenian Code. See CODEX HERMOGENIANUS.

Hernescus, a heron.—*Cowel.*

Hernesium, household goods; implements of trade or husbandry.

Herondes, heralds.

Herring Silver, a composition in money for the custom of supplying herrings for the provision of a religious house.

Hership, the illegally driving off cattle from the grounds of a proprietor.—*Scotch term.*

Hesia, an easement.

Hesta, Hestha, a little loaf of bread.

Hestcorn, vowed or devoted corn.

Hetærarcha [fr. ἑταίρος, Gk., friend, and ἀρχή, government], the head of a religious house; the head of a college; the warden of a corporation.

Heuvelborgh, a surety for debt.

Hexham, a very ancient town in the county of Northumberland, celebrated as the *Axelodunum* of the Romans. It was made a county palatine in the reign of Henry VIII. but it is now united to Northumberland.—14 *Eliz.* c. 13.

Heybote. See HAYBOTE.

Heyloed, a customary burden laid upon inferior tenants for mending or repairing the heys or hedges.—*Cowel.*

Heymectus, a hay-net.

Hibernagium, season for sowing winter corn.

Hibrid, or **Hibris,** a mongrel or mule; also one born of parents of different countries.

Hidage, an extraordinary tax formerly payable to the Crown for every hide of land. This taxation was levied, not in money, but provision of armour, &c.

Hide and Gain, arable land.—*Co. Litt.* 856.

Hide of land, such a space as might be ploughed with one plough, or as much as would maintain the family of a hide or mansion-house. According to some, it was sixty acres; others make it eighty; and others, again, a hundred. The quantity probably was always determined by local usage. See *Co. Litt.* 69 *a.*

Hidel, a place of protection or sanctuary.

Hidgild, Hidegild [fr. *hide,* A. S., skin, and *gild,* A. S., a contribution], a sum of money paid by a villein or servant to save himself from a whipping.

Hierarchy [fr. ἱερός, Gk., sacred, and ἀρχή, government], direction in religious concerns and things sacred.

Of whatever denomination may be the persons who take the lead in conducting religious rites, whether they be styled presbyters, elders, ministers, priests, or bishops, they virtually, and according to the true and real meaning of

the term, constitute a hierarchy. It is only by limitation of its true sense, and by partial application of it under such restriction, that hierarchy is taken to mean 'episcopal direction,' to the exclusion of other 'direction in things sacred.' If we would speak correctly, and if we would follow the true import of the word, hierarchy subsists as much among the chief ministers in the Church of Geneva and Scotland as in the Church of Rome or of England. For wherever there is regular form and order of sacred things, there is hierarchy; the very essence of which is conducting that regular form and order.—*Encyc. Lond.*

Hierloom. See HEIRLOOM.

High Commission Court, established by 1 Eliz. c. 1. It was instituted to vindicate the dignity and peace of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. The powers of this tribunal were directed to tyrannical and unconstitutional purposes; it was therefore abolished by 16 Car. I. c. 11.—5 *Reeves*, 215.

High Constable. See CONSTABLE.

High Constable of England, Lord. His office has been disused, except only upon great and solemn occasions, as the coronation or the like, since the attainder of Stafford, Duke of Buckingham, in the reign of Henry VIII. See CHIVALRY, COURT OF.

High misdemeanors, misprisions.

High Steward, *Court of the Lord*, a tribunal instituted for the trial of peers indicted for treason or felony, or for misprision of either, but not for any other offence. The office of this great magistrate is very ancient, and was formerly hereditary, or at least held for life, or *dum benè se gesserit*; but now it is usually, and has been for many centuries past, granted *pro hâc vice* only, and it has been the constant practice (and therefore seems now to have become necessary) to grant it to a lord of Parliament. When, therefore, such an indictment is found by a grand jury of freeholders in the Queen's Bench, or at the assizes before a judge of *oyer* and *terminer*, it is to be removed by a writ of *certiorari* into the Court of the Lord High Steward, which only has power to determine it. A peer may plead a pardon before the Queen's Bench, in order to prevent the trouble of appointing a high steward, merely for the purpose of receiving such plea, but he cannot plead any other plea, because it is possible that, in consequence of such a plea, judgment of death might be pronounced upon him.

The Sovereign, in case a peer be indicted for treason, felony, or misprision, appoints a Lord High Steward *pro hâc vice*, by commission under the Great Seal, which, reciting the indictment so found, gives him power to receive and try it *secundum legem et consuetudinem Angliæ*. When the indictment is regularly removed by *certiorari*, the Lord High Steward addresses a precept to a serjeant-at-arms, to summon the lords to attend and try the indicted peer. All the peers who have a right to sit and vote in Parliament are summoned, at least twenty days before such trial, to appear and vote thereon, and every lord appearing and taking the proper oaths may vote upon the trial. The decision is by the majority, but a majority cannot convict, unless it consist of twelve or more.

During a session of Parliament, the trial is not properly in the court of the Lord High Steward, but before the High Court of Parliament. A Lord High Steward is, however, always appointed to regulate the proceedings; but he is rather in the nature of a speaker or chairman than a judge, for the collective body of the peers are the judges, both of law and fact, and the High Steward has a vote with the rest, in right of his peerage. But in the Court of the Lord High Steward, which is held in the recess of Parliament, he is the sole judge of matters of law, as the lords triers are in matters of fact, and he may vote upon the trial and regulate all the proceedings.

The lords spiritual have a right to stay and sit in court in capital cases, till the court proceeds to the vote of guilty or not guilty. But this extends only to trials in full Parliament, for to the Court of the Lord High Steward (in which no vote can be given but that of guilty or not guilty) no bishop, as such, ever was or could be summoned. They have no right to be tried themselves in this court, and therefore ought not to be judges thereof.

The method and regulation of proceeding differs little from trial by jury, except that no special verdict can be given, because the judges are sufficiently competent to deal with the law as it arises out of the facts.—4 *Bl. Com.* 261.

High Steward of the Royal Household, *Lord, Court of*, a tribunal long since fallen into disuse.—9 *Geo. IV.* c. 31; 4 *Step. Com.* 405; 4 *Inst.* 133.

High Steward of the Universities, *Court of the Lord.* By the charter of 7 June, 2 Hen. IV. confirmed by 13 Eliz. c. 29, conusance is granted to the University of Oxford, of all indictments of treasons, insurrections, felonies, and mayhem, which shall be found in any of the Queen's courts against a scholar or privileged person; and they are to be tried before the Lord High Steward or his deputy, who is nominated by the Chancellor of the University, and approved of by the Lord High Chancellor of England. A special commission is given to him and others, to try the indictment then depending, according to the law of the land

and the privileges of the University. The indictment must first be found by a grand jury, and then the cognizance claimed of it in the first instance, or at the first day.

When the cognizance is allowed, if the offence be a misdemeanor it is tried in the Chancellor's court by the ordinary judge. If it be for treason, felony or mayhem, it is then determined before the Lord High Steward, who issues one precept to the sheriff of the county, who returns a panel of eighteen freeholders, and another to the university bedels, who return a panel of eighteen matriculated laymen. The indictment is then tried by a jury *de medietate*, half of freeholders and half of matriculated laymen in the guildhall there. The sheriff must execute the university process, to which he is bound by an oath.—4 *Bl. Com.* 277, and 4 *Step. Com.* 382.

The University of Cambridge has also a similar jurisdiction.

By 19 & 20 Vict. c. 17, s. 18, the jurisdiction of the University of Cambridge in criminal as well as other proceedings, wherein any person not a member of the university shall be a party, is taken away.—See CHANCELLOR OF THE TWO UNIVERSITIES.

High Treason. Since *petit* treason was abolished by 9 Geo. IV. c. 31, s. 2, the correlative term *high* is not now usually retained, when speaking of this the highest civil crime. It is merely denominated treason. See TREASON.

Highland Roads and Bridges Act 1862, 25 & 26 *Vict.* c. 105.

Highness, a title of honor given to princes. The kings of England before the time of James I. were not saluted with the title of *Majesty*, but with that of *Highness* only. The children of crowned heads are generally styled *royal highness.*

High-water-mark, that part of the seashore to which the waters ordinarily reach when the tide is highest.

Highwaymen, robbers on the highways.

Highway rate, a tax chargeable upon the same property that is liable to the poor-rate. The rate is to be made and signed by the surveyor, who keeps accounts which may be inspected at all reasonable times by the rated inhabitants, without fee or reward. The yearly account is laid before the vestry, and examined and passed before justices of the peace, at the special sessions of the highways.—3 *Step. Com.* 246. Stat. 4 & 5 *Vict.* c. 59, continued by 23 & 24 *Vict.* c. 67, authorises for a certain time the application of a portion of the highway rates to turnpike roads in certain cases. See also 25 & 26 *Vict.* c. 61.

Highways, public roads, which every subject of the kingdom has a right to use. They exist either by prescription, by authority of local acts of Parliament, or by dedication to the use of the public.

The liability to keep highways in repair (in whatever manner they may happen to have first originated) is of common right, incumbent generally upon the parishes in which they respectively lie; but in some cases it attaches (by prescription) to particular townships, or other divisions of parishes, and occasionally to private persons bound *ratione tenuræ*, or in right of their estates, to repair some particular highway.

Highways in general are regulated by 5 & 6 Wm. IV. c. 50 (amended by 4 & 5 Vict. cc. 51 & 59, and 8 & 9 Vict. c. 71), which has repealed all former enactments on the subject, and is applicable to all highways whatever, except turnpike roads, and roads, pavements or bridges, falling under the provisions of local or personal acts of Parliament, a description which applies generally to the streets of towns.

The general plan of the act is to place highways under the care of surveyors to be appointed for the respective parishes, subject to a superintending power to be exercised by the justices of the peace, at special sessions to be holden for the highways. See 12 *Vict.* c. 14; 12 & 13 *Vict.* c. 35; 13 & 14 *Vict.* c. 99; 23 & 24 *Vict.* cc. 68, 73; 24 & 25 *Vict.* cc. 46, 70, 126; and 25 & 26 *Vict.* c. 61. See also 3 *Step. Com.* 242, *et seq.*

High wood, timber.

Higler, a person who carries from door to door, and sells, by retail, provisions, &c.

Hikenilde Street, one of the four Roman roads of Britain, leading from St. David's to Tynemouth, thus described by Trevisa:—'The fourthe is called *Heykenyldestrete*, and stretcheth forth by Worchestre, by Wycombe, by Byrmyngeham, by Lichefeld, by Derby; by Chestrefeld, by Yorke, and fourth unto Tynmouthe.'—*Polychron.* l. 1, c. xlv.

Hilary Term, one of the law terms, i. e. periods of time during which the courts of law are open for business. It begins on the 11th and ends on the 31st January in each year. It is an issuable term (1 Wm. IV. c. 70, s. 6); and is so called from Hilary, Bishop of Poictiers in France, a great champion of the Catholic faith against the Arians in the fourth century.

Hindeni Homines, a society of men. The Saxons ranked men into three classes, and valued them as to satisfaction for injuries, &c. according to their class. The highest class were valued at 1,200*s.* and were called *twelf hindmen*; the middle class at 600*s.* and called *sexhindmen*; the lowest at 200*s.* called *troy-hindmen.* Their wives were termed *hindas.*—*Brompt. Leg. Alfred.* c. xii.

Hine, or **Hind,** a husbandry-servant.

Hine fare, the loss or departure of a servant from his master.

Hinegeld. See HIDGILD.

Hircisсunda, the division of an inheritance among heirs.

Hireman, a subject.

Hiring [*locatio, conductio,* Lat.], a bailment for a reward or compensation. It is divisible into four sorts:—(1) The hiring of a thing for use (*locatio rei*). (2) The hiring of work and labor (*locatio operis faciendi*). (3) The hiring of care and services to be performed or bestowed on the thing delivered (*locatio custodiæ*). (4) The hiring of the carriage of goods (*locatio operis mercium vehendarum*), from one place to another. The three last are but subdivisions of the general head of hire of labor and services.

Several ingredients are of the essence of the contract of bailment for hire. (1) There should be a thing in *esse*, which may be the subject of the contract. (2) It should be a thing capable of being let. (3) The bailee should have a right to use, enjoy and possess it during the period for which it is let. (4) There should be a price for the hire. And, (5) There should be a contract creating a legal obligation between the parties.

To make a binding contract, it is necessary, (1) that the bailment should not be prohibited by law; (2) that it should be between persons competent to contract; and (3) that there should be a free and voluntary consent between the parties.

The rights, duties, and obligations of the parties resulting from the contract of bailment for hire may be thus stated.

(I.) Hire of things. The letting to hire implies an obligation to deliver the thing to the hirer; to refrain from every obstruction to the use of it by the hirer during the period of the bailment; to do no act that shall deprive the hirer of the thing; to warrant the title and right of possession to the hirer, in order to enable him to use the thing, or to perform the service; to keep the thing in suitable order and repair for the purposes of the bailment; and, finally, to warrant the thing free from any fault inconsistent with the proper use or enjoyment of it. It is the duty of the person letting to hire, according to the Roman law, to disclose the faults of the thing hired, and practice no artful concealment, to charge only a reasonable price therefor, and to indemnify the hirer for all expenses, which are properly payable by the letter. The rights of the hirer are that he acquires the right of possession only of the thing for the particular period or purpose stipulated (but he acquires no property in it); and that he also acquires the exclusive right to the use of the thing during the time of the bailment. His duties are to put the thing to no other use than that for which it is hired; to use it well; to take care of it; to restore it at the time appointed; to pay the price or hire; and, in general, to observe whatever is prescribed by contract, or by law, or by custom. The contract may be dissolved or extinguished in respect to future liabilities in various ways: (1) by the mere efflux of the time, or the accomplishment of the object, for which the thing is hired; (2) by the loss or destruction of the thing by any inevitable casualty; (3) by a voluntary dissolution of the contract by the parties; and (4) by operation of law, as where the hirer becomes proprietor by purchase or otherwise of the thing hired. How far these principles, which are derived altogether from the Roman and foreign laws, are to be deemed satisfactorily established in our jurisprudence, is a matter for consideration, since the common law does not furnish any direct recognition of them. But it may be safely affirmed, that they are so consonant with general justice and with the nature of the contract, that in the absence of any controlling authority, they may be used as fit guides to assist our general reasoning.

(II.) Hire of labor and services, divisible into two branches:—(α) *Locatio operis faciendi*, and (β) *locatio operis mercium vehendarum*, mentioned as the 2nd and 4th divisions of the four sorts of hiring above set forth.

(α) The *locatio operis faciendi* may be subdivided into two kinds:—(a) The hire of labor and services, or *locatio operis faciendi*, strictly so called; such are the hire of tailors to make clothes, of jewellers to set gems, and of watchmakers to repair watches; (b) *locatio custodiæ* (the third division first above mentioned), or the receiving of goods on deposit for a reward for the custody thereof, which is properly the hire of care and attention about the goods, as by warehousemen, wharfingers, &c.

(a) In contracts for work it is of the essence of the contract:—(1) That there should be work to be done; (2) that it should be to be done for a price or reward; and (3) that there should be a lawful contract between parties capable and intending to contract. The obligation and duties on the part of the employer, as deduced in the foreign law, are principally these:—(1) To pay the price or compensation; (2) to pay for all proper, new, and accessorial materials; (3) to do everything on his part to enable the workman to execute his engagement; (4) to accept the thing when it is finished. If before the work is finished, the thing perishes by internal defect, by inevitable accident, or by irresistible force, without any default of the workman, then, (1) if the work is independent of any materials or property of the employer, the manufacturer has the risk, and the unfinished work perishes to him; (2)

if he is employed in working up the materials, or adding his labor to the property of the employer, the risk is with the owner of the thing, with which the labor is incorporated; (3) if the work have been performed in such a way as to afford a defence to the employer against a demand for the price, if the accident had not happened (as if it were defectively or improperly done), the same defence will be equally available to him after the loss. The obligations or duties on the part of the workman or undertaker are thus summed up in the foreign law:—To do the work; to do it at the time agreed on; to do it well; to employ the materials furnished by the employer in a proper manner; and, lastly, to exercise a proper degree of care and diligence about the work.

(b) The hiring of care and attention. To this class belong agistors of cattle; warehousemen forwarding merchants and wharfingers. They are bound to use ordinary diligence, and of course are responsible for losses by ordinary negligence.

(β) The *locatio operis mercium vehendarum*, or the carriage of goods for hire. In respect to contracts of this sort entered into by private persons, who do not exercise the business of common carriers, there does not seem to be any material distinction, varying the rights, obligations, and duties of the parties from those of other bailees for hire. Every such private person is bound to ordinary diligence, and to a reasonable exercise of skill; and of course he is not responsible for any losses not occasioned by the ordinary negligence of himself or of his servants. The exceptions to this general rule are postmasters, innkeepers, and common carriers. These are under peculiar regulations consonant with public policy. See those titles respectively.—*Story on Bailments*, c. vi.

Hirst, or **Hurst**, a wood.—*Domesday; Co. Litt.* 4 *b*.

His testibus (*these being witnesses*), a phrase anciently added in deeds, after *in cujus rei testimonium*. The deed was read in the presence of witnesses, and their names were then written down. The phrase is not now inserted.

Hiwisc, a hide of land.

Hlaf æta, a servant fed at his master's cost.

Hlaford, a lord.—*Ang.-Sax.*

Hlafordsocna, a lord's protection.

Hlasocner, the benefit of the law.

Hlothbote, a mulct set on him who commits homicide in a riot or hloth.

Hlothe [*turma*, Lat.], an unlawful company, from eight inclusive to thirty-five.—*Cowel.*

Hlytas [fr. *sortes*, Lat.], lots.

Hoastmen, an ancient guild or fraternity in Newcastle-upon-Tyne, engaged in selling or shipping coal.

Hobblers, or **Hobilers**, light horsemen or bowmen; also certain tenants, bound by their tenure to maintain a little light horse for giving notice of any invasion, or such like peril, towards the seaside.—*Camd. Brit.*

Hoccus saltis, a hoke, hole, or lesser pit of salt.

Hockettor, or **Hocqueteur**, a knight of the post; a decayed man; a basket carrier.—*Cowel.*

Hock-Tuesday-money, a duty given to the landlord, that his tenants and bondmen might solemnize the day on which the English conquered the Danes, being the second Tuesday after Easter week.—*Cowel.*

Hodge-podge Act, a statute embracing distinct subjects which it would be better to keep apart.

Hoga, Hogium, Hoch, a mountain or hill.

Hogaster, a little hog; a young sheep.

Hogenhine. See THIRD-NIGHT-AWN-HINDE.

Hoggacius, Hoggaster, a sheep of the second year.

Hogshead, a measure containing half a pipe, a fourth part of a ton, or sixty-three gallons.

Hokeday. See HOCK-TUESDAY-MONEY.

Hold, or **Wold**, a governor or chief officer. *Gibs. Camd.*

Holder, a payee of a bill of exchange or a promissory note.

Holdin tenure.—*Scotch term.*

Holding over, keeping possession of land by a lessee after the expiration of his term. See DOUBLE RENT; DOUBLE VALUE.

Holding up hand. When a prisoner is brought to the bar in treason or felony, he is called upon by name to hold up his hand; which, though it may seem a trifling circumstance, yet is of this importance, that by the holding up of the hand, he owns himself to be of that name by which he is called. It is not, however, an indispensable ceremony, for being calculated merely for the purpose of identifying the person, any other acknowledgment will answer the purpose as well.—4 *Step. Com.* 475.

Holiday, an anniversary feast; a time of festivity. Also called a red-letter day.

State holidays are either appointed by Act of Parliament or founded on ancient usage. The former are, the 5th November, to be kept as a day of thanksgiving (3 Jac. I. c. 1); the 29th May, to be an anniversary thanksgiving (12 Car. II. c. 14); the 30th January, to be kept as an anniversary day of humiliation (12 Car. II. c. 3, s. 1); the 2nd September, to be annually kept as a fast in London (19 Car. II. c. 3, s. 28). 'But the several acts and parts of acts, and every other enactment now in force which may be read or construed as requiring the observance of the 30th day of January, the 29th day of May, the 5th day of November, and the 23rd day of October respectively, as anniversary days, or the use of any special services of the church for those days

respectively, shall be and the same are hereby repealed' (22 Vict. c. 2). The latter are the birthday, accession, proclamation, and coronation of the reigning monarch; and also the birthday of the Consort and Prince of Wales. Besides these, fast and thanksgiving days are occasionally appointed by royal proclamation.

As regards the holidays to be allowed in the common law offices, the 3 & 4 Wm. IV. c. 42, s. 43, after reciting 'that the observance of holidays in the courts of common law during term time, and in the offices belonging to the same, on the several days on which holidays are now kept, is very inconvenient, and tends to delay in the administration of justice,' enacts, 'that none of the several days mentioned in the 5 & 6 Edw. VI. c. 3, shall be observed or kept in the said courts, or in the several offices belonging thereto, except Sundays, the day of the nativity of our Lord and the three following days, and Monday and Tuesday in Easter week.' By rule of Hilary Term, 6 Wm. IV. it is ordered, that 'thenceforth, in addition to the said days, the following, and none other, shall be observed in the several offices belonging to the said courts, viz.: Good Friday and Easter Eve, and such of the four days following as may not fall in the time of term, but not otherwise; the birthday and accession of the sovereign; Whit-Monday and Whit-Tuesday.'

The several offices of the Court of Chancery, except the offices of the accountant-general and of the taxing masters, are to be opened on every day of the year except Sundays, Good Friday, Monday and Tuesday in Easter-week, Christmas-day, and all days appointed by proclamation to be observed as days of general fast or thanksgiving. The offices of the accountant-general and of the taxing masters are to be opened on every day of the year except Sundays and the days above specified, and except during vacations. The offices of the vacation taxing master are to be open during the vacations on every day except the days above specified.—*Consol. Ord.* 1860, v., r. 1, 2 & 3. See VACATION.

Holm [fr. *hulmus*, Sax.; *insula amnica*, Lat.], an isle, or fenny ground; a river island; also a hill or cliff.—*Co. Litt.* 5 *a.*

Holograph [fr. ὅλος, Gk., all, and γράφω, to write], a deed written entirely by the grantor himself, which, on account of the difficulty with which the forgery of such a document can be accomplished, is held by the Scotch law valid without witnesses. Also a will in the testator's handwriting.

Holt, a wood.—*Co. Litt.* 4 *b.*

Holy Orders, those who have been admitted and ordained as officials in the Established Church. They consist of archbishops, bishops, priests, and deacons. The ordination must take place according to the form prescribed in the Book of Common Prayer.—3 *Step. Com.* 2. See DEACON.

Homage [fr. *homo*, Lat., a man], the most honorable service of reverence that a free tenant may do to his lord. When a tenant performs it, he is ungirt, and his head uncovered, the lord sitting; the tenant then kneels before him, and holds his hands extended and joined between the hands of his lord, and says thus:—'I become your man from this day forward, of life, and limb, and earthly honor, and to you will be faithful and loyal, and bear you faith, for the tenements that I claim to hold of you (saving the faith that I owe unto our sovereign lord the king): so help me God.' The lord then kisses him. Homage can only be done to the lord himself, but fealty may to his steward or bailiff.—*Litt.* 85. See COPYHOLD.

Homage ancestrel, where a tenant holds lands of his lord by homage; and the same tenant and his ancestors have holden the same land of the same lord, and of his ancestors, immemorially, and have done to them homage. 1 *Inst.* 100.

Homage Jury, a jury in a court-baron, consisting of tenants that do homage, who are to inquire and make presentments of the death of tenants, surrenders, admittances, and the like.

Homager, one who does or is bound to do homage.

Homagio respectuando (*respecting of homage*), a writ to the escheator commanding him to deliver seisin of lands to the heir of the king's tenant, notwithstanding his homage not done.—*F. N. B.* 269.

Homagium reddere (*to renounce homage*), when a vassal made a solemn declaration of disowning and defying his lord; for which there was a set form and method prescribed by the feudal laws.—*Brac.* l. 2, c. xxxv., s. 35.

Homagium, non per procuratores nec per literas fieri potuit, sed in propriâ personâ tam domini quam tenentis capi debet et fieri.—*Co. Litt.* 68.—(Homage cannot be done by proxy, nor by letters, but must be paid and received in the proper person, as well of the lord as the tenant.)

Homagium repellit perquisitum.—*Gilb.* 9, 142. (Homage repels perquisition.)

Home ne serra puny pur suer des briefes en court le roy, soit il a droit ou a tort.—2 *Inst.* 228.—(A man shall not be punished for suing out writs in the King's Court, whether he has a right or a wrong.)

Homesoken, Homsoken. See HAMESECKEN.

Homestall, a mansion-house.

Homicide, destroying the life of a human being, in its several stages of guilt, arising from the particular circumstances of mitigation or aggravation which attend it. It is either justifiable, excusable, or felonious.

I. *Justifiable*, of three kinds:—

(α) Where the proper officer executes a criminal in strict conformity with his sentence.

(β) Where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it.

(γ) Where it is committed in prevention of a forcible and atrocious crime.—1 *Hale*, 488.

II. *Excusable*, of two kinds:—

(α) *Per infortunium*, or by misadventure, as where a man doing a lawful act, without any intention of hurt, by accident kills another.

(β) *Se defendendo*, as where a man kills another upon a sudden rencounter in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling.

III. *Felonious*, of two kinds:—

(α) Killing one's self.

(β) Killing another, which is either—

(1) Murder; or

(2) Manslaughter; and this is either—

(α) Voluntary, where a man doing an unlawful act, not amounting to felony, by accident kills another; or

(β) Involuntary, where, upon a sudden quarrel, two persons fight, and one of them kills the other; or where a man greatly provokes another, by some personal violence, &c. and the other immediately kills him.—4 *Bl. Com.* c. xiv.; 4 *Step. Com.* 130, *et seq.*

Homicidium vel hominis cædium, est hominis occisio ab homine facta.—3 *Inst.* 53.—(Homicide or slaughter of a man, is the killing of a man, perpetrated by a man.)

Hominatio, the mustering of men; the doing of homage.

Homine capto in withernamium, a writ to take him that had taken any bondman or woman, and led him or her out of the country, so that he or she could not be replevied according to law.—*Reg. Orig.* 79.

Homine eligendo ad custodiendam peciam sigilli pro mercatoribus editi, a writ directed to a corporation for the choice of a man to keep one part of the seal appointed for statutes-merchant, when a former is dead, according to the Statute of *Acton-Burnell*.—*Reg. Orig.* 178.

Homine replegiando, a writ to bail a man out of prison.—*Reg. Orig.* 77. All these writs are totally disused.

Homines, feudatory tenants who claimed a privilege of having their causes, &c. tried only in their lord's court.—*Paroch. Antiq.* 152.

Homiplagium, the maiming of a man.

Homologation. The express or implied ratification of an act that formerly was null or invalid.—*Scotch term.*

Homo potest esse habilis et inhabilis diversis temporibus.—5 *Co.* 98.—(A man may be capable and incapable at divers times.)

Homstale, a mansion-house.

Hond-habend. See HAND-HABEND.

Hong, the Chinese name for large factories at Canton.

Hong Kong, *Governor of*, see 6 & 7 *Vict.* c. 80, and 22 & 23 *Vict.* c. 9.

Honor, a seignory of several manors held under one baron or lord paramount; also, those dignities or privileges, degrees of nobility, knighthood, and other titles, which flow from the Crown, the fountain of honor.

Honor, *Court of*, a branch of the Court of Chivalry. See CHIVALRY, *Court of*.

Honor Courts, tribunals held within honors or seigniories.

Honor, *Maids of*, ladies in attendance upon the Queen: they are six in number, and receive salaries of 300*l.* each.

Honorable, a title of quality given to the younger children of earls, and the children of viscounts and barons; to persons enjoying trust and honor; and, collectively, to the House of Commons and the East India Company.

Honorarium, a recompense for service rendered; a voluntary fee to one exercising a liberal profession, e.g. a barrister's fee.

Honorarium jus, the law of the prætors and the edicts of the ædiles.—*Civ. Law.*

Honorary Canons, those without emolument. 3 & 4 *Vict.* c. 113, s. 23.

Honorary Feuds, titles of nobility, descendible to the eldest son, in exclusion of all the rest.

Honorary Services, those incident to grand serjeanty, and commonly annexed to some honor.

Honorary Trustees, trustees to preserve contingent remainders, so called because they are bound, in honor only, to decide on the most proper and prudential course.—*Lewin on Trus.* 408.

Honoris respectum, Challenge *propter*. See CHALLENGE.

Hontfongenethef, or **Honfangenethef**, a thief taken with *hondhabend*, i. e. having the thing stolen in his hand. See BACKBERINDE.

Hoo, a hill.—*Co. Litt.* 5 *b.*

Hookland, land ploughed and sown every year.—*Scott.*

Hopcon, a valley.—*Cowel.*

Hope, a valley.—*Co. Litt.* 5 *b.*

Hoppo, a collector; an overseer of commerce. *Chinese.*

Hora Auroræ, the morning-bell; as *ignitegium*, or *coverfeu*, was the evening-bell.

Hora non est multum de substantiâ negotii, licet in appello de eâ aliquando fiat mentio.—1 *Buls.* 82.—(The hour is not considered of much consequence as to the substance of

business, although in appeal mention of it is sometimes made.)

Horda, a cow in calf.—*Old Records.*

Hordera, a treasurer.

Horderium, a hoard, treasury, or repository.

Hordeum palmale, beer, barley.—*Cowel.*

Horesti, the people of Angus-upon-the-Tay, or Highlanders.

Hornagium. See HORNGELD.

Horngeld, or **Hornegeld,** a forest-tax paid for horned beasts.

Horn with horn, or **Horn under horn,** the promiscuous feeding of bulls and cows, or all horned beasts that are allowed to run together, upon the same common.—*Spelm.*

Horning, *Letters of,* warrant for charging persons in Scotland to pay or perform certain debts and duties; probably so called because they were originally proclaimed by sound of trumpet.

Hors de son fee (out of the fee), where land is without the compass of a person's fee.

Hors-wealh, the wealh, or Briton who had the care of the king's horses.

Hors-weard, a service or corvée, consisting in watching the horses of the lord.—*Anc. Inst. Eng.*

Horse-racing. By 13 Geo. II. c. 19, no plates or matches at horse-races, under 50*l.* value, could be run, under penalty of 200*l.* to be paid by the owner of the horse or horses, and 100*l.* by the advertiser of the plate. This was repealed by 3 & 4 Vict. c. 5.

Formerly wagers of not more than 10*l.* on a legal horse race could be recovered by action, but now all wagers are void. See 8 & 9 *Vict.* c. 109, s. 5. As to the sale of horses, see 31 *Eliz.* c. 12.

Horstilers, innkeepers.

Hospes generalis, a great chamberlain.

Hospitallers, the knights of a religious order, so called, because they built an hospital at Jerusalem, wherein pilgrims were received. All their lands and goods in England were given to the Sovereign, by 32 Hen. VIII. c. 34.

Hospitals, eleemosynary corporations. They are either *aggregate,* in which the master or warden and his brethren have the estate of inheritance, or *sole,* in which the master, &c. only has the estate in him, and the brethren or sisters, having college and common-seal in them, must consent, or the master alone has the estate, not having college or common-seal. They are either *eligible, donative,* or *presentative.*

Any person seised of an estate in fee-simple may, by deed enrolled in Chancery, erect and found an hospital for the sustenance and relief of the poor, to continue for ever, and place such heads, &c. therein as he shall think fit; and such hospital shall be incorporated and subject to such visitors, &c. as the founder shall nominate; also such corporations have power to take and purchase lands, not exceeding 200*l.* per annum, so as the same be not holden of the Crown, and to make leases for twenty-one years, retaining the accustomed yearly rent. But no hospital is to be erected, unless upon the foundation it be endowed with lands or hereditaments of the clear yearly value of 20*l.* per annum, 39 Eliz. c. 5, perpetuated by 21 Jac. I. c. 1, s. 1. Any goods and chattels, real or personal, may be taken, of what value soever. 5 *Reeves,* 23. See CHARITABLE USES, and CHARITIES.

Hospiticide [fr. *hospes,* Lat., guest, and *cædo,* to kill], one that kills his guest or host.

Hospitium, procuration or visitation-money.

Hospodar, a Turkish governor in Moldavia or Wallachia.

Hostage, a person given up to an enemy as a security for the performance of the articles of a treaty, &c.

Hostelagium, a right to have lodging and entertainment, reserved by lords, in their tenants' houses.—*Old Records.*

Hosteler, or **Hostler,** an innkeeper.

Hostels, the inns of court.

Hosterium, a hoe.

Hostes sunt qui nobis vel quibus nos bellum decerninus; cæteri proditores vel prædones sunt. 7 *Co.* 24.—(Enemies are those with whom we declare war, or who declare it against us; all others are traitors or pirates.)

Hosticide, one who kills an enemy.

Hostilaria, Hospitalaria, a place or room in religious houses used for the reception of guests and strangers.

Hostilarius, an hospitaller.

Hostricus, a goshawk.

Hot-water-ordeal. This was a test, in cases of accusation, by hot water; the party accused and suspected being appointed by the judge to put his arms up to the elbows in seething hot water, which, after sundry prayers and invocations, he did, and was, by the effect which followed, judged faulty or faultless.—*Verst. Rest. Dec. Intel.* 66.

Hotchpot [fr. *haché en poche,* Fr., a confused mingling of divers things], a blending or mixing of lands and chattels, answering in some respects to the *collatio bonorum* of the civil law.

As to *lands,* it only applies to such as are given in frank-marriage, thus: if one daughter have an estate given with her in frank-marriage by her ancestor, then, if lands descend from the same ancestor to her and her sisters in fee-simple (not in fee-tail), she or her heirs shall have no share in them, unless they will agree to divide the lands so given in frank-marriage, in equal proportions with the rest of the lands descending, i. e. bringing her lands so given into hotchpot.

As to *personalty.* The Statute of Distributions intended children to take equal shares of the goods and chattels of their intestate an-

cestor and it considers that there may be some of the children who have previously received a portion or advancement, but not so much as to make up their full share; in that case, such child so advanced but in part, is allowed so much more out of the intestate's personal estate as will suffice to make his share equal to that of the other children. The act takes nothing away that has been given to any of the children, however unequal that may have been. How much soever that may exceed the remainder of the personal estate left by the intestate at his death, the child may, if he please, keep it all; if he be not content, but would have more, then he must bring into hotchpot what he has before received. This principle is based upon the equitable doctrine of equality, for it is perfectly coincident with that conduct which a good and just parent would pursue towards all his children. See 1 *Step. Com.* 353, and 2 *Ibid.* 225, 227.

Housage, a fee paid for housing goods by a carrier.

Housebote, estovers, or an allowance of necessary timber out of the lord's wood for the repairing or support of a house or tent.

House-breaking. See BURGLARY.

House-burning. See ARSON.

House of Commons, one of the constituent parts of Parliament, being the assembly of knights of shires, or the representatives of counties; citizens, or the representatives of cities; and burgesses, or the representatives of boroughs.

The following is a statement of the entire representation of the three kingdoms, composing the House of Commons:

ENGLAND AND WALES.

160 knights of shires,
338 citizens and burgesses, including the members for the universities.

Total 498

SCOTLAND.

30 knights of shires,
23 citizens and burgesses.

Total 53

IRELAND.

64 knights of shires,
41 citizens and burgesses, including the members for Trin. Col., Dublin.

Total 105

Total of the United Kingdom, 656.

The property-qualification of Members of Parliament is abolished by 21 Vict. c. 26. Members of the Universities of Oxford, Cambridge, and Trinity College, Dublin, eldest sons or heirs apparent of peers or of persons qualified to be knights of the shire, never required a qualification. In Scotland, no qualification was ever necessary.

Aliens are not eligible as members, neither are minors, lunatics, English or Scotch peers; but Irish peers, unless representative, may sit for any place in Great Britain. The English, Scotch, and Irish Judges (except the Master of the Rolls in England, when not a peer), are disqualified. Also the holders of various offices particularized by statute, Government contractors, clergymen, and bankrupts.—2 *Step. Com.*; 348, *et seq.*

House of Correction, a species of gaol which does not fall under the sheriff's charge, but is governed by a keeper, wholly independent of that office.

Houses of Correction, first established in the reign of Elizabeth, were originally designed for the penal confinement (after conviction) of paupers and vagrants refusing to work; but by 5 & 6 Wm. IV. c. 38, ss. 3, 4, reciting that great inconvenience and expense had been found to result from the practice of committing to the common gaol, where it happens to be remote from the place of trial, it is enacted that a justice of the peace, or coroner, may commit for safe custody, to any house of correction situate near the place where the assizes or sessions are to be held; and that offenders sentenced in those courts may be committed, in execution of such sentence, to any house of correction for the county.—3 *Step. Com.* 234. See 13 & 14 *Vict.* c. 91; and 14 & 15 *Vict.* c. 55, ss. 20, 21.

House Duty, a tax on inhabited houses imposed by 14 & 15 Vict. c. 36, in lieu of window-duty, which is abolished. See HOUSE-TAX.

House of Lords, a constituent part of Parliament, being composed of the Lords Spiritual and Temporal.

Archbishops and bishops held a prominent place in the great Saxon council, and under the Norman Kings they still retained it. They have always had a seat in the House of Lords, but by what right is not agreed. In the Saxon times there is no doubt that they sat as bishops, by virtue of their ecclesiastical office; but it is said that 'William the Conqueror thought proper to change the spiritual tenure of frank-almoign or free-alms, by virtue of which the bishops held their lands under the Saxon government, into the feudal or Norman tenure by barony; and in right of succession to those baronies, which were unalienable from their respective dignities, the bishops and abbots were allowed their seats in the House of Lords' (1 *Bl. Com.* 156). Mr. Hallam thinks this view of the rights of the English hierarchy too contracted, and maintains that the bishops of William the Conqueror were entitled to sit in his councils by the general custom of Europe, which invited the superior ecclesiastics to such offices, and by the common law of England, which the Conqueror did not

overturn (*Middle Ages*, vol. iii. p. 6). Another view of the question is, that the abbots only had a seat in Parliament solely by virtue of their tenures as barons; but that the bishops sat in another capacity, as bishops and as barons (*Hody's Treat. on Convocations*, 126.) Their presence in Parliament, however, has been uninterrupted, whatever changes may have been effected in the nature of their tenure.

The lords temporal are divided into dukes, marquesses, earls, viscounts, and barons. The number of British peerages of different ranks has been greatly augmented from time to time, and there is no limitation to the power of the Crown to add to it by fresh creation. The following table will show pretty correctly the present number of each class:

Lords Spiritual:
- 2 English archbishops,
- 24 English bishops (the Bishop of Sodor and Man and the junior bishop do not sit. See 10 & 11 *Vict.* c. 108, s. 2).
- 1 Irish representative archbishop,
- 3 Irish representative bishops.

Total 30

Lords Temporal:
- 3 princes of the royal blood,
- 20 dukes,
- 19 marquesses,
- 110 earls,
- 22 viscounts,
- 211 barons,
- 16 representative peers of Scotland,
- 28 representative peers of Ireland, one of whom is an English peer.

Total 429

Total of the House of Lords, 459.

The House of Lords is the Supreme Court of Judicature in the kingdom, the appeal tribunal in the last resort, having no original jurisdiction over causes, but only upon appeals and proceedings in error, to rectify any injustice or mistake of the law, committed by the courts below.—2 *Step. Com.* 342; 3 *Hallam's Constit. Hist.* c. xiii., p. 17, *et seq.*, 8th ed. As to Scottish appeals, see 4 *Geo. IV.* c. 85; and Irish appeals, 39 & 40 *Geo. III.* c. 67, art. 8.

The following are exceptions to the rule: an appeal from the Court of Stannaries in Cornwall, is to the Warden of the Stannaries, and from him to the Privy Council of the Prince of Wales, as Duke of Cornwall; and if there be no Prince of Wales, it is to the Queen in Council.

An appeal from the decision of the Vice-Chancellor of Lancaster is to the Chancellor of the Duchy Court at Westminster.

An appeal from the Lord Chancellor in idiocy or lunacy is to the Queen in Council.

An appeal from the Ecclesiastical, Maritime, or Prize Courts in England, and from the courts in Man, Jersey, Guernsey, Sark, Alderney, or from the colonies, is to the Queen in Council.

An appeal from a court-martial is to the Queen in person.

In the text-books and reports, the abbreviation *D. P.* or *Dom. Proc.*, is met with. It means a case decided by the House of Lords; both of these abbreviations standing for *Domus Procerum*, the House of Lords.

House-tax, an assessed tax, which was abolished by 4 & 5 Wm. IV. c. 19. See HOUSE-DUTY.

Householder [*paterfamilias*, Lat.], an occupier of a house; a master of a family.

Howe, a hill.—*Co. Litt.* 5 *b.*

Howgh, a valley.—*Ibid.*

Hredige, readily, quickly.

Hudegeld. See HIDGELD.

Hue and Cry [fr. *huer*, Fr. to shout; *crier*, to cry aloud; *hutesium et clamor*, Lat.], the old common law process of pursuing with horn and with voice all felons and such as have dangerously wounded another. It may be raised by constables, or by private persons, or by both. If, in a hue and cry, the constable or peace officer concur in the pursuit, he has the same powers, protection, and indemnification as if acting under a magistrate's warrant. Indeed, all those who join in following upon a hue and cry that has been raised, and that whether a constable be present or not, will be justified in the apprehension of the person pursued, even though it should ultimately turn out that he is innocent, or that no felony has been committed; and where the person pursued has taken refuge in a house, may break open the door to secure him, if admittance be refused. But if a man wantonly or maliciously raise a hue and cry, without cause, he is liable to fine and imprisonment, and also liable to an action at the suit of the party injured. The 7 Geo. IV. c. 64, s. 28, provides for compensation and expenses in such cases, in order to encourage the apprehension of felons.—4 *Bl. Com.* 293, and 4 *Step. Com.* 431. As to the mode of raising the hue and cry, see *Hawk.* l. 2, c. xii., s. 6. The term is also applied to a paper circulated by order of the Secretary of State for the Home Department, announcing the perpetration of offences.

Huisserium, a ship used to transport horses. Also termed *uffer*.

Huissier, an usher of a court.

Hulka, a hulk, or small vessel.

Hullus, a hill.

Humagium, a moist place.

Hundred, a subdivision of the country, the nature of which is not known with certainty. In the *Dialogus de Scaccario*, it is said that a

hundred '*ex hydarum aliquot centenariis, sed non determinatis constat; quidam enim ex pluribus, quidam ex paucioribus constat.*' Some accounts make it consist of precisely a hundred hides; others, of a hundred tithings, or of a hundred free families. Certain it is, that whatever may have been its original organization, the hundred, at the period when it became known to us, differed greatly as to extent in the several parts of England. This division is ascribed to King Alfred, and he may possibly have introduced it into England, though in Germany it dates from a very remote period, where it was established among the Franks in the sixth century. In the capitularies of Charlemagne we meet with it in the form known among us.—*Capit.* l. 3, c. x.

To the statement that Alfred was the author of this division in England, it may be objected that the hundred is named in the Penitential of Egbert, but this objection is not fatal. It is there mentioned in the rubric only, to which it seems attached as an afterthought, and does not appear in the text, between which and the rubric there is little accordance; and, moreover, it is evident from its dialect, that the Penitential has not reached us in its original state, being bereft of every vestige of its Northumbrian origin, and, in its present dress, is most probably much later than the time of Alfred.—See *Domesday*, vol. i., p. 185; 1 *Step. Com.* 129.

Hundred Court, a larger court-baron, being held for all the inhabitants of a particular hundred, instead of a manor. The free suitors are here also the judges, and the steward the registrar, as in the case of a court-baron. It is not a court of record; it resembles a court-baron in all points, except that in point of territory it is of a greater jurisdiction. It was denominated *hæreda* in the Gothic constitution. Causes are removed by the same writ as from a court-baron, and its proceedings may be reviewed by writ of false judgment. The court is become obsolete.—3 *Step. Com.* 392.

Hundred-fecta, the performance of suit and service at the hundred court.

Hundred-fetena, dwellers or inhabitants of a hundred.

Hundred-lagh, or **Hundred-law,** a hundred-court.

Hundred-penny, the *hundredfeh*, or tax collected by the sheriff or lord of an hundred.

Hundredes earldor, Hundredes man [*aldermannus hundreti*], the presiding officer in the hundred-court.—*Anc. Inst. Eng.*

Hundredors, men of a hundred; persons serving on juries, or fit to be empannelled thereon for trials, dwelling within the hundred where the cause of action arose.

The statute now in force, by which hundredors are liable for damages done by rioters, is the 7 & 8 Geo. IV. c. 31. The 7 & 8 Geo. IV. c. 27, repeals all the prior statutes relative to such liability. Hundredors are now no longer, as formerly, liable in cases of robbery, arson, killing or maiming cattle, cutting down or destroying trees, destroying turnpikes or works on navigable rivers, cutting hop-bines, destroying corn to prevent it being exported, destroying corn going to market, or injuring horses or carriages so conveying it, and wounding revenue officers; they are, in short, only now liable for damage done by rioters acting feloniously. A plaintiff cannot proceed by action, unless his loss exceed 30*l.*; for a loss amounting to that sum or under, his remedy is by summary proceedings before justices at a special petty sessions. Previously to the commencement of an action, the plaintiff or his servant having the care of the property injured, must, within seven days after the commission of the offence, go before some near resident justice, and state on his oath the names of the offenders, and submit to an examination, and enter into a recognizance to prosecute. This examination must take place within seven days, exclusively of the day on which the offence was committed; the action must be brought within three calendar months after the committing of the offence, exclusive of the day the offence was committed. The writ should be served upon the high constable, or one of the high constables of the hundred, who should, within seven days after service, give notice of it to two justices residing near and acting for the hundred. Any of the hundredors are competent witnesses on the trial. The mode of execution is provided for by the 6th sec. of 7 & 8 Geo. IV. c. 31. As to compensation by hundredors for the plunder, &c., of wrecks, see 17 & 18 *Vict.* c. 104, s. 477.

Hurdereferst, a domestic; one of a family.

Hurdle, a sledge used to draw traitors to execution.

Hurst, Hyrst, Herst, Hirst, a wood or grove of trees.—*Co. Litt.* 4 *b.*

Hurtardus, Hurtus, a ram, or wether.

Husband of a Ship. See SHIP'S HUSBAND.

Husband, or **Husbond** [fr. *hus*, A. S., a house, and *bindan*, A. S., to bind, as *domûs vinculum*, one bound by rules, *Spel.*, *Skin.*, and *Bosw.*; or fr. *hus* and *bonda*, A. S., *Somm.* and *Skin.*; or fr. *buend*, A. S., or *Bonda Dan*, an occupier, *Jun.*, being the pres. part. of *bya*, *byan*, *bugian*, *habitare incolere*, and rendered by *manens* in the Latin charters, as Palg. states], a married man; the good man of the house.

Husband and Wife [*baron* and *feme*], one of the great relationships of private life effected by marriage, by which the legal existence of a wife is incorporated with that of her husband.

The *common law* treats them, for most purposes, as one person, therefore a husband cannot make a grant to his wife at the common law, but he may do so: (1) under the Statute of Uses, by granting an estate to another person for her use; (2) by creating a trust in her favor; (3) by the custom of particular places; (4) by surrendering copyholds to her use; and (5) by will. If an estate be limited to them, they do not take as joint tenants, but the entirety is in each; neither can alien to the other.

The custody of the wife's person belongs of right to her husband; but if he, by ill-usage or threat, place her life or person in danger, she may obtain sureties to keep the peace either from a justice of the peace, the Sessions, the Court of Queen's Bench, or the Lord Chancellor, by articles of the peace and supplicavit. She may obtain a *habeas corpus*, at her own instance, if under improper restraint, though not at the instance of others, to enable her to make a will or an appointment of her property. If a wife be taken away or harboured, she may be retaken, or the husband may issue a *habeas corpus*, or bring an action for her detention. He may justify the defence of his wife by force; and when her life or person is endangered, he may even kill the assailant. If he were to detect anyone in criminal intercourse with her, *flagrante delicto*, his instant killing him would, at most, but constitute manslaughter.

The extent of a husband's rights in his wife's property, not settled or separated in her sole favor, may be thus epitomized:—

(*a*) A husband by the marriage acquires an absolute right to all his wife's personal property, in her actual and beneficial possession at the time, or capable of immediate and tangible possession, or which may come into actual possession during the coverture, all or any part of which he may assign and dispose of at his own pleasure. With regard to personalty in expectancy, or a *chose en action*, he may acquire a right thereto, either by a prenuptial agreement, or by receiving it without suit, or by resorting to the proper legal remedy in his own name alone, if he like, should the property have devolved upon her during marriage, but if she were possessed of it before marriage, then by joining her in the proceedings and thus reducing it into possession during the marriage. Should a *chose en action* be outstanding, and not in actual possession, when the marriage is dissolved by the death of either of them, then, if the wife be the survivor, she will be entitled to such property with all its accrued profits, against her husband's representatives; but should the husband survive, he has an absolute right to administer to his wife's effects in the Probate Court, in order to obtain it; for he would not be entitled to it, *jure mariti*, by virtue of the gift by marriage, and therefore he takes this property subject to the claims of his deceased wife's antenuptial creditors. If he do not take out letters of administration, he is entitled to any surplus which may remain after satisfying the wife's debts. If, however, he die before obtaining possession of the property by virtue of an administration, his legatees or next of kin will then be beneficially entitled, and will be allowed to administer, even where the husband did not himself administer.

(*b*) After the 31st day of December, 1857, it shall be lawful for every married woman by deed to dispose of every future or reversionary interest, whether vested or contingent, of such married woman or her husband in her right in any personal estate whatsoever to which she shall be entitled under any instrument made after the said 31st day of December, 1857 (except such a settlement as after mentioned), and also to release or extinguish any power which may be vested in or limited or reserved to her in regard to any such personal estate, as fully and effectually as she could do if she were a feme sole, and also to release and extinguish her right or equity to a settlement out of any personal estate to which she, or her husband in her right, may be entitled in possession under any such instrument as aforesaid, save and except that no such disposition, release, or extinguishment shall be valid, unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her in the manner required by 3 & 4 Wm. IV. c. 74. Provided always that nothing herein contained shall extend to any reversionary interest to which she shall become entitled by virtue of any deed, will, or instrument, by which she shall be restrained from alienating or affecting the same (20 & 21 Vict. c. 57, ss. 1 & 2). Provided always that the powers of disposition given to a married woman by this act shall not interfere with any power which independently of this act may be vested in or limited or reserved to her so as to prevent her from exercising such power in any case, except so far as by any disposition made by her under this act she may be prevented from so doing in consequence of such power having been suspended or extinguished by such disposition (s. 3). Provided always that the powers of disposition hereby given to a married woman shall not enable her to dispose of any interest in personal estate settled upon her by any settlement or agreement for a settlement made on the occasion of her marriage, (s. 4).

(*c*) In order to entitle a husband to his wife's chattels real, and bar her right to them, he must do some act to appropriate them *during his life*, as by an absolute disposition of

them, even without her concurrence, and without any consideration if he like, and this though the property be held in trust for her benefit, as long as it is not settled to her separate use, or by a creditor of his selling them under an execution during his life; for otherwise the wife surviving him will at once have an absolute right thereto, by virtue of her antenuptial ownership, notwithstanding any will or disposition he may have made of them, to take effect after his decease. Should the husband, however, survive, such property belongs to him absolutely, in his marital right, without anything further being done by him.

(*d*) With regard to a wife's unsettled real property, the wife cannot deal with it during the marriage except with her husband, pursuant to 3 & 4 Wm. IV. c. 74, its management devolving upon her husband, who may apply the proceeds of it to his own use, for he acquires by the marital right a freehold estate in his wife's lands of inheritance during the joint existence of himself and wife, in right of his wife; but he has not any marital power over the inheritance. Should there be no child or children, then upon her death such estates would devolve upon her heir, to the exclusion of the husband, but after the birth of a child, he becomes (unless otherwise expressly provided by a marriage-settlement) what is called a tenant by the courtesy or favor of the law of England, 'initiate' which is a *droit de viduité*, and acquires an estate in his wife's inheritance in his own right during his life, whereby his widow's heir at law is postponed. As to a lease of a wife's lands, see 19 & 20 Vict. c. 120.

(*e*) With regard to land limited to the wife, and her heirs, during the life of a third person (technically called a freehold *pur autre vie*), it will go to her heir-at-law, upon her death, and the husband would be excluded; but should such lands be limited to the wife, her executors and administrators, or to the wife alone, without adding her representatives, either real or personal, it will then devolve upon the husband-survivor for the remainder of the life of such third person, who is styled the *cestui que vie*, on his taking out letters of administration to his deceased wife's effects, subject, however, to the claims of the wife's antenuptial creditors.

(*f*) A wife acquires a right to her *paraphernalia*, making an exception to the rule, that the whole of her personal chattels vests absolutely in her husband.

A wife's *paraphernalia* consist of the clothing and ornaments which she possessed at the time of the marriage, or which have been given to her by her husband during the marriage, and which are suitable to her condition in life.

The respective rights of husband and wife in *paraphernal* property are these: the husband may, during the marriage, sell them or give them away; they may be seized by his creditors, but his power over them ceases at his death, for he cannot bequeath them; the wife has merely the use of them during the marriage, subject to the husband's power over them, and therefore she cannot dispose of them; but after his decease, she is entitled to them as her absolute property, and may claim them or their value as a debt owing from his estate, a claim which, although postponed till after his debts are paid, is yet preferred to legacies.

A wife's right to her *paraphernalia* may be barred by settlement, or by her acquiescence in a limited bequest of them to her by her husband's will; but this bequest she may repudiate, and stand upon her legal absolute right to them.

(*g*) A wife may make a will, with her husband's particular permission, of her unsettled personal property, for such permission waives his marital right to it. He should consent to such will, when it is proved, for his previous permission is revocable at any time before probate. Should he once act under the will, or agree to it after her death, he cannot afterwards retract. Should he die before his wife, it is a partial revocation of such will, and unless she make another, she will be held to have died intestate. Such a will, however, will be valid, so far as her separate estate is concerned, or so far as she was empowered to make a will without his assent, as executrix, or under a power. In all such cases, however, it will be better to make a new will.

The general rule is that a husband is not bound by his wife's contracts, unless they are made by his authority, express or implied. If any articles are supplied to the wife which are not necessaries, the legal presumption is, that the husband did not assent to his wife's contract; but it is contrariwise if they be necessaries. Any person supplying a married woman with goods is bound, therefore, at his peril, to ascertain whether they are necessaries, and whether she is acting under her husband's authority, for a husband is not liable on his wife's contracts, if the subjects of them are beyond his station and circumstances in society, unless by his express consent. Where a separation has ensued in consequence of the wife's adultery, whether it be by a decree of judicial separation, or by the voluntary elopement of the wife, or by expulsion from her husband's house, he is not responsible even for the necessaries of life furnished to her. So if a wife, though not guilty of adultery, elope from her husband without sufficient cause. So if they be separated, provided the husband duly pays her an adequate allowance; for otherwise he would be liable.—*Story on Contracts*, 46.

As to actions, wherever their cause would

survive to the wife, she and her husband ought to join in suing; but where they arise during coverture, the husband may sue alone or jointly with her. In any action brought by a man and his wife for an injury done to the wife, in respect of which she is necessarily joined as co-plaintiff, it shall be lawful for the husband to add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the court or a judge shall think fit. Provided that in the case of the death of either plaintiff such suit, so far only as relates to the causes of action, if any, which do not survive, shall abate.—*C. L. P. A.* 1852, s. 40. In bringing actions against husband and wife, the general rule is, that whenever the cause of action would survive against the wife, they ought to be sued jointly. 2 *Chit. Arch. Prac. by Pren.* 1241.

In the *Roman Civil Law*, the husband and wife are considered as two distinct persons, and may have separate estates, contracts, debts, and injuries; and may also, by agreement with each other, have a community of interest in the nature of a partnership.

In courts of *Equity*, although the principles of law as to husband and wife are fully recognised and enforced in proper cases, yet they are not exclusively considered. On the contrary, equity, for many purposes, treats the husband and wife as the civil law treats them, as distinct persons, capable (in a limited sense) of contracting with each other, of suing each other, and of having separate estates, debts, and interests. A wife may, in a court of equity, sue her husband, and be sued by him. And in cases respecting her separate estate, she may also be sued without him; although he is ordinarily required to be joined for the sake of conformity to the rule of law, as a nominal party, whenever he is within the jurisdiction of the court, and can be made a party.

Courts of equity will, in special cases, in furtherance of the manifest intentions and objects of the parties, carry into effect a contract made before marriage between husband and wife, though it could not be enforced at law. An agreement, therefore, entered into by husband and wife before marriage, for the mutual settlement of their estates, or of the estate of either upon the other, upon the marriage, even without the intervention of trustees, will be enforced in equity, although void at law; for equity will not suffer the intention of the parties to be defeated by the very act which is designed to give effect to such a contract. Even at law a bond given by a husband to his intended wife, upon a condition not to be performed in his lifetime (as for instance, to leave her at his death 1,000*l.*), would not be extinguished by the intermarriage; for marriage extinguishes such contracts only as are for debts or things which are due *in præsenti* or *in futuro*, or upon a contingency, which may occur during the coverture. But where the debt or thing cannot be due until after the coverture is dissolved, the contract is only suspended and not extinguished during the coverture. *A fortiori*, such an agreement would be specifically decreed in equity. In regard to contracts made between husband and wife after marriage, the principles of the common law pronounce them a mere nullity: yet although *æquitas sequitur legem*, it will, under particular circumstances, give full effect and validity to post-nuptial contracts. And a wife may become a creditor of her husband by acts and contracts during marriage; and her rights, as such, will be enforced against him and his representatives.

It is well known that the strict rules of the old common law would not permit a wife to take or enjoy any real or personal estate separate from or independent of her husband; and although these rules have been in some degree relaxed and modified in modern times, yet they have still a very comprehensive influence and operation at law. On the other hand, courts of equity have, for a great length of time, admitted the doctrine that a married woman is capable of taking real and personal estate to her own separate and exclusive use, and that she has also an incidental power of disposition over it. This may be effected by marriage articles, or by an actual settlement before marriage. And although, in strict propriety, the separate and exclusive use should be vested in trustees for her benefit (and this is usually done in regular and well considered settlements), yet it has for more than a century been established in equity, that the intervention of trustees is not indispensable, and that whenever real or personal property is given, devised, or settled upon a wife, either before or after marriage, for her *separate* and exclusive use, without the intervention of trustees, the intention of the parties shall be effectuated, and the wife's interest protected against the marital rights and claims of her husband. In all such cases the husband will be held to be a mere trustee for her. Wherever a trust is created, or a power is reserved by a settlement, to enable a wife after marriage to dispose of her separate property, either real or personal, it may be executed by her in the manner provided for, whether it be by deed or other writing, or by a will or appointment.

The principal, if not the sole, cases in which equity will interfere to secure to a wife her equity to a settlement, are: (1) where a husband seeks aid or relief from a court of equity in regard to her property; (2) where he makes an assignment of her equitable interests; (3) where she seeks the like relief, as plaintiff against her husband or his assignees, in regard to her equitable interests. But if a wife be

already amply provided for under a prior settlement, the motive and ground for the interference of equity in her favor is removed. And her equity to a settlement may be lost or suspended by her own misconduct. — 2 *Story's Eq. Jurisp.* 546; *Roper on Husband and Wife.* See EQUITY TO A WIFE'S SETTLEMENT and SEPARATE ESTATE.

A wife, if her husband is banished, or has abjured the realm, or has been transported for felony, may, both at law and in equity, maintain a suit in her own name as a *feme sole*, otherwise the husband must join in the suit. But, in equity, if a wife claim some rights in opposition to those claimed by her husband, and it becomes proper to vindicate her rights against him, a bill is filed for her by her next friend, with her consent. The husband may also, in certain cases, sue the wife. Generally, a wife must be joined with her husband as a defendant in a suit.—*Story's Eq. Plead.* 61.

As to *Criminal* law, if a wife commit a felony in her husband's presence, the law presumes that she acted under his immediate coercion, and excuses her from punishment, which presumption, however, may be rebutted by evidence; but if in the absence of her husband she commit an offence—even by his order or procurement—her coverture will be no excuse. Such a protection is not allowed in crimes which are *mala in se*, and prohibited by the law of nature, nor in such as are heinous in their character, or dangerous in their consequences; and therefore, if a married woman be guilty of treason, murder, or homicide, in company with and by coercion of her husband, she is punishable as if she were sole. A wife may, generally, be found guilty with her husband in all misdemeanors. But husband and wife cannot alone be found guilty of a conspiracy, because they are deemed to be one person in law, and are presumed to have but one will. If a wife incite her husband to the commission of a felony, she is an accessory before the fact; but she cannot be treated as an accessory for receiving her husband, knowing that he has committed a felony.—1 *Hale*, 45; 1 *Hawk*, c. i., ss. 9, 10, 11, 12; 1 *Russ.* 20.

The law of *Evidence* on this subject may be thus epitomized: —

On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding in any court of justice, or before any person having by law or by consent of parties authority to hear, receive, and examine evidence, the husbands and wives of the parties thereto, and of the persons in whose behalf any such suit, action, or other proceeding may be brought or instituted, or opposed, or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action, or other proceeding.—16 & 17 *Vict.* c. 83, s. 1.

Nothing herein shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, in any criminal proceeding, or in any proceeding instituted in consequence of adultery (s. 2).

No husband shall be compellable to disclose any communication made to him by his wife during the marriage, and no wife shall be compellable to disclose any communication made to her by her husband during the marriage (s. 3).

So much of s. 1 of 6 & 7 Vict. c. 85 as relates to husbands and wives is repealed by s. 4. See also 14 & 15 *Vict.* c. 99.

The following are exceptions in criminal proceedings:—

(1) If a woman be taken away by force and married, she may be a witness against her husband, if he is indicted under 3 Hen. VII. c. 2, for she is not a wife *de jure*, a contract obtained by force having no obligation in law.

(2) On an indictment for a second marriage during the continuance of a former marriage, though the first wife or husband cannot be a witness, yet the second wife or husband may, after the proof of the first marriage.

(3) A wife may be a witness against her husband for an offence committed against her person.

(4) Upon an appeal against an order of bastardy, in the case of a married woman, Lord Hardwicke and the other judges held that she was a competent witness to prove her criminal connection with the appellant, though her husband was interested both in the question and in the event of the appeal; because such a fact, so secret in its nature, can scarce ever be proved by other evidence.

By the Bankrupt Law Consolidation Act, 1849, the courts of bankruptcy may summon the wife of any bankrupt, and examine her (after she shall have made and signed the necessary declaration), either by word of mouth or interrogatories in writing, for the finding out and discovery of the estate, goods, and chattels of such bankrupt, concealed, kept, or disposed of by such wife, in her own person, or by her own act, or by any other person; and she will incur such danger or penalty for not coming before the court, or for refusing to be sworn and examined, or for refusing to sign or subscribe her examination, or for not fully answering to the satisfaction of the court, as any other person.—12 & 13 *Vict.* c. 106, ss. 117, 118.

By the Small Debts Act, 9 & 10 Vict. c. 95, s. 83, all parties to any proceedings in the county courts, their wives, and all other persons,

may be examined on behalf of the plaintiffs or defendants, upon oath or affirmation.

By 22 & 23 Vict. c. 61, s. 6, on a wife's petition to the Divorce Court for dissolution of marriage, on the ground of adultery and cruelty, or of adultery and desertion, husband and wife are competent and compellable to give evidence of or relating to cruelty or desertion.

As to dissolution of marriage, judicial separation, nullity of marriage, protecting order, see the respective titles, and MARRIAGE.

Husbandry, farming; a man devoted to this pursuit is not to be called a farmer, but a husbandman.

Husbrece, burglary.

Huscarle, a menial servant.—*Domesday.*

Husfastne, he who holds house and land.

Husgable, house-rent or tax.

Hush-money, a bribe to hinder information; pay to secure silence.

Husting [fr. *hus-thing*, A.S.], council, court, tribunal; apparently so called from being held within a building, at a time when other courts were held in the open air. It was a local court. The county court in the city of London bears this name. There were hustings at York, Winchester, Lincoln, and in other places, similar to the London hustings.—*Madox, Hist. Excheq.* c. xx.

In these courts certain documents are enrolled, outlawries proclaimed, &c., and the elections of officers and parliamentary representatives take place. The raised place from which candidates for seats in Parliament address the constituency is called hustings.

Hutesium et Clamor (*hue and cry*).

Hutilan, taxes.

Hwata, Hwatung, augury, divination.—*Anc. Inst. Eng.*

Hybernagium, the season for sowing winter corn between Michaelmas and Christmas.

Hyd, hide, skin. See HIDE-GILD.

Hyd, a measure of land, containing at present a hundred acres, which quantity is also assigned to it in the *Dialogus de Scaccarii.* It seems, however, that the hide varied in different parts of the kingdom. See HIDE OF LAND.

Hydage. See HIDAGE.

Hynden, an association of ten men, first mentioned in *In.* 54, where it signifies the persons from among whom the consacramentals were to be chosen in the case of deadly feud. From *Ath.* V. iii. it appears that the members of the 'firth-guilds' (*congildones*) were formed into associations of ten, the enactment running thus: 'That we count ten men together, and let the senior direct the nine in all those things that are to be done; and then let them count their hyndens together, with one hynden-man who shall admonish the ten (i. e. the ten hyndens) for our common benefit.' Hence it would seem that the eleven who are to hold the money consisted of the senior of each hynden, together with the hynden-man who presided over the hynden of the hyndens, i. e. ten hyndens. The number XII. mentioned in *Ath.* V. viii. 1, is apparently an error for XI.—*Anc. Inst. Eng.*

Hypobolum, a legacy to a wife above her dower.—*Civ. Law.*

Hypothecation [fr. *hypotheca*, Civ. Law, a species of pledge in which the pledger retained possession of the thing pledged, as distinguished from *pignus*, where the possession was transferred to the pledgee. See *Sand. Justin.* 52, 227, 429; *Smith's Dict. of Antiq.*, tit. 'Pignus'], the act of pledging a thing as security for a debt or demand without parting with the possession.

There are few cases, if any, in our law where an hypothecation, in the strict sense of the Roman law, exists. The nearest approaches, perhaps, are the cases of holders of bottomry-bonds, and of seamen to whom wages are due in the merchant service, who have a claim against the ship *in rem.* But these are rather cases of liens or privileges than strict hypothecations. There are also cases where mortgages of chattels are held valid, without any actual possession by the mortgagee, but they stand upon very peculiar grounds, and may be deemed exceptions to the general rule.

Hypotheque, the right acquired by the creditor over the immoveable property which has been assigned to him by his debtor as security for his debt, although he be not placed in possession of it.—*Fr. Law.*

Hyrnes [*parochia*, Lat.], parish.

Hysteropotmoi [Gk.], such as had been thought dead, and after a long absence in foreign countries returned safely home; or such as had been thought dead in battle, and afterwards unexpectedly escaped from their enemies and returned home. These, among the Romans, were not permitted to enter their own houses at the door, but were received at a passage opened in the roof.—*Encyc. Lond.*

Hysterotomy [fr. ὑστέρα, Gk., the womb, and τόμος, a section], the Cæsarian operation.

Hythe, a port or little haven at which to lade or unlade wares.

I.

Ibernagium [fr. *hibernagium*, Lat.], the season for sowing winter corn.—*Cart. Antiq. MSS.*

Ibi semper debet fieri triatio, ubi juratores meliorem possunt habere notitiam.—7 *Co.* 1.—(A trial should always be had there where the jury can get the better information.)

Ibidem, Ibid., Id. [Lat.] (*in the same place or case*).

Iceni, the ancient name for the people of Suffolk, Norfolk, Cambridgeshire, and Huntingdonshire.

Ich Dien (*I serve*), the motto of the Prince of Wales, first assumed by Edward the Black Prince, after he had slain John, King of Bohemia, at Cressy, whose motto it was originally. The Black Prince assumed it to show his subjection to his father, Edward III.

Icona, a figure or representation of a thing.

Ictus orbus, a maim, bruise, or swelling, without a solution of continuity.

Id certum est quod certum reddi potest; sed id magis certum est quod de semet ipso est certum.—9 *Co.* 47.—(That is certain which can be reduced to a certainty, but that is more certain which is certain on the face of it.)

Idem agens et patiens esse non potest.—*Jenk. Cent.* 40.—(The same person cannot be both the agent and patient.)

Idem est facere, et non prohibere cum possis; et qui non prohibet, cum prohibere possit, in culpâ est, 3 *Inst.* 158.—(To commit and not prohibit, when in your power, is the same thing; and he who does not prohibit when he can prohibit, is in fault.)

Idem est nihil dicere et insufficienter dicere.—2 *Inst.* 178.—(It is the same thing to say nothing, and not to say sufficiently.)

Idem est non esse et non apparere.—*Jenk. Cent.* 207.—(Not to be and not to appear are the same.)

Idem semper antecedenti proximo refertur.—*Co. Litt.* 685.—(The same is always referred to its next antecedent.)

Idem sonans (*sounding alike*). The courts will not interfere in setting aside proceedings on account of the misspelling of names, provided the variance is so trifling as not to mislead, or there is an *idem sonans* between the pronunciation of the right name and that which is inserted in the proceedings; as Lawrance instead of Lawrence, Reynell for Reynolds, Beneditto for Benedetto.—1 *Cromp. and M.* 806; 1 *Chitt. R.* 659; 6 *Price*, 2; 2 *Taunt.* 401.

Identitas vera colligitur ex multitudine signorum.—*Bacon.*—(True identity is collected from a multitude of signs.)

Identitate, or **Idemptitate nominis**, an ancient and obsolete writ that lay for one taken and arrested in any personal action, and committed to prison for another man of the same name.—*F. N. B.* 267; 2 *Reeves*, 374.

Identity of person. Cases have frequently arisen, both in civil and criminal courts, where the question at issue has been whether an individual was really the person whom he pretended or stated himself to be. When such cases present themselves, the difference of opinion that exists is generally of such a nature as to render the duty of the court trying and difficult. This subject is calculated to excite attention, to awaken discussion, and to cause great positiveness of opinion on either side. An examination of these cases will lead to the conclusion that considerable importance should be attached to physical signs. In all disputed cases, recommends Foderé, we should particularly notice mature formations or congenital marks. These cannot be removed. All wounds also of the soft parts leave marks of their existence. Scrofulous ulcers have their cicatrices; smallpox and burns have their marks. All peculiarities of physiognomy, profession, or trade, should be noted.—*Beck's Med. Juris.* 104.

Ides [fr. *iduare*, obs. Lat., to divide], a division of time among the Romans. In March, May, July, and October, the Ides were on the 15th of the month, in the remaining months, on the 13th.—*Kenn. Antiq.*; *Smi. Clas. Antiq.* This method of reckoning is still retained in the Chancery of Rome, and in the calendar of the breviary.

Idiots and Lunatics, persons incapable of contracting and transacting the ordinary business of life.

The administration of idiots' and lunatics' estates is, in virtue of *personal* authority given by the Crown, viz. a special commission under a warrant of the Queen's sign manual, countersigned by the Lords of the Treasury, not directed to the Court of Chancery, but to a certain great officer of the Crown, not of necessity the person who has the custody of the great seal, though it is generally given to him by a warrant from the Crown, in consideration of its being his duty as chancellor to issue the commissions on which the inquiry as to the facts of idiotcy or lunacy is to be obtained. It is said that the warrant confers no jurisdiction, but only a power of administration. This power is at present exercised by the Lord Chancellor and the two Lords Justices of Appeal by virtue of the royal sign manual.

The rules of equity and law are the same as to what amounts to insanity.

Insanity in its ordinary acceptation may be divided into:—(1) Mania, in which the delusion extends to all kinds of objects, and is accompanied with some excitement. (2) Monomania, or melancholy, in which the delusion is confined to a single object, or to a few objects. (3) Dementia, wherein the person is rendered incapable of reasoning, in consequence of functional disorder of the brain, not congenital (i. e. not born with the person). (4) Idiotism, congenital, from original mal-conformation of the brain.

The ancient theory on the subject of lunacy was that a person insane became so at particular changes of the moon, and that in the interval he would be rational. This is a notion, however, long since abandoned. '*Lunatic*,' says Lord Hardwicke, 'is a technical word,

coined in more ignorant times, as imagining these persons were affected by the moon; but it is discovered by philosophy and ingenious men, that it is entirely owing to a defect of the organs of the body.'

In the case of a lunatic the Crown is but a trustee of his estate, but in the case of an idiot the Crown is absolutely entitled to the profits, subject to the idiot's maintenance; but persons are seldom found idiots, but only *non compotes mentis*; and even when they are found idiots the Crown very rarely claims that interest in their property to which it is legally entitled.

A lunatic is never considered in law to be incurable.

It is exceedingly difficult to ascertain the lunacy of a person, where, instead of being marked and excessive, it is *cunningly* present in his mind; to determine the precise point at which mental health ceases, and incontrollable impulse begins; or to discriminate between acts which arise from violent temper or excessive passion, and acts which indicate a diseased obliquity of the volition and understanding. For what can be more alike than the anger of the sane and the insane; or than the maniac and the habitually passionate; or the melancholic and one accustomed to brood over his malignant and revengeful conceptions?

As to the nature and duration of a lucid interval:—

'It must not be a superficial tranquillity, a shadow of repose, but, on the contrary, a profound tranquillity, a real repose; it must be not a mere ray of reason, which only makes its absence more apparent when it is gone—not a flash of lightning, which pierces through the darkness only to render it more gloomy and dismal—not a glimmering which unites the night to the day; but a perfect light, a lively and continued lustre, a full and entire day, interposed between the two separate nights of the fury which precedes and follows it; and, to use another image, it is not a deceitful and faithless stillness which follows or forbodes a storm, but a sure and steadfast tranquillity for a time, a real calm, a perfect serenity; in fine, without looking for so many metaphors to represent our idea, it must be not a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked as in every respect to resemble the restoration of health. So much for its nature.

'And as it is impossible to judge in a moment of the quality of an interval, it is requisite that there should be a sufficient length of time for giving a perfect assurance of the temporary re-establishment of reason, which it is not possible to define in general, and which depends upon the different kinds of fury; but it is certain that there must be a time, and a considerable time. So much for its duration.'—Per *D'Aguesseau*, pleading in the case of the Prince de Conti and the Duchess of Nemours as to the insanity of the Abbé d'Orleans, 1696; 2 *Poth. on Oblig. by Evans*, 668.

When the question is whether an act was done *lucido intervallo*, which may be either by remission or intermission of the disease, it is not enough to show that the act was *actus sapienti conveniens*, for that may happen many ways; but it must be proved to be *actus sapientis*, and to proceed from judgment and deliberation, otherwise the presumption continues. See MENTAL ALIENATION.

The practice in lunacy is regulated by 16 & 17 Vict. c. 70, amended by 18 Vict. c. 13, and by 'The Lunacy Regulation Act, 1862,' 25 & 26 Vict. c. 86, and the General Orders, Nov. 7, 1853.

In lieu of a Special Commission, a General Commission is issued to the two masters in lunacy, to inquire as to the lunacy of all persons whose cases shall be referred to them by the Lord Chancellor, under a separate order in each case (16 & 17 Vict. c. 70, s. 39), obtainable upon petition.

The mode of inquiry without a jury as to *lunatics in confinement*, heretofore authorised by the Act 8 & 9 Vict. c. 100, s. 95 (commonly known as Lord Ashley's Act), is discontinued, and the inquiry as to insanity is, in future, to be conducted in the same manner, whether the alleged lunatic be in confinement or not (ss. 53 & 54).

The inquiry takes place before a jury if the alleged lunatic, within seven days after notice has been given him of the petition for an inquiry, by notice signed by him, and attested by his solicitor, and filed with the registrar, or at the hearing of such petition, orally by himself, his counsel, or solicitor, or by petition to the Lord Chancellor, demands a jury, and the Lord Chancellor, after a personal examination of the alleged lunatic, is satisfied that he is mentally competent to form and express a wish for an inquiry before a jury; or if the Lord Chancellor, or master acting under the petition, is of opinion that such an inquiry is expedient (16 & 17 Vict. c. 70, ss. 41, 42, 43, and Gen. Ord. 7–10, and 25 & 26 Vict. c. 86, s. 6. The inquiry is to be confined to the question, whether or not the person who is the subject of it is at the time of such inquiry of unsound mind and incapable of managing himself or his affairs, and no evidence as to anything done or said by such person, or as to his demeanor or state of mind at any time being more than two years before the time of the inquiry, shall be receivable in proof of insanity on any such inquiry, or on the trial of any traverse of an inquisition, unless the judge or master shall otherwise direct (25 & 26 Vict. c. 86, s. 3), but inquiries as to previous dealings with the lunatic's property may after inquisition be gone

into (Ord. 12). Whenever the Lord Chancellor shall order an inquiry before a jury, he may direct an issue to be tried in one of the superior courts of common law—the question in such issue to be whether the alleged insane person is of unsound mind and incapable of managing himself or his affairs (the provisions of 16 & 17 Vict. c. 70, with respect to commissions of lunacy and orders for inquiry to be tried by a jury, and the trial thereof and the constitution of the jury, to apply to such issue, &c.), and a verdict finding the alleged insane person to be of unsound mind, &c., shall have the same force as an inquisition under a commission of lunacy (25 & 26 Vict. c. 86, s. 4). Upon the trial of such issue the alleged insane person, if within the jurisdiction, is to be examined before any evidence is taken, and at the close of the proceedings before the jury consult as to their verdict, unless the presiding judge shall otherwise direct, and such examination shall take place in open court or in private, as the presiding judge shall direct (s. 6). No person shall be entitled to traverse any inquisition so made upon the oath of a jury, but the Lord Chancellor may, upon a petition presented within three months after the trial, order a new trial (s. 7). If it shall appear to the Lord Chancellor not expedient, or not for the benefit of the lunatic, that the commission should be superseded unconditionally, but that it should be superseded on terms and conditions, he may, upon the consent of the lunatic, &c., order it to be superseded on terms and conditions (s. 10). The Lord Chancellor may order the costs of, and incidental to the presentation of a petition for a commission, &c., to be paid, in whole or in part, either by the party presenting or opposing the petition, or out of the estate of the alleged lunatic (s. 11). When it is established to the satisfaction of the Lord Chancellor by the report of a master, or commissioner, in lunacy, or by affidavit, or otherwise, that a person is of unsound mind and incapable of managing his affairs, and that his property does not exceed 1,000*l.*, or that his annual income does not exceed 50*l.*, he may, without directing an inquiry under a commission of lunacy, after notice to the alleged lunatic, make such order as he may think expedient for the purpose of rendering the property or income of such person available for his maintenance or benefit, or for carrying on his trade or business (s. 12), and may order such property to be sold, charged, &c., and the proceeds to be paid to such person as he thinks fit, to be applied for the benefit of the insane person, his family, &c. (s. 13). When on the trial of an indictment the accused has been acquitted on the ground of insanity, the Lord Chancellor, on being satisfied by affidavit or otherwise of the continued insanity of such person, and that he is still in confinement, may make similar orders as to the application of his property (s. 15).

After inquisition, all applications as to the person and property of the lunatic may be entertained by the masters, and are to be submitted to them in the first instance; any person being at liberty, at any time, to carry the inquiry before the Lord Chancellor, but at his own risk as to costs (ss. 69 to 74, and Gen. Ord. 12 to 14). If objections be taken to the master's report, they are to be left with and proceeded on before the master, and any objections not removed are to be brought forward (without separate petition) on the hearing of the petition to confirm (ss. 93 & 94). If there be no objections remaining to the master's report, it is to be submitted to the Lord Chancellor for confirmation, without petition, and without the attendance of parties; and the Lord Chancellor's fiat on the report will give to it the operation of an order made upon petition; and, in all those cases, the report will contain the necessary consequential directions (ss. 95 & 96).

Should the Lord Chancellor see fit to have any matter heard before him, either before or after a report from the master, it will be brought before him by petition, as heretofore (s. 97).

The General Orders made under the Act embody the common provisions and directions in particular orders. By this means, unnecessary repetition in reports and orders will be avoided (s. 98, and Gen. Ord. 34 to end).

And it is provided that 'affidavits, petitions, and other documents brought into the offices of the masters or registrar shall not contain unnecessary recitals, or statements of proceedings or documents previously taken or used in the matter; and the taxing-masters shall look into all such affidavits, petitions, and other documents as aforesaid, and deal in such manner as to them seems just, with the costs of any affidavit, petition, or other document appearing to them to be unnecessary or improper, in the whole or in part, or of unnecessary length' (s. 89).

The order of the Lord Chancellor appointing a committee will have the force of a grant of custody, and that very expensive document is dispensed with; and the security is taken by the masters, instead of her Majesty's attorney-general (ss. 62, 63, and Gen. Ord. 36).

The committeeship may survive among several committees, if the master shall so approve; and in that case, the security will be taken accordingly (s. 66).

Enlarged powers are given to the Lord Chancellor for dealing with the real and leasehold estate of the lunatic, for various purposes, and for providing, among others—

For charging the estate with the expenses of

any permanent improvements of the lunatic's estate (s. 118).

Also for selling the lunatic's land for building purposes (s. 125). And for granting mining leases (ss. 130, 131, & 132, and 18 Vict. c. 13). Powers are also given to the Lord Chancellor and the masters, for regulating the inquiries as to next of kin, and for fixing, or dispensing with, the attendance of next of kin (ss. 75 to 82, and Gen. Ord. 22 & 23).

The dividends are to be invested by the accountant-general without request, as in Chancery (Gen. Ord. 16).

The certificate of the master (without confirmation by the court) is to have the effect of an order in some classes of cases, of which the following are the principal :—

For payment of money or transfer of stock of the lunatic into court, whether to the credit of the lunacy generally, or to a particular or separate account in the lunacy (s. 64, and Gen. Ord. 20).

For the receipt, or delivery out, of deeds or securities, or for the payment of money or transfer of stock of the lunatic into court for the purpose of reducing the security, or for any other reason (s. 65, and Gen. Ord. 20).

For payment or transfer of money or stock of an approved committee into court in lieu of security (s. 64, and Gen. Ord. 20).

For the investment of cash standing in the name of the accountant-general (Gen. Ord. 16).

For opening and delivering out the will of the lunatic on his death (s. 84).

For the taxation and allowance of the costs of certain proceedings before them ; and

For disallowing the costs of any proceeding or document. The costs of counsel attending in the master's office are not to be allowed, unless the master shall consider such attendance necessary, and for the lunatic's benefit (ss. 72 & 88, and Gen. Ord. 48).

The percentage formerly paid into the Lunatics' Visitors' Fund is discontinued, and a graduated percentage on incomes amounting to 100*l.* and upwards, ranging from four per cent. on the smaller to two per cent. on the larger incomes (but in no instance to exceed 200*l.*), is charged on lunatics' estates; and in lieu of fees heretofore payable, fees of 2*l.* for each order, 1*l.* for such report or certificate, and 1*l.* for every attendance of a clerk in court, are fixed (ss. 26 & 29). The percentage and fees are to be collected by stamps, as in Chancery, except where the percentage is carried over by the accountant-general from the particular lunacy to the fee fund, which will be done where there is cash at the accountant-general's, arising from income available for the purpose (ss. 29 & 31, and Gen. Ord. 27–33). For copies and engrossments, the stationer's charge only is to be paid (s. 29). Other alterations are introduced in the law and practice in matters of minor importance, which will be seen on reference to the Act and Orders. And see *Elmer's Lunacy Prac.* As to actions by or against idiots and lunatics, see 2 *Chit. Arch. Prac. by Pren.* 1256.

Idoneum se facere ; idoneare se, to purge one's self by oath of a crime of which one is accused.

Idoneus homo (*a proper man*). He is legally said to be *idoneus homo* who has honesty, knowledge, and ability.

Id perfectum est quod ex omnibus suis partibus constat ; et nihil perfectum est dum aliquid restat agendum.—9 *Co.* 9.—(That is perfect which is complete in all its parts; and nothing is perfect whilst anything remains to be done.)

Id possumus quod de jure possumus.—*Lane,* 116.—(We may do only that which by law we are allowed to do.)

Id quod est magis remotum, non trahit ad se quod est magis junctum, sed è contrario in omni casu.—*Co. Litt.* 164.—(That which is more remote does not draw to itself that which is nearer, but on the contrary in every case.)

Idumanus fluvius, Black Water in Essex.

Ifungia, the finest white bread, formerly called cocked bread.—*Blount.*

Ignis judicium, the old judicial trial by fire.

Ignitegium [fr. *ignis*, Lat., fire, and *tego*, to cover], the curfew.—*Encyc. Lond.*

Ignoramus (*we are ignorant*). The word formerly written on a bill of indictment by a grand jury when they rejected it; the phrase now used is ' not a true bill,' or ' not found.'

Ignorantia eorum quæ quis scire tenetur non excusat.—*Hale's Pl. Cr.* 42.—(Ignorance of those things which one is bound to know, excuses not.)

Ignorantia facti excusat, ignorantia juris non excusat.—1 *Co.* 177.—(Ignorance of the fact excuses; ignorance of the law excuses not.)

Every man must be taken to be cognizant of the law; otherwise there is no saying to what extent the excuse of ignorance may not be carried. It is, therefore, a rule—1st, that money paid with full knowledge of the facts, but through ignorance of the law, is not recoverable, if there be nothing against conscience in retaining it; and, 2ndly, that money paid in ignorance of the facts is recoverable, provided there have been no laches in the party paying it.—2 *Smith's L. C.* 327.

In criminal cases this maxim applies, when a man intending to do a lawful act does that which is unlawful. For there is not that conjunction between the deed and the will which is necessary to establish a criminal act; but, in order that he may stand excused, there must be an ignorance or mistake of fact, and not an

error in point of law; for a mistake in point of law, which every person of discretion not only may but is bound and presumed to know, is no sort of defence.—4 *Bl. Com.* 27.

Ignorantia judicis est calamitas innocentis.—2 *Inst.* 591.—(The ignorance of a judge is the misfortune of the innocent.)

Ignoratis terminis ignoratur et ars.—*Co. Litt.* 2.—(The terms being unknown, the art also is unknown.)

Ikenild Street. See HIKENILDE STREET.

Ilet, a little island.

Illegal conditions, all those that are impossible or contrary to law, immoral, or repugnant to the nature of the transaction. See CONDITION.

Illegal considerations. See CONSIDERATION.

Illegal contract, an agreement to do any act forbidden by the law, or to omit to do any act enjoined by the law.

Illegal contracts have been divided into

1st, contracts which violate the common law; subdivided into

(α) Contracts void on account of fraud, which may be either

(a) Misrepresentation.

(b) Concealment.

(β) Contracts void on account of immorality.

(γ) Contracts in violation of public policy, which may be

(a) In restraint of trade.

(b) In restraint of marriage.

(c) Marriage-brokerage contracts.

(d) Wagers.

(e) Contracts to offend against law, &c.

(f) Trading with an enemy without license.

2nd, Contracts which violate any statute provisions.—*Story on Contracts*, 102.

Illegitimacy. See NATURAL CHILD.

Illeviable, a debt or duty that cannot or ought not to be levied.

Illicit, unlawful.

Illicite, unlawfully.

Illicitum Collegium (*an illegal corporation*).

Illocable, incapable of being placed out or hired.—*Bailey.*

Illud, quod alias licitum non est, necessitas facit licitum; et necessitas inducit privilegium quoad jura privata.—*Bac. Max.*—(That which is otherwise not permitted, necessity permits; and necessity makes a privilege as to private rights.)

Illud, quod alteri unitur, extinguitur, neque ampliùs per se vacare licet.—*Godolph. Rep. Can.* 169.—(That which is united to another is extinguished, nor can it be any more independent.)

Illusory Appointment Act, 1 Wm. IV. c. 46. This statute enacts that no appointment made after its passing (July 16, 1830), in exercise of a power to appoint property real or personal among several objects, shall be invalid, or impeached in equity on the ground that an unsubstantial, illusory, or nominal share only was thereby appointed, or left unappointed, to devolve upon any one or more of the objects of such power; but that the appointment shall be valid in equity as at law. It provides that the act shall not prejudice any provision in any deed, will, or other instrument, declaring the amount from which no object of the power shall be excluded.

Imagine, to entertain or contemplate.

Iman, Imam, or **Imaum,** a Mohammedan prince having supreme spiritual as well as temporal power; a regular priest of the mosque.

Imbargo. See EMBARGO.

Imbasing of money, mixing the species with an alloy below the standard of sterling.—1 *Hale's P. C.* 102.

Imbezzle. See EMBEZZLE.

Imbracery. See EMBRACERY.

Imbrocus, a brook, gutter, or water-passage.

Immaterial averment, an unnecessary statement.

Immaterial issue, an issue upon a point or ground unfit to decide the action.—*Step. Plead.* 142.

Immediate execution. See SPEEDY EXECUTION.

Immemorial usage, a practice which has existed time out of mind; custom; prescription.

Immoral contracts, all contracts founded upon considerations *contra bonos mores*, are void. *Ex turpi contractu non oritur actio.* But where a contract, founded upon an immoral consideration, has been executed, neither law nor equity will interfere to set it aside, if both parties have been equally in fault, for *in pari delicto, potior est conditio defendentis.*

Yet, a *sealed* contract, made in consideration of past seduction and cohabitation, or past cohabitation without seduction, can be enforced; not merely because it is binding in honor and conscience, for such a reason is not legally sufficient, but because a specialty imports a consideration, which, if legal, both parties thereto are estopped from denying.—1 *Vern.* 483; 2 *Wils.* 339.

Immoveable, not to be forced from its place; the characteristic of things real, or land.

Immunity, exemption.

Impalare, to put in a pound.

Impanel, or **Impannel,** the writing and entering of the names of a jury in a parchment-schedule by the sheriff.

Impargamentum, the right of impounding the cattle.

Imparl, to have license to settle a litigation amicably, to obtain delay for adjustment.

Imparlance [fr. *licentia loquendi*, Lat.], time

to plead; also when a court gives a party leave to answer or plead at another time, without the assent of the other party. Abolished by r. 31 T. T. 1853. And see 2 Wm. IV. c. 39.

Imparsonee, a clergyman inducted into a benefice. See INDUCTION.

Impatronization, the act of putting into full possession of a benefice.

Impeachment, a prosecution by the House of Commons before the House of Lords of a commoner for treason, or other high crimes and misdemeanors, or of a peer for any crime.

Impeachment by the House of Commons is a proceeding of great importance, involving the exercise of the highest judicial powers of Parliament; and though in modern times it has rarely been resorted to, in former periods of our history it was of frequent occurrence. The last memorable cases are those of Warren Hastings, in 1788, and Lord Melville, in 1805.

The mode of proceeding is this:—A member of the House of Commons charges the accused of certain high crimes and misdemeanors, and moves that he be impeached; if the House agree to it, the member is ordered to go to the Lords, and at their bar, in the name of the House of Commons and of all the Commons of the United Kingdom, to impeach the accused. A committee is then appointed to draw up articles of impeachment, which are reported to the House, and having been discussed and agreed upon, are engrossed and delivered to the Lords. Further articles may be delivered from time to time. The accused sends answers to each article, which are communicated to the Commons by the Lords; to these, replications are returned, if necessary. After these preliminaries, the Lords appoint a day for the trial. The Commons desire the Lords to summon the witnesses required to prove their charges, and appoint managers to conduct the proceedings. Westminster Hall has been usually fitted up as the court, which is presided over by the Lord High Steward. The Commons attend with the managers, as a committee of the whole House. The accused remains in the custody of the Usher of the Black Rod, to whom he is delivered; if a commoner, by the Serjeant-at-Arms attending the House of Commons. The managers should confine themselves to the charges contained in the articles of impeachment. Persons impeached of treason are entitled, by 20 Geo. II. c. 30, to make their full defence by counsel; a privilege which is also enjoyed by persons charged by the Commons with high crimes and misdemeanors. When the managers have made their charges and adduced evidence in support of them, the accused answers them, and the managers have a reply. The Lord High Steward then puts to each peer, beginning with the junior baron, the question upon the first article, whether the accused be guilty of the crimes charged therein. The peers, in succession, rise in their places when the question is put, and standing uncovered, and laying their right hands upon their breast, answer 'guilty' or 'not guilty,' as the case may be, 'upon my honor.' Each article is proceeded with separately in the same manner, the Lord High Steward giving his own opinion the last. The numbers are then cast up, and being ascertained, are declared by the Lord High Steward to the Lords, and the accused is acquainted with the result.—*The Imperial Parliament, by T. E. May.*

Impeachment of waste. See ABSQUE IMPETITIONE VASTI.

Impechiare, to impeach, to accuse, or prosecute for felony or treason.

Impediatus. See EXPEDITATE.

Impediens, a defendant or deforciant.

Imperfect obligations, moral duties, such as charity, gratitude, &c., which cannot be enforced by law.

Imperfect trust, an executory trust, which see; and see EXECUTED TRUST.

Imperii majestas est tutelæ salus.—Co. Litt. 64.—(The majesty of the empire is the safety of its protection.)

Imperitia culpæ annumeratur.—Jur. Civ.—(Want of skill is reckoned as a fault.)

Imperitia est maxima mechanicorum pœna.—11 *Co.* 54.—(Ignorance is the greatest punishment of mechanics.)

Imperium, right to command, an attribute of executive power.

Impersonalitas non concludit nec legat.—Co. Litt. 352 *b.*—(Impersonality neither concludes nor binds.)

Impertinence, where the pleadings in Chancery are encumbered with long recitals, or with lengthy digressions of matters of fact, which are altogether unnecessary, and totally immaterial to the point in question, as where a deed is stated, which is not prayed to be set forth, *in hæc verba.*

The practice of excepting to bills, answers, and other proceedings for impertinence shall be and the same is hereby abolished. Provided always that it shall be lawful for the court to direct the costs occasioned by any impertinent matter introduced into any proceeding in the said court, to be paid by the party introducing the same, upon application being made to the court for that purpose.—15 & 16 *Vict.* c. 86, s. 17.

The application to be made for the costs of any impertinent matter introduced into any bill, answer, or other proceeding, is to be made at the time when the court disposes of the costs of the cause or matter, and not at any other time.—*Consol. Ord.* 1860, xl. r. 11.

Impescatus, impeached or accused.

Impetitio. See IMPEACHMENT.

Impetration, acquiring anything by request and prayer.

Impier, umpire, which see.

Impierment, impairing or prejudicing.

Impignoration, the act of pawning or putting to pledge.

Impius et crudelis judicandus est qui libertati non favet.—*Co. Litt.* 124.—(He is to be adjudged impious and cruel who does not favor liberty.)

Implead, to sue or prosecute.

Implicata [Ital.]. In order to avoid the risk of making fruitless voyages, merchants have been in the habit of receiving small adventures on freight at so much per cent. to which they are entitled at all events, even if the adventure be lost.—*Mar. Law.*

Implication, a necessary or possible inference, of something not directly declared.

Implied condition. See CONDITION.

Implied contract. See CONTRACT.

Implied trusts. An implied trust arises generally from an equitable construction put upon the acts, conduct, or situation of parties.

Implied trusts have been distributed into two classes: (1) those depending upon the presumed intent of the parties, as where property is delivered by one to another to be handed over to a third person, the receiver holds it upon an implied trust in favor of such third person; (2) those not depending upon such intention, but arising by operation of law, in cases of fraud, or notice of an adverse equity.

A trust of this kind arises, wherever the estate is converted by the trustee from one species of property into another; for if the property, in its original form, were invested with a trust, the *cestui que* trust's interests cannot be affected by any change of that form; and whether the conversion be in pursuance or in breach of the trustee's duty, is immaterial; for an abuse of trust cannot confer any right on the party abusing it, or on those who claim in privity with him.

Implied use. See RESULTING USE.

Implied warranty. See WARRANTY.

Importation, the bringing goods and merchandize into this country from other nations. As to importation of arms, &c. see 16 & 17 *Vict.* c. 107, s. 45.

Imports, goods or produce brought into a country from abroad.

Imposition, tax, contribution.

Impost [fr. *impôt*, Fr.; *impositum*, Lat.], any tax or tribute imposed by authority; particularly a tax or duty laid by Government on goods imported.

Impotence, or **Impotency,** physical inability of a man or woman to perform the act of sexual intercourse. A marriage is void if at the time of the celebration either of the parties to it is incurably impotent, and may be declared void by a decree in a suit of nullity of marriage. See *Bishop on Marriage and Divorce.*

A plea of impotence is sometimes pleaded by prisoners indicted for rape. Very nice questions as to the legitimacy of children have been contested on issues as to impotence.

The medical jurists have classed the subject, as to the male, into absolute, curable, and temporary, as to the female into curable and incurable. Consult *Beck's Med. Juris.* p. 52.

Impotentiam, propter, property, a qualified property, which may subsist in animals, *feræ naturæ*, on account of their inability, as where hawks, herons, or other birds, build in a person's trees, or coneys, &c. make their nests or burrows in a person's land, and have young there, such person has a qualified property in them till they can fly or run away, and then such property expires.—2 *Step. Com.* 8.

Impotentia excusat legem.—*Co. Litt.* 29.—(Impotency excuses law.)

Impounding cattle, &c. placing cattle, &c. after they have been distrained, in a safe place for custody.—11 *Geo. II.* c. 19, s. 10; 12 & 13 *Vict.* c. 92, s. 5; *Woodf. Land. and Ten.* 399.

Imprescriptable rights, such as a person may use or not, at pleasure, since they cannot be lost to him by the claims of another founded on prescription.

Impressing men, compelling persons to serve in the navy. This practice is founded on immemorial usage, and has been practised for ages, and is in conformity with the well-known constitutional maxim, that it is better that private mischief be submitted to than that public detriment and inconvenience should ensue. It is provided by 5 & 6 Wm. IV. c. 24, that no person shall be detained in the royal navy, against his consent, for a longer period than five years, except in case of emergency. And see 16 & 17 *Vict.* c. 69, and 17 & 18 *Vict.* cc. 18, 104, ss. 141–145.

(1) Every ship in the coal trade has the following persons protected, viz.: two able seamen (such as the master shall nominate) for every ship of 100 tons, and one for every 50 tons for every ship of 100 tons and upwards; and any officer who presumes to impress any of the above shall forfeit to the master or owner of such vessel 10*l.* for every man so impressed; and such officer shall be incapable of holding any place, office, or employment in any of his Majesty's ships of war.—6 & 7 *Wm. III.* c. 18, s. 19.

(2) No parish apprentice shall be compelled or permitted to enter into His Majesty's sea service till he arrives at the age of eighteen years. 2 & 3 *Anne*, c. 6, s. 4.

(3) Persons voluntarily binding themselves apprentices to sea service shall not be impressed for three years from the date of their indentures.

But no person above eighteen years of age shall have any exemption or protection from His Majesty's service, if they have been at sea before they became apprentices.—2 & 3 *Anne*, c. 6, s. 15; 4 *Anne*, c. 19, s. 17; and 13 *Geo. II.* c. 17, s. 2.

(4) Apprentices.—The Act 5 & 6 Wm. IV. c. 19, enacts some new regulations with respect to the number of apprentices that ships must have on board, according to their tonnage; and the Act 4 Geo. IV. c. 25, grants protection to such apprentices till they have attained the age of twenty-one years.

(5) Persons employed in the Fisheries.—The Act 50 Geo. III. c. 108, grants the following exemptions from impressment, viz.:—

1st. Masters of fishing vessels or boats, who, either themselves or their owners, have, or within six months before applying for a protection shall have had, one apprentice or more under sixteen years of age, bound for five years, and employed in the business of fishing.

2ndly. All such apprentices, not exceeding eight, to every master or owner of any fishing vessel of fifty tons or upwards; not exceeding seven to every vessel or boat of thirty-five tons, and under fifty; not exceeding six to every vessel of thirty tons and under thirty-five tons; and not exceeding four to every vessel or boat under twenty-nine tons burden, during the time of their apprenticeship, and till the age of twenty years; they continuing for the time in the business of fishing only.

3rdly. One mariner, besides the master and apprentices, to every fishing vessel of ten tons or upwards, employed on the sea coast during his continuance in such service.

4thly. Any landsman, above the age of eighteen, entering and employed on board such vessel for two years from his first going to sea; and to the end of the voyage then engaged in, if he so long continue in such service.

An affidavit, sworn before a justice of the peace, containing the tonnage of such fishing vessel or boat, the port or place to which she belongs, the name and description of the master, the age of every apprentice, the term for which he is bound, and the date of his indenture, and the name, age, and description of every such mariner and landsman respectively; and the time of such landsman's first going to sea is to be transmitted to the Admiralty, which, upon finding the facts correctly stated, grants a separate protection to every individual. In case, however, of an actual invasion of these kingdoms or imminent danger thereof, such protected persons may be impressed; but, except upon such an emergency, any officer or officers impressing such protected persons, shall respectively forfeit 20*l.* to the party impressed, if not an apprentice, or to his master, if he be an apprentice (ss. 2, 3, & 4).

(6) General Exemptions.—All persons fifty-five years of age and upwards, and under eighteen years. Every person being a foreigner, who shall serve in any merchant ship or other trading vessel or privateer, belonging to a subject of the Crown of Great Britain; and all persons of what age soever, who shall use the sea; shall be protected for two years, to be computed from the time of their first using it.—13 *Geo. II.* c. 17.

(7) Harpooners, line managers, or boat-steerers, engaged in the southern whale-fishery, are also protected.—26 *Geo. III.* c. 50.

(8) Mariners employed in the herring-fishery are exempted whilst actually employed.—48 *Geo. III.* c. 110.

Impressment is not now necessary, as the voluntary enlistment of seamen is both encouraged and responded to.

Imprest money, money paid on enlisting soldiers or sailors.

Impretiabilis, invaluable.

Imprimatur, a license to print or publish.

Imprimery, a print or impression.

Imprimis (*in the first place*).

Imprisii, adherents or accomplices.

Imprisonment, the restraint of a person's liberty under the custody of another. It extends to confinement not only in a gaol, but in a house, stocks, or to holding a man in the street, &c.; for in all these cases the person so restrained is said to be a prisoner, so long as he has not his liberty freely to go about his business, as at other times.—*Co. Litt.* 253. See BAIL and CAPIAS. The power of imprisonment for small debts, so indiscriminately exercised by county-court judges, is now very properly limited to cases of fraud, breach of trust, &c. See 22 & 23 *Vict.* c. 57, and 24 & 25 *Vict.* c. 134, s. 105.

Impristi, those who side with or take the part of another, either in his defence or otherwise.

Improbation, the act by which falsehood or perjury is proved.—*Scotch term.*

Improbi rumores dissipati sunt rebellionis prodromi.—2 *Inst.* 226.—(Wicked rumours spread abroad are the forerunners of rebellion.)

Improper feuds, derivative feuds; as, for instance, those that were originally bartered and sold to the feudatory for a price, or were held upon base or less honourable services, or upon a rent in lieu of military service, or were themselves alienable, without mutual license, or descended indifferently to either males or females.—1 *Step. Com.* 185.

Impropriation, the act of employing the revenues of a church-living to a layman's use. See APPROPRIATION.

Improvement. See APPROVEMENT.

Impruiamentum, the improvement of land.

Impruiare, to improve land.

Impunitas continuum affectum tribuit delin-

quendi.—4 *Co.* 45.—(Impunity confirms the disposition to commit crime.)

Impunitas semper ad deteriora invitat.—5 *Co.* 109.—(Impunity always invites to greater crimes.)

Imputatio [Lat.], legal liability.—*Civ. Law.*

In ædificiis lapis malè positus non est removendus.—11 *Co.* 69.—(A stone badly placed in buildings is not to be removed.)

In æquali jure melior est conditio possidentis. Plow. 296.—(In equal right the condition of the possessor is best.)

Inalienable, not transferable.

In alio loco [Lat.] (*in another place*).

In altâ proditione nullus potest esse accessorius sed principalis solummodo.—3 *Inst.* 138. (In high treason no one can be an accessory, but only principal.)

In alternativis electio est debitoris.—(In alternatives the debtor has the election.)

In ambiguis casibus semper præsumitur pro rege.—(In doubtful cases the presumption is always in favor of the king.)

In Angliâ non est interregnum.—*Jenk Cent.* 205.—(In England there is no interregnum.)

In articulo mortis [Lat.] (*at the point of death*).

In atrocioribus delictis punitur affectus licet non sequatur effectus.—2 *Rol. Rep.* 82.—(In more atrocious crimes the intent is punished, though an effect does not follow.)

Inauguration, the act of inducting into office with solemnity, as the coronation of the sovereign, or the consecration of a prelate.

In auter, or **Autre droit** (*in another's right*).

In banco, or **banc,** *sittings.* The Chief Justices and the Chief Baron, and the *puisné* judges of the three superior courts of common law, sit during the term, and also in vacation, if they so determine, for the despatch of business, in their full courts. The *puisné* judges sit by rotation, in each term or otherwise, as they agree among themselves, so that no greater number than three of them sit at the same time in banc, unless in the absence of the Lord Chief Justice or Chief Baron, the number of the judges forming the full court in banc being limited to four.

The usual business of the court in banc is to hear arguments on demurrers, applications in arrest of judgment, and for new trials, &c., and in the Queen's Bench, criminal informations, parish cases, &c.

Inblaura, profit or product of ground.—*Cowel.*

Inborh, a security, pledge, or hypotheca, consisting of the chattels of a person unable to obtain a personal 'borg,' or surety.

Inbound Common, an unenclosed common, marked out, however, by boundaries.

Incastellare, to make a building serve as a a castle.

In casu extremæ necessitatis omnia sunt communia.—*H. P. C.* 54.—(In cases of extreme necessity, every thing is in common.)

Incaustum, or **Encaustum,** ink.—*Fleta,* l. 2, c. xxvii., p. 5.

Incerta pro nullis habentur.—*Dav.* 33.—(Things uncertain are reckoned as nothing.)

Incerta quantitas vitiat actum.—1 *Rol. Rep.* 465.—(An uncertain quantity vitiates the act.)

Incest, carnal knowledge of persons within the Levitical degrees of kindred. This crime is a capital offence in Scotland; here it is left to the feeble coercion of the spiritual courts.

Inchartare, to give, or grant and assure, anything by a written instrument.

In chief. See EXAMINATION.

Inch, a twelfth part of a foot.

Inch of candle, a mode of sale among merchants. A notice is first given upon the Exchange or other public place, as to the time of sale; the goods to be sold are divided into lots, printed papers of which and the conditions of sale are published; when the sale takes place, a small piece of candle, about an inch long, is kept burning, and the last bidder, when the candle goes out, is entitled to the lot or parcel for which he bids.

Incident, a thing necessarily depending upon, appertaining to, or following another that is more worthy, as rent is incident to a reversion; a court-baron is incident to a manor.

Incident diligence, a process granted before *litis contestatam* in improbations, for the recovery of writs craved to be produced, and in many other cases during the dependance of a principal process.—*Scotch Law.*

Incipitur (*it is begun*), the technical commencement of a declaration, demurrer-book, judgment, &c.—3 *Step. Com.* 663 n.

Incivile est nisi totâ sententiâ inspectâ de aliquâ parte judicare.—*Hob.* 171.—(It is improper to judge of any part unless the whole sentence be examined.)

Incivism, unfriendliness to the state or government of which one is a citizen.

In claris non est locus conjecturis.—(In things obvious there is no room for conjecture.)

Inclausa, a home-close, or enclosure near a house.

Inclosure Acts, 41 Geo. III. c. 109; 1 & 2 Geo. IV. c. 23; 6 & 7 Wm. IV. c. 115; 8 & 4 Vict. c. 31; 8 & 9 Vict. c. 118; 9 & 10 Vict. c. 70; 10 & 11 Vict. c. 111; 11 & 12 Vict. c. 99; 12 & 13 Vict. c. 83; 14 & 15 Vict. c. 53; 15 & 16 Vict. c. 79; 17 & 18 Vict. c. 97; 20 & 21 Vict. c. 31; 22 & 23 Vict. c. 43; 25 & 26 Vict. c. 94; and 26 & 27 Vict. cc. 18 & 39.

Inclosure Commissioners, officers appointed under inclosure acts.

Inclusio unius est exclusio alterius.—(The inclusion of one is the exclusion of another.)

Income-tax Acts, 5 & 6 Vict. c. 35; 6 & 7 Vict. c. 24; 8 & 9 Vict. c. 4; 11 & 12 Vict. c. 8; 14 & 15 Vict. c. 12; 16 & 17 Vict. c. 34; 17 & 18 Vict. c. 10; 18 & 19 Vict. c. 20; 19 & 20 Vict. c. 33; 20 Vict. c. 6; 20 & 21 Vict. c. 5; 22 & 23 Vict. c. 18; 23 Vict. c. 14; and 26 & 27 Vict. c. 33.

In commendam. See COMMENDAM.

Incommodum non solvit argumentum.—(An inconvenience does not destroy an argument.)

In conjunctivis oportet utramque partem esse veram.—*Wing.* 13.—(In things conjunctive, each part ought to be true.)

In consimili casu, consimile debet esse remedium.—*Hard.* 65.—(In similar cases the remedy should be similar.)

In consuetudinibus non diuturnitas temporis sed soliditas rationis est consideranda.—*Co. Litt.* 141.—(In customs, not the length of time but the strength of the reason should be considered.)

Incontinency, unlawful indulgence of the sexual passion.

In contractibus, benigna: in testamentis, benignior; in restitutionibus, benignissima interpretatio facienda est.—*Co. Litt.* 112.—(In contracts, the interpretation is to be liberal; in wills, more liberal; in restitutions most liberal.)

In contractibus tacitè insunt quæ sunt moris et consuetudinis.—(Those things which are of manner and custom are tacitly imported into contracts.)

Incopolitus, a proctor or vicar.

Incorporated Law Society, constituted registrar of attornies and solicitors, 6 & 7 Vict. c. 73, s. 21.

Incorporation, the formation of a legal or political body, with the quality of perpetual existence and succession, unless limited by the act of incorporation.

Incorporeal chattels, incorporeal rights incident to chattels, e. g. patent rights and copyrights.—2 *Stop. Com.* 9.

Incorporeal hereditament. See HEREDITAMENT.

Incrementum, increase or improvement, opposed to *decrementum* or abatement.

In criminalibus probationes debent esse luce clariores.—3 *Inst.* 210.—(In criminal cases the proofs ought to be clearer than light.)

In criminalibus sufficit generalis malitia intentionis cum facto paris gradûs.—*Bacon.*—(In criminal actions a general malice of intention, with an act of corresponding degree, is sufficient.)

In criminalibus voluntas reputabitur pro facto.—3 *Inst.* 106.—(In criminal acts the will will be taken for the deed.)

Incroachment [fr. *accrochement*, Fr., a grasping], an unlawful gaining upon the right or possession of another.

Incumbent [fr. *incumbo*, Lat., to attend diligently], a clergyman in possession of an ecclesiastical benefice.

Incumbrance, a claim, lien, or liability attached to property; as a mortgage, a registered judgment, &c.

Incurramentum, the liability to a fine, penalty, or amerciament.

In custodia legis [Lat.] (*in the keeping of the law*).

Indebitatus assumpsit [Lat.] (*being indebted he undertook*); that species of the action of assumpsit in which the plaintiff first alleges a debt, and then a promise in consideration of the debt. The promise laid is generally implied. All actions on the *indebitatus* counts are now, both in form and substance, actions of debt. See 1 *Selw. Nisi Prius*, 69, *et seq.*

Indecimable, not titheable.

Inde datæ leges ne fortior omnia posset.—*Dav.* 36.—(The laws are made lest the stronger should be altogether uncontrolled.)

Indefeasible, not to be made void.

Indefensus, undefended.

Indefinite payment, where a debtor owes several debts to a creditor, and makes a payment, without specifying to which of the debts it is to be applied.

Indefinitum equipollet universali.—1 *Vent.* 368.—(The indefinite equals the universal.)

Indefinitum supplet locum universalis.—4 *Co.* 77.—(The indefinite supplies the place of the universal.)

Indemnity, a writing to secure one from all danger and damage that may ensue from an act or omission. An act of indemnity is passed in every session of Parliament for the relief of those who have neglected to take the necessary oaths of office, &c. See 26 & 27 *Vict.* c. 107.

Every deed, will, or other instrument, creating a trust either expressly or by implication, shall, without prejudice to the clauses actually contained therein be deemed to contain a clause in the words or to the effect following: that is to say: 'that the trustees or trustee for the time being of the said deed, will, or other instrument shall be respectively chargeable only for such monies, stocks, funds, and securities, as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust monies or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same shall happen through their own wilful defaults respectively;' and also 'that it shall be lawful for the trustees or trustee for the time being of the said deed, will, or other instrument to reimburse themselves or himself,

or pay and discharge out of the trust-premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument.'—22 & 23 *Vict.* c. 35, s. 31.

Indenization, the act of making free, or of naturalizing.

Indenture, a deed indented between two or more parties. See DEED.

Index animi sermo.—(Speech is the mind's index.)

India. See EAST INDIA COMPANY.

India Stocks, Act for the Registration and Transfer of, 25 & 26 Vict. c. 7; 26 & 27 Vict. c. 73.

Indicatif, an abolished writ by which a prosecution was in some cases removed from a court-christian to the Queen's bench.—*Encyc. Lond.*

Indicavit (*he has proclaimed*), a writ of prohibition that lies for a patron of a church, whose clerk is sued in the spiritual court by another clerk for tithes which amount to a fourth part of the profits of the advowson, when the suit belongs to the common law courts, by West. II. c. 5, 13 Edw. I. st. 4. The patron of the defendant is allowed this writ, as he is like to be prejudiced in his church and advowson, if the plaintiff recover in the spiritual court.—*Reg. Orig.* 55.

Indicia [Lat.], signs, marks.

Indicted, charged in an indictment with a criminal offence. See INDICTMENT.

Indictee, a person indicted.

Indictio, an indictment.

Indiction, *Cycle of,* a mode of computing time by the space of fifteen years, instituted by Constantine the Great; originally the period for the payment of certain taxes. The Popes, since the time of Charlemagne, have dated their acts by the year of the indiction, which was fixed on the 1st of January A. D. 313. At the time of the reformation of the calendar, the year 1582 was reckoned the 10th year of the indiction. Now this date, when divided by 15, leaves a remainder of 7, that is 3 less than the indiction, and the same must be the case in all subsequent calculations; so that in order to find the indiction for any year, divide the date by 15, and add 3 to the remainder. It has no connection with the motion of the heavenly bodies. Some of the charters of King Edgar and Henry III. are dated by indictions.

Indictment [fr. *indico,* Lat., to show], a written accusation against one or more persons, of a crime of a public nature, preferred to and presented upon oath by a grand jury. It lies against all persons (except those under incapacity, as lunatics, &c.), who actually commit or who procure and assist in the commission of crimes, or who knowingly harbour an offender; for each, in contemplation of law, is guilty and liable to punishment according to the part which he takes in the perpetration of the offence. It consists of three principal parts—the commencement (or caption), statement, and conclusion. The caption is no part of an indictment, it is merely the style of the court where it is preferred, which is prefixed by way of preamble, when the record is made up, or when it is returned to a *certiorari.* The statement must be certain as to the party indicted, and as to the person against whom the offence was committed, and also as to time and place, facts, circumstances, and intent. It must be positive, and neither double nor repugnant. There is, in general, no time limited for preferring an indictment, but by several statutes certain limitations for certain offences are fixed. If an indictment be defective, it will be quashed.—2 *Hawk.* c. xxv., s. 4; *Arch. Crim. Plead. by Power* 75, *et seq.*

An indictment for perjury, subornation of perjury, conspiracy, obtaining money or other property by false pretences, keeping a gambling house, keeping a disorderly house, and any indecent assault, cannot be preferred without previous authorization. See 22 & 23 *Vict.* c. 17. See *Roscoe's Crim. Evid.*

Indictment, in the Scotch law, is the form of process by which a criminal is brought to trial at the instance of the Lord Advocate. Where a private party is a principal prosecutor, he brings his charge in what is termed the form of criminal letters.

Indictment de felony *est contra pacem domini regis, coronam et dignitatem suam, in genere et non in individuo; quia in Angliâ non est interregnum.*—*Jenk. Cent.* 205.—(Indictment for felony is against the peace of our lord the king, his crown and dignity in general, and not against his individual person; because in England there is no interregnum.)

Indictor, he who indicts another for an offence.

Indirect evidence, proof of collateral circumstances, from which a fact in controversy, not directly attested by witnesses or documents, may be inferred. It is also called circumstantial and presumptive evidence. See *Starkie, Taylor,* or *Best on Evidence.*

Indistanter, forthwith; without delay.

In disjunctivis sufficit alteram partem esse veram.—*Wing.* 13.—(In things disjunctive, it suffices should either part be true.)

Indivisum, that which is held in common, without partition.

Indo-Briton, a person born in India, one of whose parents is a native of Great Britain.

Indorsee, the person to whom a bill of exchange, promissory note, bill of lading, &c. is assigned by indorsement.

Indorsement [fr. *in,* Lat., upon, and *dorsum,*

a back], anything written or printed upon the back of a deed or writing.

Indorser, he who writes his name on the back of a bill of exchange, &c.

Indowment. See ENDOWMENT.

In dubiis non præsumitur pro testamento.—*Cro. Car.* 51.—(In doubtful things, the presumption is not in favor of a will.)

In dubiis magis dignum est accipiendum. (In doubtful things, that which is more worthy is to be received.)

In dubio hæc legis constructio quam verba ostendunt.—*Jur. Civ.*—(In a doubtful point, the construction which the words point out is the construction of the law.)

In dubio pars mitior est sequenda.—(In doubt, the gentler course is to be followed.)

In dubio sequendum quod tutius est.—(In doubt, that which is the safer course is to be adopted.)

Inducement, an allegation of a motive; an incitement to a thing. A term used in pleading.

Induciæ legales, the days between the citation of a defendant and the day of appearance.

Induciare, to prorogue, postpone, respite.

Induction [fr. *inductio*, Lat., a leading into], the giving a parson possession of his church.

A clerk is not complete incumbent until induction, which is performed by a mandate from the bishop to the archdeacon, or if the church be exempt from archidiaconal jurisdiction, to the chancellor or commissary, or if it be a peculiar, to the dean or judge, who usually issues a precept to other clergymen to perform it for him.

It is to be made according to the tenor and language of the mandate, by investing the clerk with all the profits, and full possession of the church. Accordingly, the person who inducts usually takes the clerk by the hand, and lays it on the ring, key, or latch of the church-door, or wall of the church, or delivers a clod, turf, or twig of the glebe, and gives corporal possession of the church in the following manner:—

'By virtue of this mandate I induct you into the real, actual, and corporal possession of the church of , with all rights, profits, and appurtenances thereto belonging.'

The inductor then usually opens the door, and puts the clerk into the church, and he frequently tolls the bell to make his induction public, and known to the parishioners. After which the inductor endorses a certificate of the induction on the mandate, which is witnessed by the persons present.

Induction, therefore, is the investiture of the temporal part of the benefice or the corporal seisin, as institution is of the spiritual. And when a clerk is thus presented, he is then, and not before, in full and complete possession of the temporalities, and is called in law *persona impersonata*, or parson imparsonee. No person can, either by institution or collation, be admitted to any ecclesiastical living, except he first subscribe to these three articles:—

That the queen's majesty, under God, is the only supreme governor of this realm, and of all others her highness's dominions and countries, as well in all spiritual or ecclesiastical things or causes as temporal; and that no foreign prince, person, prelate, state or potentate, hath or ought to have any jurisdiction, power, superiority, pre-eminence or authority, ecclesiastical or spiritual, within her majesty's said realms, dominions, and countries;

That the book of common prayer, and of ordering of bishops, priests, and deacons, containeth in it nothing contrary to the word of God, and that it may lawfully be used; and that he himself will use the form in the said book prescribed in public prayer, and administration of the sacraments, and none other;

That he alloweth the book of articles of religion, agreed upon by the archbishops and bishops of both provinces, and the whole clergy, in the convocation holden at London in the year of our Lord One thousand five hundred and sixty-two; and that he acknowledgeth all and every the articles therein contained, being in number nine and thirty, besides the ratification, to be agreeable to the word of God.

To these three articles, whosoever will subscribe, he shall, for the avoiding of all ambiguities, subscribe in this order and form of words, setting down both his Christian and surname, viz.: 'I, , do willingly and *ex animo* subscribe to these three articles abovementioned, and to all things that are contained in them.' And if any bishop shall admit any as is aforesaid, except he first have subscribed in manner and form as aforesaid, he shall be suspended from giving of orders and licences to preach for the space of twelve months.—*Mirehouse on Advowsons*, 195.

Indulgence, in the Roman Catholic church a remission of the punishment due to sins, granted by the pope or church, supposed to save the sinner from purgatory. Its abuse led to the reformation in Germany.

Indulto, a dispensation granted by the pope to do or obtain something contrary to the common law.

Indument, endowment.

Industrial Schools. See 20 & 21 *Vict.* c. 48, and 23 & 24 Vict. c. 108.

Industriam, per, a qualified property in animals *feræ naturæ* may be acquired *per industriam*, i. e. by a man's reclaiming and making them tame by art, industry, and education; or by so confining them within his own immediate power, that they cannot escape and use their natural liberty.—2 *Step. Com.* 5.

In esse (*actually existing*), distinguished

from *in posse*, which means, that which is not, but may be. A child before birth is *in posse*; after birth, *in esse*.

Inesse potest donationi, modus, conditio, sive causa; ut *modus est*; si, *conditio*; quia, *causa*.—*Dyer*, 138.—(In a gift there may be a manner, condition, or cause; *ut*, introduces a manner; *si*, a condition; *quia*, a cause.)

Inewardus, a guard, a watchman.

In extremis (*in the last moments*).

In faciendo (*in doing or in feasance*).

In facto quod se habet ad bonum et malum magis de bono quam de malo lex intendit.—*Co. Litt.* 78.—(In an action which addresses itself to good and bad, the law looks more to the good than to the bad.)

Infalistalus, a capital punishment inflicted on the sands or seashore.—*Sed. qu.*

Infamy, public disgrace; total loss of character. This does not now incapacitate from giving evidence.—7 & 8 *Vict.* c. 85, s. 1.

Infangenthef, a privilege of lords of certain manors to judge any thief taken within their fee.—*Anc. Inst. Engl.*

Infant [fr. *infans*, Lat., which means *qui fari non potest*, one who cannot speak for himself], a person under twenty-one years of age, whose acts are in many cases either void or voidable. See AGE.

At *Common Law*, the contracts of infants are divided into three classes:—

1st. Those which are absolutely void: such as are positively injurious to the interests of the infant, and can only operate to his prejudice; as a surety-bond, or a release to his guardian.

2nd. Those which are only voidable: such as are beneficial to him, which he may affirm or avoid when he comes of age; as a conveyance of lands, a promissory note, an account stated.

3rd. Those which are binding *ab initio*, and need no ratification: such as contracts for the public service, articles of apprenticeship, executed contracts of marriage, representative acts as executor or trustee, contracts for necessaries.—*Story on Contracts*, 21.

All conveyances by an infant are voidable by him or his heirs, on attaining majority, but an infant at the age of fifteen may make a valid feoffment of gavelkind lands, which he has by descent; yet it must be by way of sale, and not by mortgage; and an infant, at any age, may present to a church. By 1 Wm. IV. c. 47, courts of equity are empowered to direct and compel a conveyance by the infant heir or devisee, or the devisee having a limited interest, of a person whose estates shall have been decreed by the court to be sold for payment of his debts. And by 2 & 3 Vict. c. 60, the court is empowered to make mortgages as well as sales of such estates, in the case where the devisee of a limited interest is an infant. As to conveyances and transfers of estates and funds vested in trustees and mortgagees, &c., being infants, see 13 & 14 *Vict.* c. 60. Leases made by infants are also voidable, on attaining majority. By 11 Geo. IV. and 1 Wm. IV. c. 65, ss. 16, 17, infants are empowered to grant renewals of leases under the direction of the Court of Chancery, and that court is authorized to direct leases of land belonging to infants, when it is to the benefit of the estate. By custom, infants seised of lands in socage may, at the age of fifteen, make leases for years, which shall bind them after majority. All leases made to infants are voidable; but the election to avoid must be made within a reasonable time after attaining full age.

An infant is liable for torts committed by him unless the tort has arisen out of a contract. As to the criminal liability of infants, see AGE, *ante*.

An infant cannot prosecute an action, either in person or by attorney, he must sue either by *prochein amy* or guardian; usually the former. The process is sued out in the infant's name, and the *prochein amy* approved by a judge at chambers. An infant can appear and defend by guardian *ad litem* only.—2 *Chit. Arch. Prac. by Pren.* 1230, 1233.

The general superintendence and protective jurisdiction of the Court of *Chancery* over the persons and property of infants, is a delegation of the rights and duties of the Crown—the universal guardian of infants. This court interferes:—

1st. In the appointment and removal of guardians. It will appoint a suitable guardian where there is none other, or none other who will or can act; but the infant must have property. Such a guardian is treated as an officer of the court, and held responsible to it. Whenever sufficient cause is shown, the court will remove a guardian, no matter how and by whom appointed. Guardians are also assisted by the court in their duty.

2nd. In the suitable maintenance and education of an infant, having a due regard to the rank, the future expectations, and the intended profession and employment, and the property of the infant, the court usually confines itself within the limits of the income of the property; but where the property is small, and more means are necessary for the due maintenance of the infant, the court will sometimes allow the capital to be broken in upon.

3rd. In the management and disposition of the property, by exercising a vigilant care over the conduct of guardians as to the change of property, making it in all cases advisable for them to act under the strict guidance of the court in the duties of their fiduciary office.

4th. As to marriage. If anyone marry a ward of court without the express sanction of the court, even with the guardian's consent, he is guilty of a contempt of court, though he be ignorant that he has married a ward, and will be committed to prison until he consents to such a settlement of the property as the court shall deem equitable and proper.—2 *Story's Eq.* 516; *Madd. Ch.* vol. i., tit. 'Infants;' *Chambers on Infancy*; 2 *Step. Com.* 314, *et seq.*

Infants institute a suit in equity by their next friend, but they must defend a suit by guardian, who is appointed by the court, and is usually their nearest relation not interested in the matter in question.—*Story's Eq. Plead.* 70; *Smi Ch. Pr.* 176, 325.

Infants' Marriage Act, 18 & 19 Vict. c. 43. This act enacts that from and after the 2nd of July, 1855, it shall be lawful for every infant (who being a male has attained the age of twenty years, or a female seventeen years, s. 4), upon or in contemplation of his or her marriage, with the sanction of the Court of Chancery (given upon petition presented by the infant or his or her guardian in a summary way without the institution of a suit, s. 3), to make a valid and binding settlement, or contract for a settlement of all or any part of his or her property, or over which he or she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy; and every conveyance, appointment, or assignment of such real or personal estate, or contract to make a conveyance, appointment, or assignment thereof executed by such infant with the approbation of the said court for the purpose of giving effect to such settlement, shall be as valid and effective as if the person executing the same were of the full age of twenty-one years. If there be no guardian, the court may require a guardian to be appointed or not, as it shall think fit, and the court also may, if it shall think fit, require that any persons interested or appearing to be interested in the property should be served with notice of such petition. This act is not to extend to powers of which it is expressly declared that they shall not be exercised by an infant (s. 1). And also in case any appointment under a power of appointment or any disentailing assurance shall have been executed by any infant tenant-in-tail under the provisions of this act, and such infant shall afterwards die under age, such appointment or disentailing assurance is thereupon to become absolutely void (s. 2). See *In re Strong*, 26 *L. J. Ch.* 64. By 23 & 24 Vict. c. 83, the above act is declared to extend to the Court of Chancery in Ireland.

Infanticide, the killing of a child after it is born. The felonious destruction of the fœtus in utero is more properly called fœticide, or criminal abortion.

In every case in which an infant is found dead, and its death becomes the subject of judicial investigation, the great questions which present themselves for inquiry are:—

(1) What is the age of the child?
(2) Was the child born alive?
(3) If born alive, how long had it lived?
(4) If born alive, by what means did it die?

If it be proved that its death was owing to violence, it is then to be ascertained who the murderer of it is. If suspicion fall upon the mother, it is to be determined—

(1) Whether she has been delivered of a child? and,

(2) Whether the signs of delivery correspond as to time, &c. with the appearances developed in the child?

Now there are two ways in which a child may be born alive. (1) It may be born, the cord may be pulsating, showing that it is alive, and yet it may not respire. It may thus continue for a sufficient length of time, so as to die from natural causes, or in consequence of criminal interference, before respiration has commenced. (2) It may be born and respire.

It must be evident that when a child is born alive but has not yet respired, its condition is precisely like that of the fœtus in utero. It lives merely because the fœtal circulation is still going on. In this case none of the organs undergo any changes. But the case of a child who is born alive and respires, is tested by respiration. The proofs by which this is to be established are all deduced from certain changes which take place in the system as soon as the vital process of respiration commences. These proofs have been thus classed:—

(I.) Those derived from the circulating system, subdivided into—

(*a*) The character of the blood itself. According to Fourcroy, the points of difference between the composition of fœtal and adult blood, are the following:—(1) In the fœtus the coloring matter is darker, and the blood is not so susceptible of taking the brilliant red shade on exposure to the atmosphere. (2) It contains no fibrous matter; the thickened and coagulated matter which is found in its place more resembles gelatinous matter. (3) It does not contain any phosphoric acid.

(*β*) The condition of the heart and blood-vessels. There are a number of striking and interesting peculiarities in the organs circulating the blood in the fœtus, which are modified or entirely lost after the child is born, and respiration is established. (1) The *foramen ovale* becomes obliterated after birth by the closure and adhesion of its valve, leaving behind it in the adult nothing but an oval depression in the septum between the

auricles, called the *fossa ovalis*. If the *foramen ovale* be found closed, in consequence of the blood taking a new route through the lungs, when respiration commences, it is an evidence of the child's having been born alive. But with regard to the validity of this test, it must be obvious that, from the gradual manner in which such change takes place, a great many cases must occur, from which no positive conclusion can be drawn. (2) The *ductus arteriosus* will be found open and filled with blood in the fœtus, but, after birth, it becomes gradually obliterated, the duct itself eventually changing into a ligament. Should, therefore, this duct be found permanently closed, it is a proof that the child was born alive. (3) The *ductus venosus* in the fœtus, anterior to respiration, is always found open; after respiration it gradually contracts, becomes impervious, and is finally converted into a ligament. If it be obliterated, it is a proof that the child has lived and respired; on the contrary, as it remains open a day or two at least after birth, its being found open is no proof that the child was born dead. (4) The umbilical vessels, consisting of two arteries and a vein, become gradually obliterated after birth, and converted into ligaments. From scientific observations the following conclusions have been drawn:— (a) That the fœtal openings are not obliterated immediately after birth. (b) That the periods at which they are obliterated are variable. (c) That most commonly the *foramen ovale* and the *ductus arteriosus* are obliterated towards the eighth or the tenth day. (d) That the order in which they are obliterated is the following—viz. the umbilical arteries, the umbilical vein, the *ductus venosus*, the *ductus arteriosus*, and lastly, the *foramen ovale*. (e) That their obliteration proves that the child was born alive. (f) That it is impossible to infer from the fact of their not being obliterated, that the child has not respired, since the obliteration is very far from being made immediately after birth. (5) The umbilical cord after birth, and its division from the placenta, separates from the child, and drops off. In a new-born infant the cord is firm, round, and of a bluish color. If the child live, the first change which it undergoes is that of withering, the second is that of desiccation or drying; the third is the separation of it; and, lastly, the cicatrisation of the umbilicus.

The following are some general inferences which have been deduced from the examination of the circulation:—

(1) If the *foramen ovale*, the *ductus arteriosus*, the *ductus venosus*, and the umbilical vessels, be obliterated, and the umbilical cord be separated, the conclusion is certain, not merely that the child has respired, but that it has lived for a considerable time.

(2) If the *foramen ovale*, the *ductus arteriosus*, the *ductus venosus*, and the umbilical vessels, be still open, and if the cord be still attached to the umbilicus, no inference can be drawn that the child has not respired.

(3) Of all the changes in the circulating apparatus, consequent upon respiration, those of the *ductus arteriosus* are the only ones which can be rendered available in cases where the child has respired but for a short period.

(4) In cases where a child has respired for a sufficient length of time, valuable presumptive evidence of the fact may be obtained from the state of the umbilical cord.

(5) The changes in the circulation, consequent upon respiration, are important, in many cases, to determine the length of time during which a child may have lived after birth.

(II.) Those derived from the respiratory organs. There are three conditions in which the new-born child may be found: it may have respired perfectly; it may have respired imperfectly; it may not have respired at all. In reference to these conditions the following investigations have been made.

(α) The size and configuration of the thorax. Its size, in a child which has never respired, is narrow and flattened, and the diaphragm rising into it is highly arched. This test, taken by itself, is not of much value; it is only in connection with other signs that it is of importance.

(β) The situation of the lungs. Anterior to respiration the lungs occupy a small space at the upper and posterior parts of the thorax, leaving the pericardium and diaphragm almost, and sometimes entirely, uncovered. If only imperfect respiration have taken place, the lungs will be found occupying the lateral portions of the thorax also. If the respiration have been complete, and especially if it have been established for a certain length of time, they will cover almost entirely the pericardium, as well as the arch of the diaphragm.

(γ) The volume of the lungs in the fœtal state is comparatively small, but as soon as respiration is established the volume is increased, because the lungs are distended with air.

(δ) Shape of the lungs. In the fœtal state the edges of the lungs are sharp, and the margin of the left upper and the right middle lobes pointed. After respiration the edges of the lungs become rounded, while the pointed margins of the left upper and the right middle lobes become obtuse.

(ε) The color of the lungs in the fœtus is of a brownish red, resembling very much the color of the liver in the adult, and of the thymus gland in the fœtus. After perfect respiration, it is a pale red or scarlet. Other causes, however, will modify or change the color of the

lungs, as artificial inflammation, disease, or atmospherical action.

(ζ) Consistence or density of the lungs. In the fœtus the lungs are dense, somewhat resembling the solidity of the liver; on pressure or when cut into, they do not crepitate. After perfect respiration they become soft and spongy; air-bubbles may be squeezed out of them; and when pressed or cut into they give out a crepitus.

(η) The absolute weight of the lungs. According to Orfila no just inference can be drawn from this test.

(θ) The specific gravity of the lungs. The principle upon which this test is founded is the difference produced in the specific gravity of the lungs, in consequence of the introduction of air into them. On putting the lungs of a still-born child into water, it will be found that they sink rapidly to the bottom of the fluid. On the other hand, if the lungs of a child which has breathed perfectly be put into water, they will be found to float high in that fluid. If the breathing have only been imperfect, the lungs will float or sink according as a greater or less portion of these organs has been penetrated by air. On cutting the lungs into pieces, those portions into which air has been introduced will float, while the rest will sink. From these facts the general conclusions are, that when the lungs float, the child has respired; when they sink, that the child has not respired; when portions of the lungs only float, that the respiration has been partial and imperfect.

There are, however, several objections to this hydrostatic test: (1) that a child may not have respired, and yet the lungs may float in water from having undergone putrefaction; (2) there may be a peculiar emphysematous condition of the lungs, which may make them float in water, even though respiration has never taken place; (3) the lungs may float in consequence of artificial inflation.

The following conclusions have been drawn from an examination of the objections to the hydrostatic test:—

(1) That when the lungs float in water, it must be from one of four causes—natural respiration, putrefaction, emphysema, the artificial introduction of air.

(2) As the lungs may float from other causes besides respiration, their mere floating is no proof that the child has respired.

(3) As, however, it is possible to discriminate between the floating of natural respiration, and of that which is the result of other causes, it follows:

(4) That, with due precautions, the floating of the lungs may be depended upon as a decided proof that the child has respired.

Another class of objections may be thus stated:—(1) That although the child has breathed, yet the lungs, in consequence of disease, may have their specific gravity so increased as to make them sink in water. (2) A child may have actually breathed, but yet so imperfectly that the lungs shall not have received air sufficient to make them float. From these objections it may, therefore, be concluded—

(1) That when the lungs sink in water, it must be from one or the other of the following causes: the total want of respiration, feeble and imperfect respiration; some diseases of the lungs rendering them specifically heavier than the water.

(2) As the lungs may sink from other causes than the absence of respiration, the mere sinking is no decisive proof that the child has not respired.

(3) As, however, the sinking from the want of respiration may be distinguished from that which is the result of other causes, it follows:

(4) That with due precautions, the sinking of the lungs is a safe test that the child has not respired.

(III.) Those deduced from the abdominal organs.

(α) The liver, which is much larger in the mature fœtus, than it is after respiration has taken place.

(β) The intestines, in the fœtal state, contain a dark pitchy matter, called the meconium, which is evacuated shortly after birth, when the child is born alive.

(γ) The bladder anterior to birth contains a considerable quantity of urine, which, at variable periods after birth, is evacuated.

It is from all these various proofs of a child having respired, that the inference of its having been born is drawn. To all this, however, a capital objection is urged—that a child may respire during the birth, and yet may die before it is fully born. But it has been inferred:

(1) That respiration anterior to full birth is a rare occurrence.

(2) That when it does take place, it must be under circumstances which give the child the best possible chance of being born alive.

(3) That when a child dies in this situation, the respiration must necessarily be imperfect, and therefore it can create no difficulty in cases where the evidences of perfect respiration are present.

(4) That when a child diés in this situation, the respiration must, as a matter of course, be of short duration, and therefore it can present no difficulty in cases where, from the appearance of the umbilical cord, it is evident that respiration has been continued for some time.

Uterine respiration can never become a question in infanticide, for it takes place only under circumstances which render manual aid necessary to complete the delivery. Vaginal res-

piration is also so far similarly circumstanced. Respiration in the passages, as hitherto observed, takes place only—(1) in delivery by the feet, when the whole body but the head is protruded; (2) in natural delivery, either when the head is expelled or the body remains in the passages; (3) when before the expulsion of the head, and after the rupture of the membranes, the hand is introduced to accelerate tedious labor. These cases are by no means likely to occur in legal medicine.

The inquiry how long the child had lived, if born alive, is important, inasmuch as it enables us to ascertain how it compares with the signs of delivery in the reputed mother. In this inquiry no information of any importance can be obtained from the respiratory organs. The question mainly depends upon proofs deduced from the circulation, and especially from the state of the umbilical cord.

The means by which a child came to its death are either:—

(I.) Criminal, subdivided into—

(α) The intentional neglect of tying the umbilical cord.

(β) Exposing a new-born child to the action of cold.

(γ) Keeping from the child the nourishment necessary for supporting life.

(δ) The infliction of wounds and injuries of various kinds.

(ϵ) Asphyxiating a new-born child, or putting a stop to its respirations.

(ζ) Poisoning.

(II.) Accidental, as—

(α) Various causes connected with delivery, unconnected with criminal intention.

(β) Congenital malformation of certain organs.

(γ) Various diseases, which may be either congenital, or occur immediately after birth.

The questions occurring as to the mother are two: (1) Has she been actually delivered? (2) Do the signs of delivery in the mother correspond as to time, &c., with the appearance of the child?

The usual defences are, that the woman was ignorant of her condition, or labored under puerperal mania.—*Beck's Med. Jurisp.* c. viii.; *Taylor's Med. Jur.* c. xxxviii *et seq.*; and *Guy's Foren. Med.* 118, *et seq.*

In favorabilibus, magis attenditur quod prodest quam quod nocet.—Bacon.—(In things favored, what does good is more regarded than what does harm.)

In favorem libertatis, vel vitæ [Lat.] (*in favor of liberty or life*).

Infectious disorders. It is an indictable offence to expose in a public frequented highway a person suffering from an infectious disorder.—*R.* v. *Vantandillo*, 4 *M. & S.* 73. As to precautions against the spread of the plague, see 6 *Geo. IV.* c. 78; the cholera, see 2 *Wm. IV.* c. 10, continued by 3 & 4 *Wm. IV.* c. 75, but now expired. As to small-pox, see 3 & 4 *Vict.* c. 29; 4 & 5 *Vict.* c. 32; 16 & 17 *Vict.* c. 100; and 24 & 25 *Vict.* c. 59.

Infeoffment, the act or instrument of feoffment, or investiture, synonymous with *sasine*, the instrument of possession.—*Scotch term.*

Inferior courts. They are the court-baron, the hundred-court, and county-court; and also all courts of a special jurisdiction. See COURT; and 3 *St. Com.* 390, *et seq.*; and 4 *Ibid.* 410.

Infeudation, the placing in possession of a freehold estate; also the granting of tithes to mere laymen.

In fictione juris semper æquitas existit.—11 *Co.* 51.—(In the fiction of law there is always equity.) See this maxim illustrated in *Add. on Contracts*, 51.

In fieri [Lat.] (*in the course of accomplishment*).

Infiht, or **Insocna,** violence committed on a person by one inhabiting the same dwelling.

Infinitum in jure reprobatur.—9 *Co.* 45.—(Infinity is reprehensible in law.)

In formâ pauperis (*in the character of a pauper*). Every poor person, who may have cause of action, is entitled to have writs according to the nature of the case, without paying the fees thereon, and the judges may assign him counsel and attorney, who, together with the officers of the court, act gratis. The party applying must swear that he is not worth 5*l.* excepting his wearing apparel and the matter involved in the cause. This discretionary indulgence is confined to plaintiffs at common law, and is not granted to defendants in civil actions, but is extended to defences in prosecutions. A plaintiff must have a counsel's certificate of good cause of action.

No person shall be admitted to sue *in formâ pauperis* unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party or his attorney, that the same case contains a full and true statement of all the material facts, to the best of his knowledge and belief, shall be produced before the court or judge to whom application may be made; and no fees shall be payable by a pauper to his counsel and attorney, nor at the offices of the masters, or associates, or at the judges' chambers, or elsewhere, by reason of a verdict being found for such pauper, exceeding five pounds.—121 r. *H. T.* 1853.

Where a pauper omits to proceed to trial, pursuant to notice, he may be called upon by rule to show cause why he should not pay costs, though he has not been dispaupered, and why all further proceedings should not be stayed until such costs shall be paid.—122 r.

A person admitted to sue *in formâ pauperis* shall not in any case be entitled to costs from

the opposite party, unless by order of the court or a judge.—28 r. *T. T.* 1853; 2 *Chit. Arch. Prac. by Pren.* 1277.

In equity a pauper, under the circumstances above stated, will be admitted to sue, and also to be sued, *in formâ pauperis.—Smi. Ch. Pr.* 779.

A person desirous of prosecuting a suit *in formâ pauperis*, in the Divorce or Probate Courts, must obtain counsel's opinion that he has reasonable grounds for asking relief, and then obtain the order of the judge, upon the production of the case and opinion, with an affidavit that the case contains all the material facts, and that the applicant is not worth 25*l.* after payment of debts, except wearing apparel. A pauper not proceeding to trial pursuant to notice, may be called upon to show cause why he should not pay costs, proceedings to be stayed in the mean time.—21 & 22 *Vict.* c. 85, s. 54; *Orders* 42, 43, & 44; *Prob. Rules, Con. Bus.* 23 & 24.

Informality, want of legal form.

Information, an accusation, or complaint; also, communicated knowledge.

Information in *Chancery*. Where a suit is instituted on behalf of the Crown or Government, or of those of whom it has the custody by virtue of its prerogative (such as idiots and lunatics), or whose rights are under its particular protection (such as the objects of a public charity), the matter of complaint is offered to the court by way of information by the attorney or solicitor-general, and not by way of petition. When a suit immediately concerns the Crown or Government alone, the proceeding is purely by way of information, but where it does not so immediately, a relator is appointed, who is answerable for costs, &c.; and if he be interested in the matter, in connection with the Crown or Government, the proceeding is then by information and bill. Informations differ from bills in little more than name and form; and the same rules are substantially applicable to each.—*Story's Eq. Plead.* 5.

A *Crown* information filed in the Court of Exchequer is a suit for recovering money or other chattels, or for obtaining satisfaction, in damages, for any personal wrong committed in the lands or other possessions of the Crown. It is instituted to redress *private* wrongs, while criminal informations are resorted to to punish *public* wrongs, or heinous misdemeanors. See Ex officio informations. The most usual Exchequer informations are in cases of *intrusion*, for trespasses on Crown lands; *debt*, for Crown monies due upon breaches of penal statutes; and, *in rem*, when any goods are supposed to become the property of the Crown, no one claiming them, as treasure-trove, wrecks, waifs, and estrays.—4 *Step. Com.* 82.

Information of *quo warranto*. See Quo warranto.

Information, in the Scotch law, is a written pleading, ordered by the lord ordinary, when he takes a cause to report to the lower house.

Informatus non sum (*I am not informed*, or, *I have no instructions*).

Informer, a person who prosecutes those who break any law or penal statute. See Qui tam.

Infortunium, *homicide per*, where a man doing a lawful act, without any intention of hurt, unfortunately kills another. See Homicide.

Infra annum luctus (*within the year of mourning*).

Infringement [fr. *infringo*, Lat., to break], breach or violation, applied to the breach of a law, or violation of a right, as of copyright or patent right.

Infugare, to put to flight.

Infula, a coif, or a cassock.

Inge, meadow, or pasture.

Ingenuitas, liberty given to a servant by manumission.

Ingenuitas regni, the commonalty of the kingdom.

In gremio legis [Lat.] (*in the bosom or protection of the law*).

Ingress, Egress, and **Regress**, free entry into, going forth of, and returning from a place.

Ingressu, an abolished writ of entry. It was also called *præcipe quod reddat.*

Ingressus, the relief which an heir at full age paid to the head lord for entering upon the fee, &c.—*Blount.*

In gross. See Gross.

Ingrossator magni rotuli, clerk of the pipe; an exchequer officer.

Ingrossing, writing the fair copy of a deed or instrument for the formal execution of it by the parties thereto. See Engrossing.

Inhabitant, a dweller or householder in any place.

In hæredes non solent transire actiones quæ pœnales ex maleficio sunt.—2 *Inst.* 442.—(Penal actions, arising from anything of a criminal nature, do not pass to heirs.)

Inheritance, a perpetual or continuing right to an estate, invested in a person and his heirs. See Canons of Inheritance; Estate.

Inhibition, a writ to forbid a judge's proceeding in a cause that lies before him. It generally issues out of a higher court to an inferior, and is similar to a prohibition.

In the Scotch law, a process to restrain the sale of land in prejudice of a debt; also a writ to prohibit credit being given to a man's wife.

In his quæ de jure communi omnibus conceduntur, consuetudo alicujus patriæ vel loci non est alleganda.—11 *Co.* 85.—(In those things

which by common right are conceded to all, the custom of a particular district or place is not to be alleged.)

Inhoc, or **Inhoke** [fr. *in*, within, and *hoks*, a corner], any corner or part of a common field ploughed up and sowed with oats, &c. and sometimes fenced in with a dry hedge, when the rest of the field lies fallow.—*Kenn. Glos.*

Iniquum est alios permittere, alios inhibere mercaturam.—3 *Inst.* 181.—(It is unjust to permit some, and to prohibit others, to trade.)

Iniquum est aliquem rei suæ esse judicem. In propriâ causâ nemo judex.—12 *Co.* 13.—(It is unjust for anyone to be judge in his own case. No one should be a judge in his own cause.)

Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem.—*Co. Litt.* 223.—(It is unjust for free men not to have the free disposal of their own property.)

Initialia testimonii. Before examining a witness in chief, in Scotland, he is first examined as to his disposition, whether he bear ill-will to either of the parties, or has been prompted what to say, or has received any bribe. It is somewhat similar to our *voir dire*, which see.

Initials, the first letters of names. By 3 & 4 Wm. IV. c. 42, s. 12, in all actions upon bills of exchange, promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian or first name or names, it shall be sufficient to designate such persons by the same initial letter or letters, or contraction of the Christian or first name or names, instead of stating them in full.

Initiate, *tenant by courtesy*, the husband is so called, when a child is born, capable of inheriting the land subject to his courtesy.

In invitum [Lat.], against an unwilling party.

In judiciis minori succurritur.—*Jenk. Cent.* 146.—(In judicial affairs a minor is protected.)

In judicio non creditur nisi juratis.—*Cro. Car.* 64.—(In judgment nothing is believed except upon oath.)

Injunction, the Court of Chancery's discretionary process of preventive and remedial justice; an interdictory writ, whereby a person is required to refrain from doing a specified meditated wrong, the wrong, however, not amounting to a crime. It is either (I.) *provisional* or *temporary* until the coming in of the defendant's answer, or until the hearing of the cause, or until the chief clerk has made his certificate—which is subdivided into (*a*) *common*, granted on default, and (*b*) *special*, granted upon particular grounds; or (II.) *perpetual*, i. e. forming part of a decree made at a hearing upon the merits whereby the defendant is perpetually inhibited from the assertion of a right, or perpetually restrained from the commission of an act, contrary to equity and good conscience.

So numerous are the instances for which an injunction will be granted, that only the principal of them can be here pointed out. See for more detailed information, *Eden on Injunctions*; 2 *Sto. Eq. Jurisp.* c. xxiii.; 3 *Chit. Eq. Ind. by Mac.* 2232–2297, and the recent *Chancery Practices of Daniel and Smith.*

A common injunction has for its object the staying of a suitor from his civil proceedings at common law.

The following are cases in which it will be granted:—

Suppose an executor or administrator is in possession of abundant assets to pay all the debts of the deceased, and by an accidental fire a great portion of them is destroyed so that the estate becomes insolvent; he might be sued by a creditor at law, and the loss of the assets by accident would be no defence, for being once chargeable with the assets at law he is for ever chargeable, notwithstanding any intervening casualties. Equity will restrain such proceedings at law.

Again, if a person sued for a debt of long standing which has been paid, is unable after due search to find a receipt or release which would have established that fact, and judgment is obtained against him, and afterwards the receipt is unexpectedly found, either in his own possession or in that of a third person, equity would in such a case afford relief by a perpetual injunction.

Again, where a judgment has been obtained at law by fraud for a sum larger than is justly due, upon the understanding that a certain set-off should be allowed and deducted, equity will not hesitate to restrain execution upon the judgment to the extent of such set-off.

Equity will also interpose to restrain proceedings at law for the recovery of penalties. A common instance of this species of relief is that which is given against a clause of re-entry in a lease for non-payment of rent.—4 *Geo. II.* c. 28, ss. 2, 3; and see The Common Law Procedure Act, 1852, ss. 210, 211, 212.

Where the rights of a party are wholly equitable in their own nature, or are incapable, under the circumstances, of being asserted in a court of law, an injunction will be granted, as upon the application of a tenant holding under an agreement for a lease, to restrain the landlord from proceeding against him in ejectment. And this upon the common equity, that the tenant is entitled to a specific performance of the agreement by the execution of a lease. So if a trustee, in violation of his trust, brings an ejectment to oust the possession

of the *cestui que* trust of an estate to the beneficial enjoyment of which he is entitled, an injunction will go against him.

Another instance of interposition against the prosecution of a legal right, is, where there has been a decree in equity, for the administration of assets to pay debts. The decree is considered as in the nature of a judgment for all the creditors, and, therefore, if subsequently to it a creditor sue at law, the court, in the assertion of its jurisdiction, will restrain him by injunction (which is in this case special), from proceeding after he has been served with notice of the decree. See the principle of the doctrine and a summary of the mischief which it is designed to prevent in *Re the Royal British Bank*, 5 *W. R.* 61, *V. C. K.* (1856). If the action have been commenced *before* bill filed, the creditor will be at liberty upon discontinuing the action to prove the costs as a debt under the decree; and, *until* notice, the party seeking to restrain the creditor must pay the costs occasioned by not having given notice, and suffering the creditor to go on; but *after* notice the creditor cannot have any costs.

An injunction will be granted against a party who attempts to enforce a judgment at law which has been satisfied. Where a creditor is suing a shareholder of a company at the instigation of the directors, being anxious to make the shareholders contribute, an injunction will issue on the ground that it was not the unbiassed action of the creditor, but rather the indirect proceeding of the co-shareholders. *Beck* v. *Dean*, 5 *W. R.* 106, *V. C. W.* (1856). A legatee who has mortgaged his legacy will be enjoined from suing the executors for it in the county court, and the fund will be ordered to be brought into court.—*Neighbour* v. *Brown*, *M. R.* 26 *L. J. Ch.* 670 (1858).

In short, wherever a person is unconscientiously attempting to make a court of law an instrument of injustice, equity will restrain his proceedings, either totally or partially, even though they have gone on to judgment.

The injunction may, upon a proper case being presented to the court, be granted at any stage of the proceedings at law. Thus an injunction will be granted to stay trial: after verdict to stay judgment; after judgment to stay execution; after execution to stay the money in the hands of the sheriff; in a case of a *fi. fa.*, or to stay the delivery of possession, in case of a writ of *ha. fa. po.*

The injunction is called *common* when it is obtained upon an *ex parte* case supported by affidavit, defendant not having appeared to or answered the bill; all other injunctions are called *special.*

Proceedings in the ecclesiastical courts will be restrained upon special application wherever those courts attempt to enforce a trust, or anything in the nature of a trust.

Wherever parties are resident within a country, the courts of such country have full authority to act upon them personally with respect to the subject of suits in another country, as the ends of justice may require; and with that view to order them to take, or to omit to take, any steps or proceedings in any court of justice, whether in the same country or in any foreign country.

A special injunction will be granted to stay waste. See WASTE.

In all cases in which a bill for an injunction will lie, equity, upon the principle of preventing multiplicity of suits, will compel an account of, and satisfaction for, waste or damage already committed, as consequential to the injunction.

Purpresture or *pourpresture*, which is any encroachment upon the royal demesne lands, will be restrained upon an information at the suit of the attorney-general.

When both parties to a suit in a foreign country are resident within another country, the courts of equity of the latter may act *in personam* upon those parties, and direct them by injunction to proceed no further in such suit, or to take certain steps in such suit as the ends of justice may require.

As to nuisances. Amongst the public nuisances, which will be restrained either upon information or at the suit of a private person, who is immediately grieved by them, may be enumerated all obstructions to highways and bridges, public rivers and harbours, and in general everything that renders the enjoyment of life and property hazardous and uncomfortable. In the case of a private nuisance, there must be such an injury as from its nature is not susceptible of being adequately compensated for by damages at law, or such as from its continuance or permanent mischief must occasion a constantly recurring grievance, which cannot be otherwise adequately prevented than by an injunction; as where the injury is irreparable, or where injury to health or trade, destruction of the means of subsistence, or permanent ruin to property, may or will ensue from the wrongful act, e. g. the darkening or obstruction of ancient lights of a dwelling-house, the blocking-up of watercourses, the diversion of streams from mills, the back flowage on mills, the pulling down of the banks of rivers, and thereby exposing adjacent lands to inundation, or neighboring mills to destruction, &c.

The piracy of a copyright, or the invasion of a patent, can be restrained, and the court will direct an account of the books printed, and the profits made by the infringer.

A special injunction may be obtained to restrain the following acts:—The publication of letters, for the writer of a letter has a joint pro-

perty in it with the person to whom it is addressed, the receiver having only a special property in it; it is a gift to him for the purpose of reading and keeping, but *ultra* the purposes for which it was sent, the property of the letter remains in the sender, and therefore cannot be published, either for profit or otherwise, without the writer's consent;—the improper use by one man of the trade-marks or name of another person, for to use names, marks, letters, or other *indicia*, by which purchasers may be induced to believe that the goods are the manufacture of another person, cannot be allowed; and an alien will be protected in the use of his trade-mark, although it is applied to goods not usually sold by him in this country (the *Collins Company* v. *Reeves*, 28 *Law. J. Ch.* 56);—the disclosure of secrets, acquired in the course of a confidential employment;—the alienation of property;—the negotiation of bills of exchange and promissory notes, obtained by fraud or collusion;—the unjust transfer of stock;—the receipt of dividends;—the sale of specific chattels; the vexatious alienation of real property *pendente lite*;—the sale of trust property;—the sale of equitable property of wives by husbands;—the presentation to a benefice;—the appointment of a minister to a dissenting chapel;—the indorsement of the registry or the sailing of a ship;—the removal of timber;—the breach of covenants;—to protect a ward of court from removal, marriage, or improper influence;—the unconscientious setting up of a legal title;—a partner intermeddling with the partnership effects, as by accepting or negotiating bills in the name of the partnership for his own private purposes, or from attempting unjustly to dissolve the partnership;—a solicitor attempting to give up one party in order to act for another party in a suit;—and lastly, railways have given rise to many questions as to the duty of equity to interfere, and prevent mischiefs to private property by an excess, or abuse, or misapplication of the corporate powers of the companies.

The practice of the Court of Chancery with respect to injunctions for the stay of proceedings at law is now, so far as the nature of the case will admit, assimilated to the practice with respect to special injunctions generally, and such injunctions may be granted upon interlocutory applications, supported by affidavit, in like manner as other special injunctions are granted. The 21 & 22 Vict. c. 27, empowers the Court of Chancery to award damages to an injured party, even in addition to or in substitution for an injunction. See *Smi. Ch. Pr.* 745.

The legislature has empowered the superior courts at common law to grant injunctions in certain cases by the following statutes:—

The Patent Law Amendment Act, 1852, 15 & 16 Vict. c. 83, s. 42, enacts, that in any action in any of Her Majesty's superior courts of record at Westminster and in Dublin for the infringement of letters-patent, it shall be lawful for the court in which such action is pending, if the court be then sitting, or if the court be not sitting, then for a judge of such court on the application of the plaintiff or defendant respectively, to make an order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such court or judge may seem fit.

This section gives the courts of common law the same power with respect to injunction, inspection, and account as the Court of Chancery. The Queen's Bench, upon application after verdict and damages recovered, refused to order an account of goods sold, in infringement of a patent previously to the bringing of the action, as the damages, though nominal in amount, must be taken to cover all loss previously incurred by the plaintiff; but made an order for an account of profits accruing after the action was brought, and for payment of the amount to the plaintiff.

The Railway and Canal Traffic Act, 1854, 17 & 18 Vict. c. 31, empowers the Court of Common Pleas, on summary application, to enjoin railway or canal companies impeding or delaying the facility of receiving or forwarding traffic. See the Common Law Procedure Act, 1852, s. 226, and *Cobbett* v. *Ludlam*, 11 *Exch.* 446 (1855), as to rendering injunctions more effectual.

By the Common Law Procedure Act, 1854, and 17 & 18 Vict. c. 125, it is provided, that in all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may claim a writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind, arising out of the same contract, or relating to the same property or right; and he may also in the same action include a claim for damages or other redress (s. 79).

The writ of summons in such action is to be in the same form as the writ of summons in any personal action, but on every such writ and copy thereof there is to be endorsed a notice that in default of appearance the plaintiff may, besides proceeding to judgment and execution for damages and costs, apply for and obtain a writ of injunction (s. 80).

The proceedings in such action are to be the same, as nearly as may be, and subject to the like control, as the proceedings in an action to obtain a *mandamus* under the provisions contained in the act (ss. 68-77); and in such action judgment may be given that the writ of

injunction do or do not issue, as justice may require; and in case of disobedience such writ of injunction may be enforced by attachment by the court, or, when such courts shall not be sitting, by a judge (s. 81).

It shall be lawful for the plaintiff at any time after the commencement of the action, and whether before or after judgment, to apply *ex parte* to the court or a judge for a writ of injunction to restrain the defendant in such action from the repetition or continuance of the wrongful act or breach of contract, or injury of a like kind, arising out of the same contract, or relating to the same property or right; and such writ may be granted or denied by the court or judge upon such terms as to the duration of the writ, keeping an account, giving security, or otherwise, as to such court or judge shall seem reasonable and just, and in case of disobedience such writ may be enforced by attachment by the court, or when such court shall not be sitting, by a judge. Any order, however, for a writ of injunction made by a judge, or any writ issued by virtue thereof, may be discharged, or varied, or set aside by the court, on application made thereto by any party dissatisfied with such order (s. 82).

In jure, non remota causa sed proxima spectatur.—Bacon.—(In law, the proximate, and not the remote cause, is regarded.)

Injuria fit ei cui convicium dictum est, vel de eo factum carmen famosum.—9 *Cro.* 60.—(An injury is done to him to whom a reproachful thing is said, or concerning whom an infamous song is made.)

Injuria illata judici, seu locum tenenti regis, videtur ipsi regi illata, maximè si fiat in exercentem officii.—3 *Inst.* 1.—(An injury offered to a judge, or person representing the king, is considered as offered to the king himself, especially if it be done in the exercise of his office.)

Injuria non excusat injuriam.—(A wrong does not justify a wrong.) See 6 *E. & B.* 47.

Injuria non præsumitur.—Co. Litt. 232.—(Injury is not to be presumed.)

Injuria propria non cadet in beneficium facientis. —(No one shall profit by his own wrong.)

Injury, any wrong or damage done to another, either in his person, rights, reputation, or property.

Inlagare, to admit or restore to the benefit of the law; to in-law, or render law-worthy.

Inlagary, or **Inlagation,** a restitution of an outlaw to the protection and benefit of the law.

Inlagh, a person within the law's protection, contrary to *utlagh*, an outlaw.

Inland, demesne land; that which was let to tenants, being denominated *outland* (*utland*).

Inland Bill of Exchange, a bill which is payable in the country where it is drawn. Its use in England was not resorted to until the reign of Charles II. See FOREIGN BILL.

Inland Trade, trade wholly carried on at home, as distinguished from Commerce, which see.

Inlantal, Inlantale, demesne or inland, opposed to *delantal*, or land tenanted.

Inleased, insnared.

Inlegiare, to admit a person to the protection of the law, after undergoing a legal punishment for a delinquency.

In limine (*at the outset*).

In loco parentis (*in the place of a parent*).

In majore summâ continetur minor.—5 *Co.* 115.—(A less sum of money is contained in a greater.)

In maximâ potentiâ minima licentia.—Hob. 159.—(In the greatest power there is the smallest license.)

Innamium, a pledge.

Innings, lands recovered from the sea; when rendered profitable they are termed *gainage* lands.

Innocent conveyances, a covenant to stand seised, a bargain and sale, and release, so called, because since they convey the actual possession by construction of law only, they do not confer a larger estate, in property, than the person conveying possesses, and therefore, if a greater interest be conveyed by these deeds, than a person has, they are only void *pro tanto*, for the excess. But a feoffment was a *tortious* conveyance, and therefore, under such circumstances, would have been void altogether, and produced a forfeiture. But by the 4th sec. of the 8 & 9 Vict., c. 106, a feoffment made after October 1, 1845, shall not have any tortious operation. It is therefore an innocent conveyance. See *Phillips* v. *Phillips*, 8 *Jurist.* (*N. S.*) 145.

Innominate contracts, those which had no particular names, as permutation and transaction.—*Civ. Law.*

Innonia, an inclosure.

Innovation, an exchange of one obligation for another, so as to make the second come in place of the first.—*Scotch term.*

Innoxiare, to purge one of a fault and make him innocent.

Innkeepers, proprietors of common inns for the accommodation of travellers in general.

All persons are deemed innkeepers who keep houses where a traveller is furnished with every thing which he has occasion for whilst on his way. They are bound to take in all travellers and wayfaring persons, and to entertain them, if they can accommodate them, for a reasonable compensation, provided they behave themselves properly, &c.; and they have a lien upon the goods of their guests for board and lodging, &c.; but the lien does not extend to their persons, or personal clothing in actual wear. Guests are those who are *bonâ fide* travelling, and not mere

neighbors and friends who visit the house occasionally. By the common law, innkeepers are bound to take not merely ordinary care but uncommon care of the goods, money, and baggage of their guests; and they are responsible for the acts of their servants and domestics, as well as for the acts of other guests. They are only liable for the goods brought within their inn, but the goods need not be delivered to the innkeeper, nor is it necessary to give him actual notice that they are in the inn. An innkeeper cannot exonerate himself from liability, save by positive proof that there was no default or negligence in him or his servants; but if a guest take upon himself exclusively the custody of his own goods, or has, by his own neglect, exposed them to peril, he exonerates thereby the innkeeper from liability.—*Story's Bail.* 470; *Calye's case*, 8 *Rep.* 32, and 1 *Smith, L. C.*

The liability of innkeepers at the common law having been found to press hardly upon them, by 26 & 27 Vict. c. 41, 'An Act to amend the law respecting the Liabilities of Innkeepers, and to prevent certain frauds upon them,' it is enacted that no innkeeper shall, after the passing of this act, be liable to make good to any guest any loss or injury to goods or property brought to his inn not being a horse or other live animal, or any gear appertaining thereto, or any carriage, to a greater amount than the sum of 30*l.*, except in the following cases:—

1. Where such goods or property shall have been stolen, lost, or injured, through the wilful act, default, or neglect of such innkeeper, or any servant in his employ.

2. Where such goods or property shall have been deposited expressly for safe custody with such innkeeper.

Provided always, that in the case of such deposit it shall be lawful for such innkeeper, if he think fit, to require as a condition of his liability, that such goods or property shall be deposited in a box or other receptacle fastened and sealed by the person depositing the same (s. 1). If any innkeeper shall refuse to receive for safe custody, as before mentioned, any goods or property of his guest, or if any such guest shall, through any default of such innkeeper, be unable to deposit such goods or property as aforesaid, such innkeeper shall not be entitled to the benefit of this act in respect of such goods or property (s. 2). Every innkeeper shall cause at least one copy of the 1st section of this act, printed in plain type, to be exhibited in a conspicuous part of the hall or entrance to his inn, and he shall be entitled to the benefit of this act in respect of such goods or property only as shall be brought to his inn, while such copy shall be so exhibited (s. 3). Except where the nature of the provision or the context of the act shall exclude such construction, the word 'inn' shall mean any hotel, inn, tavern, public-house, or other place of refreshment, the keeper of which is now by law responsible for the goods and property of his guests; and the word 'innkeeper' shall mean the keeper of any such place (s. 4).

Innotescimus [fr. *innotesco*, Lat., to make known], a kind of letters-patent.

In novo casu, novum remedium apponendum est.—2 *Inst.* 3.—(A new remedy is to be applied to a new case.)

Inns of Chancery, so called, perhaps, because anciently inhabited by such clerks as chiefly studied the framing of writs, which regularly belonged to the cursitors, who were officers of the Court of Chancery. There are nine of them, which are appendages to the inns of court, viz.: Clement's, Clifford's, and Lyon's Inns, belonging to the Inner Temple; Furnival's, Thavies', and Symond's Inn to Lincoln's Inn; New Inn to the Middle Temple; and Barnard's and Staples' Inn to Gray's Inn. These were formerly preparatory colleges for young students, and many were entered in them before they were admitted into the inns of court. See 3 *Rep. Pref.* 18.

Inns of Court. There are four of them, exercising the right of admitting persons to practise at the bar—the Inner Temple, the Middle Temple, Lincoln's Inn, and Gray's Inn. 2 *Reeves*, 360; 3 *Rep. Pref.* 18. No means of obtaining that rank exists, but that of becoming enrolled as a student in one or other of these inns, and afterwards applying to its benchers for a call to the bar.

By orders of the several societies of Lincoln's Inn, the Middle Temple, the Inner Temple, and Gray's Inn, the following report has been adopted, and directed to be carried into effect; and the regulations therein suggested are now the rules of the four inns of court.

1. That the four inns of court shall act in concert with each other in the joint establishment and maintenance of an uniform system for the legal education of students before admission to the bar.

2. That a standing committee or council be established, to consist of eight benchers, two to be nominated by each of the inns of court, and of whom four shall be a quorum. The members shall remain in office for two years, and each inn shall have power to fill up any vacancy that may occur in the number of its nominees during that period. To this council shall be entrusted the power and duty of superintending the whole subject of the education of the students, and of arranging and settling the details of the several measures which may be deemed necessary to be adopted.

3. That for the purpose of affording to the students the means of obtaining instruction and guidance in their legal studies, five readerships

or professorships shall be established, which shall consist of the three readerships already established by the societies of the Middle Temple, the Inner Temple, and Gray's Inn—viz. on jurisprudence and the civil law, the law of real property, and the common law—and also of a reader on equity to be named by the society of Lincoln's Inn, and of a readership on constitutional law and legal history to be founded by the four societies jointly. The readers shall be appointed for a period of three years, and the reader on constitutional law and legal history shall be chosen by the standing council.

4. That the duties of the readers (subject to regulation by the standing council) shall consist of the delivery of three courses of lectures in each year, of the formation of classes of students for the purpose of giving instruction in a more detailed and personal form than can be supplied by general lectures, and of affording to students generally advice and directions for the conduct of their professional studies.

5. That the four inns of court shall form a common fund by annual contributions, the amounts of which shall be mutually agreed on, and out of which fund shall be drawn the stipends to be assigned to the readers, and such studentships as shall from time to time be conferred upon students.

6. That the lectures and classes of the readers shall be open to the students of all the societies without distinction, subject to the payments of such fees as are hereinafter directed.

7. That the stipend of each reader shall be three hundred guineas per annum, and such stipends, and also the expense of the studentships, shall be wholly defrayed out of the common fund, to be raised by the contributions of the several societies.

8. That each student shall on admission pay a sum of five guineas, which shall entitle him to attend the lectures of all the readers.

9. That the fund composed of such last-mentioned payments shall be annually divided among the five readers equally, in addition to their stipends.

10. That (subject to regulation by the council) every student shall be at liberty to attend such class as he may think necessary, upon payment of a moderate fee to the reader, but care shall be taken by the council that such fees shall not in any year exceed the sum of three guineas.

11. That for the purposes of education the legal year shall be considered as divided into three terms or periods: one commencing with the 1st of November, and ending on the 22nd of December; the second commencing on the 11th of January, and ending on the 30th of March; and the third commencing on the 15th of April, and ending on the 31st of July, subject to a deduction of the days intervening between the end of Easter and the beginning of Trinity Term.

12. That no student shall be eligible to be called to the bar who shall not either have attended during one whole year the lectures of two of the readers, or have satisfactorily passed a public examination.

13. That public examinations shall be instituted, to be held three times a year, for the examination of all such students as shall be desirous of being examined previously to being called to the bar, and such examination shall be conducted by at least two members of the council jointly with the five readers, and certificates of having honorably passed such examination shall be given to such students as shall appear to the examiners to be entitled thereto.

14. That such examinations shall be held in Michaelmas Term, Hilary Term, and Trinity Term.

15. That as an inducement to students to propose themselves for examination, studentships shall be founded of fifty guineas per annum each, to continue for a period of three years, and one such studentship shall be conferred on the most distinguished student at each public examination; and further the examiners shall select and certify the names of three other students who shall have passed the next best examinations, and the inns of court to which such students belong may, if desired, dispense with any terms, not exceeding two, that may remain to be kept by such students, previously to their being called to the bar. Provided that the examiners shall not be obliged to confer or grant any studentship or certificate, unless they shall be of opinion that the examination of the students they select has been such as entitles them thereto.

16. That at every call to the bar those students who have passed a public examination, and either obtained a studentship or a certificate of honour, shall take rank in seniority over all other students who shall be called on the same day.

17. That the standing council shall have power to grant dispensations to students who shall have been prevented by any reasonable cause from complying with all the regulations as to the attendance on lectures which shall from time to time be established.

18. That it is expedient that henceforward there should be uniformity of usage at the respective inns of court as to the admission of students as members of those societies.

19. That it is expedient that no attorney at law, solicitor, writer to the signet, or writer to the Scotch courts, proctor, notary public, clerk in Chancery, parliamentary agent, or agent in

any court original or appellate, clerk to any justice of the peace, or person acting in any of these capacities, and no clerk of or to any barrister, conveyancer, special pleader, equity draftsman, attorney, solicitor, writer to the signet, or writer of the Scotch courts, proctor, notary public, parliamentary agent, or agent in any court original or appellate clerk in Chancery, clerk of the peace, clerk to any justice of the peace, or of or to any officer in any court of law or equity, or person acting in the capacity of any such clerks, should be admitted a member of any of the said societies for the purpose of being called to the bar, or of practising under the bar, until such person, being on the roll of any court, shall have taken his name off the rolls thereof, nor until he and every other person above named or described shall have entirely and *bonâ fide* ceased to act or practise in any of the capacities above named or described.

20. That it is expedient that no member of any of the said societies should be allowed to apply for, or take out, any certificate to practise, either directly or indirectly, as a special pleader, or conveyancer, or draftsman in equity, without the special permission of the masters of the bench of each society respectively, and that no such permission should be granted until the member applying shall have kept twelve terms.

21. That such permission should only be granted for one year from the date thereof, but may be renewed annually by order, as aforesaid.

22. That it is expedient that no person be allowed to obtain any such certificate unless he shall have attended such lectures, or passed such an examination, as under the preceding rules would be necessary to entitle him to be called to the bar.

23. That it is expedient that the following forms should be adopted by the said societies on applications for admission as members:—

I, ● of aged , the son of of , in the county of (add father's profession, if any, and the condition in life and occupation, if any, of the applicant) , do hereby declare that I am desirous of being admitted a member of the honorable society of for the purpose of keeping terms for the bar, and that I will not, either directly or indirectly, apply for or take out any certificate, to practise directly or indirectly, as a special pleader, or conveyancer, or draftsman in equity, without the special permission of the masters of the bench of the said society.

And I do hereby further declare that I am not an attorney at law, solicitor, a writer to the signet, a writer of the Scotch courts, a proctor, a notary public, a clerk in Chancery, a parliamentary agent, an agent in any court original or appellate, a clerk to any justice of peace, nor do I act, directly or indirectly, in any such capacity, or in the capacity of clerk of or to any of the persons above described, or as clerk of or to any officer in any court of law or equity.

Dated this day of

(Signature)

We, the undersigned, do hereby certify that we believe the above named to be a gentleman of respectability, and a proper person to be admitted a member of the said society.

} *Barristers of*

Approved, {

Treasurer, or in his absence by two benchers.

24. That it is expedient that every member of the said societies should have kept twelve terms before being called to the bar, unless any term or terms shall have been dispensed with under the 15th preceding rule.

25. That it is expedient that every member of the said societies should have attained the age of twenty-one before being called to the bar.

26. That it is expedient that members of the said societies, who shall at the same time be members of the universities of Oxford, Cambridge, Dublin, London, or Durham, or of the Queen's University in Ireland, should be enabled to keep terms by dining in the halls of their respective societies any three days in each term.

27. That members of the said societies, who shall not at the same time be members of the said Universities, should be enabled to keep terms by dining in the halls of their respective societies, any six days in each term.

28. That it is expedient that no day's attendance in the respective halls should be available for the purpose of keeping term, unless the member so attending shall have been present at the grace before dinner, during the whole of dinner, and until the concluding grace shall have been said.

29. That it is expedient that no member of any of the said societies, desirous of being called to the bar, should be so called until the name and description of such candidate shall have been placed upon the screens hung in the halls, benchers' rooms, and treasury or steward's offices, of each society, fourteen days in term before such call.

30. That it is expedient that the name and description of every such candidate should be sent to the other inns of court, and should also be screened for the same space of time in their respective halls, benchers' rooms, and treasury or steward's offices.

31. That it is expedient that the above regulations as to screening names, &c., should be applied to members seeking certificates to practise as special pleaders, conveyancers, or equity draftsmen.

32. That it is expedient that no call to the bar should take place except during term; and that such call should be made on the same day by the several societies, namely, on the sixteenth day of each term, unless such day happen to be Sunday, and in such case on the Monday after.

33. That all the foregoing rules and regulations shall come into operation on the first day of Trinity Term now next ensuing, and shall apply to all persons entering as students on and after that day, and also to all existing students who shall not by the first day of Trinity Term next have kept more than four terms; but all other students shall, if they desire it, be admitted to the benefit of the lectures and classes, and be entitled to submit themselves to the public examinations upon the same terms, and subject to the same regulations, as are hereby made applicable to students entering on and after the first day of Trinity Term, 1852.

The committee have abstained from framing any scheme, or making any suggestion as to the fees or dues charged by the inns of court to their respective members, or the deposits on the entrance of students, as they consider that these are matters of internal arrangement, which may with more propriety be left to the discretion and regulations of the societies respectively.

(*Signed by the Chairman and the Members of the Committee.*)

PARLIAMENT CHAMBER, MIDDLE TEMPLE:
Hilary Term 1852.

Innuendo [fr. *innuo*, Lat., to nod], a word used in declarations, indictments, and other pleadings, to ascertain a person or thing which was named before; as to say, he (*innuendo*, i. e. meaning the plaintiff) did so and so, when there was mention before of another person.

In odium spoliatoris omnia præsumuntur.—1 *Vern.* 19.—(All things are presumed in disparagement of a despoiler.)

Inofficious testament, a will not in accordance with the testator's natural affection and moral duties.—1 *Williams on Executors*, 35.

In omni re nascitur res quæ ipsam rem exterminat.—2 *Inst.* 15.—(In every thing a thing is born which destroys that thing itself.)

Inops consilii (*wanting advice*).

Inordinatus, an intestate.

In pari delicto, potior est conditio possidentis. (In equal fault, the condition of the possessor is the more favorable.)

Inpeny and Outpeny, customary payments on alienation of tenants, &c.

In personam [Lat.] (*against the person*).

In posse (*in a state of possibility*).

In præparatoriis ad judicium favetur actori. 2 *Inst.* 57.—(In things preceding judgment the plaintiff is favored.)

In præsentiâ majoris cessat potentia minoris. Jenk. Cent. 214.—(In the presence of the greater, the power of the lesser ceases.)

In præsenti (*at the present time*).

In propriâ personâ (*in one's own proper person*).

Inquest, judicial inquiry.

Inquest, *Coroner's.* See CORONER.

Inquest of office, an inquiry made by the king's (or queen's) officer, his sheriff, coroner, or escheator, *virtute officii*, or by writ sent to them for that purpose, or by commissioners specially appointed, concerning any matter that entitles the king to the possession of lands or tenements, goods or chattels. In order to avoid the possession of the Crown acquired by the finding of such office, the subject may have his petition of right, *monstrans de droit*, or traverse, as the case may be.—4 *Step. Com.* 61.

Inquilinus, the hirer of a house.—*Civil Law.*

Inquirendo, an authority given to some official person to institute an inquiry concerning the Crown's interests.

Inquiry, *Court of*, sometimes appointed by the Crown to ascertain the propriety of resorting to ulterior proceedings against a person charged before a court-martial.—1 *Bl. Com.* 418, *note by Mr. Justice Coleridge.*

Inquiry, *Writ of*, a judicial process addressed to the sheriff of the county in which the venue in an action is laid, stating the former proceedings in the action, and 'because it is unknown what damages the plaintiff has sustained,' commanding the sheriff that, by the oath of twelve honest and lawful men of his county, he diligently inquire the same, and return the inquisition into court. This writ is necessary after an interlocutory judgment, the defendant having let judgment go by default, to ascertain the *quantum* of damages. As the inquest, however, merely informs the court, the court may, in all cases, if it please, assess the damages, and thereupon give final judgment; and it is the practice in actions upon bills of exchange, promissory notes, or bankers' cheques, to refer it to one of the masters to compute the amount of principal and interest without a writ of inquiry. If the computation of damages be not a mere matter of calculation, the court will not refer it to one of the masters, but the plaintiff must sue out his writ of inquiry.—2 *Chit. Arch. Prac. by Pren.* 985.

Inquisitio post mortem (*inquest after death*).

Inquisition, inquiry, inquest.

Inquisitor, any officer, as a sheriff, coroner, &c., having power to inquire into certain matters.

In quo quis delinquit, in eo de jure est puniendus.—Co. Litt. 233.—(One who fails to perform the duties of his office ought to be punished, in that office.)

In re (*in the matter of*).

In rebus manifestis errat qui auctoritates legum allegat; quia perspicua vera non sunt probanda. 5 *Co.* 67.—(In things manifest, he errs who cites legal authorities, because obvious truths need not be proved.)

In rebus quæ sunt favorabilia animæ, quamvis sunt damnosa rebus, fiat aliquando extensio statuti.—10 *Co.* 101.—(In things that are favorable to the spirit, though injurious to things, an extension of a statute should sometimes be made.)

In re dubiâ magis inficiatio quam affirmatio intelligenda.—Godb. 37.—(In a doubtful case, the negative is rather to be understood than the affirmative.)

In rem (*against the thing or property*).

In republicâ maximè conservanda sunt jura belli.—2 *Inst.* 58.—(The laws of war are especially to be preserved in the state.)

In restitutionem, non in pœnam hæres succedit. 2 *Inst.* 198.—(The heir succeeds to the restitution, not to the penalty.)

In restitutionibus benignissima interpretatio facienda est.—Co. Litt. 112.—(The most benignant interpretation is to be made in restitutions.)

Inrolment [fr. *irrotulatio*, Lat.]. See ENROLMENT.

Insanity. See MENTAL ALIENATION.

In satisfactionibus non permittitur amplius fieri quam semel factum est (*quam* is probably a mistake for *quod*).—9 *Co.* 53.—(In making satisfaction, that which has been done once ought not to be done again.)

Inscriptiones, written instruments by which anything was granted.

Inservire, to reduce persons to servitude.

Insetenta, an inditch, or grave in a ditch.

Insidiatores viarum, way-layers.

Insignia, ensigns or arms.

Insiliarius, an evil counsellor.

Insilium, evil advice or counsel.

Insimul computasset (*he accounted together*), a writ or action of account which lay for things uncertain.

Insimul tenuit, a species of the abolished writ of formedon, brought against a stranger by a co-partner on the ancestor's possession.

Insinuatio, registration amongst the public records.—*Civ. Law.*

In solido, a joint contract.—*Ibid.*

Insolvency, the state of a person who has not property sufficient for the full payment of his debts. The acts for the relief of insolvent debtors, 1 & 2 Vict. c. 110, ss. 23–120; 5 & 6 Vict. c. 122; 7 & 8 Vict. c. 96; 8 & 9 Vict. c. 127; and 10 & 11 Vict. c. 102, were repealed by 'The Bankruptcy Act, 1861' (24 & 25 Vict. c. 134), s. 230. Insolvent debtors are now amenable to the bankruptcy laws. As to the law of insolvency, see *Shelford on Insolvency.*

Insolvent Court in India. See 11 & 12 *Vict.* c. 21.

Inspectator, a prosecutor or adversary.

Inspection, examination, sight of a thing.

Trial by Inspection was resorted to when, for the greater expedition of a cause, some point or issue, being either the principal question, or one arising collaterally out of it, and being evidently the object of sense, was decided by the judges of the court upon the evidence of their own senses. Obsolete.

Inspection of written documents. Where a plaintiff declares upon a written instrument not under seal, or where an action is founded upon such an instrument, the defendant may, in general, have a copy of it, by applying to a judge at chambers, who will order a copy of it to be forthwith delivered to the defendant, and all proceedings, in the meantime, to be stayed. 2 *Chit. Arch. Prac. by Pren.* 1427.

Also where a defendant is possessed of any written instrument, of which it is material that a plaintiff should have inspection, a judge at chambers, under particular circumstances, will order that such plaintiff may have leave to inspect it; that the defendant shall furnish a copy of it at the plaintiff's expense, and that the defendant shall produce it at the trial, if called upon to do so, or that he shall produce it to the plaintiff's attorney, in order that he may ascertain the names of the witnesses, so as to subpœna them. See 14 & 15 *Vict.* c. 99, s. 6; 2 *Chit. Arch. Prac. by Pren.* 1423; and as to the inspection of records, public books and documents, and the rolls of a manor, *Ibid.* 1432.

As to inspection by jury of real or personal property, see C. L. P. A. 1854, s. 58; and as to inspection in an action for the infringement of a patent, see 15 & 16 Vict. c. 83, s. 42.—2 *Chit. Arch. Prac. by Pren.* 1435. As to inspection of documents in equity, see *Smi. Ch. Pr.* 528.

Inspector, an overseer.

Inspectors of Mines. See 23 & 24 *Vict.* c. 151; and 25 & 26 *Vict.* c. 79.

Inspectorship, *Deed of,* an instrument entered into between an insolvent debtor and his creditors, appointing one or more person or persons to inspect and oversee the winding-up of such insolvent's affairs on behalf of the creditors.

Inspeximus (*we have inspected*), the first word of an ancient charter, a royal grant. An exemplification of the inrolment of a charter or of letters patent is called an *inspeximus. Co. Litt.* 225 *b.*; *Page's case,* 5 *Rep.* 52.

Installation, the ceremony of inducting or investing with any charge, office, or rank, as the placing a bishop into his see, a dean or prebendary into his stall or seat, or a knight into his order.

Instalment, a portion of a debt. When a debt is divided into two or more parts, payable at different times, each part is called an instalment, and the debt is said to be payable by instalments. It is a frequent condition in bonds, warrants of attorney, &c. Also giving possession of an ecclesiastical dignity, and is correlative to a rector or vicar's induction to a benefice.

Instance, that which may be insisted on at one diet or course of probation.—*Scotch term.*

Instance Court of Admiralty. See ADMIRALTY.

Instans est finis unius temporis et principium alterius.—Co. Litt. 185.—(An instant is the end of one time and the beginning of another.)

Instanter, immediate; at once.

Trial *instanter* is had where a prisoner between attainder and execution pleads that he is not the same who was attainted.—4 *Step. Com.* 554.

When a party is ordered to plead *instanter*, he must plead the same day.

Instar dentium [Lat.] (*like teeth*).

In statu quo (*in the condition in which it was*).

Instaurum, a stock of cattle.

Instirpare, to plant or establish.

In stirpes (*according to lineage*).

Institor, a consignee or factor; one who superintends the business of a store or shop.

Institorial power, the charge given to a clerk to manage a shop or store.—1 *Bell. Com.* 385.

Institute, a commentary, a treatise. Also, in Scotland, a person to whom an estate is first given by destination or limitation.

Institutes of Lord Coke, four volumes by Lord Coke, published A.D. 1628. The first volume is a very extensive comment upon a treatise of tenures, compiled by Littleton, one of the Judges of the Court of Common Pleas, in the reign of Edward IV. This comment is a rich mine of valuable common law learning, collected and heaped together from the ancient reports and year-books, but greatly defective in method. It is usually cited by the name of *Co. Litt.* or as 1 *Inst.* The second volume is a comment upon many old acts of parliament, without any systematic order; the third a more methodical treatise of the pleas of the Crown; and the fourth an account of the several species of courts. These are cited as 2, 3, or 4 *Inst.* without any author's name.—1 *Bl. Com.* 73.

Institution, used in four senses:—(1) Laws, rites, and ceremonies enjoined by authority, as permanent rules of conduct or of government. (2) Putting a clerk into possession of a spiritual benefice, previous to which the oaths against simony and of allegiance and supremacy are to be taken. It is a conveyance or commitment of the cure of souls by the bishop to the incumbent, whereby the benefice becomes filled. It is thus performed: the clerk kneels before the ordinary or commissary having a deputation for that purpose, whilst he reads the words of the institution out of a written instrument, drawn for this purpose, with the episcopal seal appended, which the clerk holds in his hand during the ceremony.

The act of presentation only gives the clerk a right *ad rem*, but institution gives him a right *in re*, when he becomes parson as to the spirituality, and may celebrate divine service, and enter on the parsonage house and glebe, and take the profits of the benefice, though he cannot grant, or let, or claim a freehold in them, or bring an action for them till induction.

Institution being given to a clerk, a distinct and particular entry of it should be made in the public register of the ordinary, that is, not only that such a clerk received institution on such a day, and in such year, but if the clerk were presented, then at whose presentation, and whether in his own right or in the right of another, and if collated or presented by the Crown, then whether *jure pleno* or *per lapsum temporis*. This has been the practice as far back as any ecclesiastical records remain, and it is of great importance that such entries be duly made and carefully preserved, both to the clerk, whose letters of institution may be destroyed or lost, and to the patron, whose title may suffer in time to come by the want of proper evidence, upon whose presentation it was that institution was given.—*Mirehouse on Advow.* p. 187. (3) A society for promoting any public object, as a charitable or benevolent institution. (4) In the civil law, the appointment of a debtor as heir, i. e. to carry on the legal existence, the *persona*, of the testator.

Institutiones. It was the object of Justinian to comprise in his Code and Digest, or Pandects, a complete body of law. But these works were not adapted to the purposes of elementary instruction, and the writings of the ancient jurists were no longer allowed to have any authority, except so far as they had been incorporated in the Digest.—*Smi. Dict. of Antiq.* It was, therefore, necessary to prepare an elementary treatise, and the Institutes were published a month before the Pandects, A.D. 533, and designed as an elementary introduction to legal study (*legum cunabula*). The work was divided into four books, subdivided into titles.

The Institutes are the elements of the Roman law, and were composed, at the command of the Emperor Justinian, by Trebonian, Dorotheus,

and Theophilus, who took them from the writings of the ancient lawyers, and chiefly from those of Gaius, especially from his Institutes and his books called *Aureorum* (i. e. of important matters).

The Institutes are divided into four books, each book into several titles, and each title into several parts—the first of which is called *Principium*, and those which follow, paragraphs. The first book of the Institutes has twenty-six titles, the second twenty-five, the third thirty, and the fourth eighteen; in all ninety-one titles. First, it is to be observed that the division is triple—Persons, Things, and Actions, under which the subject matter of the four books of Institutes is comprised. The first book treats of the Rights of Persons; the second, third, and five first titles of the fourth, of Things; and Actions are the subjects treated of from the sixth title of the fourth book to the end. The first book treats of Persons, but it is from Title III. only; for the first two, which are by way of introduction, explain Justice, Law, and Right; the meaning of the Right or State of Persons follows in two divisions, which complete the remaining part of the first book. According to the chief Division of Persons treated of from Title III. to VIII. of the first book, men are either Free or Slaves.

The condition of all slaves is the same, but it is not so with freemen, of whom some are free by birth, others are made so by emancipation.

The second Division of Persons begins at Title VIII. of the first book, and is explained in the following titles of that book. It is of independent persons, and of such as are under the power of another. The power of masters over their slaves, and of fathers over their children, is first treated of; after which is shown the manner of acquiring paternal power, viz., by marriage, legitimation, and adoption, and how that power may be lost.

Title XIII. to the end of the first book treats of Pupils, or such as have Tutors; of Minors, or such as have Curators appointed to them; and lastly, of persons who are of age, subject to nobody, and masters of their own actions.

Tutorship is treated of under three heads: (1) the definition or division thereof into testamentary, legal, and dative; (2) the effect of the tutorship, which consists in putting the pupil under the care of his tutor, so that he may do nothing that will bind him, unless with the authority of his tutor; (3) the manner in which tutorships expire.

In Title XX. matters relating to Curators, and in the last three of this book, three things common to Tutors and Curators, are treated of. These are, the security they are obliged to give to indemnify pupils and minors; the lawful causes exempting persons from being tutors or curators; and lastly, those for which they may be deprived of their offices.

After Persons, Things are treated of, in Title I. of the second book to Title VI. of the fourth, under three heads—their divisions, the way of acquiring them, and the means by which they become due to us.

The divisions are principally two: by the first, Things are divided into those which belong to individuals and those which do not; by the second they are corporeal or incorporeal. The property in Things is acquired either by the Natural Law or by the Civil Law.

The ways of acquiring introduced by Natural Law are explained in Title I. of the second book.

Title II. explains the second Division of Things, which are either corporeal or incorporeal; and here real or personal services, as being incorporeal things, are treated of. The modes of acquisition introduced by the Civil Law follow; and the property of Things, according to the Civil Law, acquired either by particular or universal title.

The civil means of acquiring by particular title are Adjudication, Usucaption, or Prescription; and the express provision of the law, as where the title to a Thing is derived directly from the law, as in the case of a gift by a testament, the validity of which was declared by the law of the Twelve Tables or a *donatio mortis causâ*, or gift in contemplation of death.

Title VI. treats of Usucaption or just Usurpation and the conditions which it requires, and Title VII. of Donations; Titles VIII. & IX. of those who have the power of alienation, and of those through whom property may be acquired.

The mode of acquiring property in Things, according to the Civil Law, by universal title, are—Inheritance; the Prætorian Succession, called *Bonorum Possessio*; Acquisition, by Adrogation; the Adjudication of the goods of a deceased person in order to make the enfranchisement of slaves effectual; and the two abrogated Successions *per bonorum venditionem*, and *ex Senatûs-Consulto Claudiano*. These six modes of acquisition occupy from Title X. of the second to Title XIV. of the third book. As every succession is either testamentary or legal, and the legal takes place only in default of the testamentary, the question of Testaments takes precedence, and extends from Title X. to the end of the second book, and may be reduced under three principal heads.

The first relates to the four conditions required to make a testament valid: viz. (1) It must be made in the form prescribed by law, from which, however, the military testament is exempt. (2) The testator must possess the power of making a will. (3) He must either institute or disinherit such children as are *sub potestate*. (4) He must institute an heir, for without that

the testament is null. Now, the institution may be to the first, second, or third degree. That in the first is called properly Institution; that in the second or other degree is termed Substitution; and it is divided into vulgar, pupillary, quasi-pupillary. The second head shows how a testament duly made may afterwards become null, which is the subject-matter of Titles XVII. and XVIII. of the second book.

Title III. shows how a Testament made in the form prescribed by law, and not invalidated, may be carried into execution, which is done by the heir accepting the succession. Now this may be in several ways, according to the different qualities of the heir: for some are necessary heirs, or such as are obliged to accept the inheritance; others are both *necessarii* and *sui hæredes*, and others *extranei hæredes*.

The entering on inheritance makes the heir liable, not only for the debts of the deceased, but to the liquidation of legacies and fiduciary bequests, which are the subject of the second book from Title XX. to the end. In the first place the meaning of a legacy is explained; what actions a legatee may bring on account of the legacy left him; what things may be disposed of by legacy, and to whom. It is then shown how legacies are taken away or transferred; and lastly, the diminution to which they are subject by *Lex Falcidia*.

Fiduciary Bequests are treated of in Titles XXIII. and XXIV. In the first of these the nature of the universal Fiduciary Bequest, called Inheritance by the Fiduciary Bequest, is explained; and in the other the nature of a particular Fiduciary Bequest. The last title of the book speaks of Codicils.

Testamentary Successions, which take place before all others, are explained in the last fifteen titles of the second book.

Title I. of the third book and those that follow treat of Legal successions, admissible only in default of Testamentary.

According to the Ancient Law, there were but two kinds of legal heirs; for by the provisions of the law of the Twelve Tables, the legal succession, or succession to intestates, fell only to two sorts of heirs, which were, first, *hæredes sui*, or domestic heirs, and in default of them to the next of kin on the father's side, termed *Agnati*. These make the subject-matter of the two first titles of this book. In process of time, another sort of legal succession was created by the *Senatûs-Consultum Tertullianum* and *Orphitianum* contained in Titles III. and IV.

Title V. treats of the Succession to Intestates, to which the *cognati*, or female side, were admitted by the Prætorian equity according to the degree of cognation. This necessitates an examination of the degrees of kindred, which immediately follows in Title VI.

The Title, in conclusion, treats of those who were excluded from this Prætorian succession, because allied to the deceased only by a servile relation.

The succession of Freemen is the subject of Title VII., and the assignment of Freemen that of Title VIII.

After disposing of the question of Succession, which by the Civil Law is the first mode of acquiring property by universal title, the other five modes which followed, by the Prætorian succession, are called *bonorum possessio*; acquisition by adrogation; the adjudication of the goods of a deceased person, in order to make the enfranchisement of slaves effectual; and the two abrogated successions, *per bonorum venditionem* and *ex Senatûs-Consulto Claudiano*. Titles IX.–XII.

We then come to the last point relating to Things, viz.: Obligations, being the means whereby things accrue to us. The principal division of them is into two kinds. *Civil*, or those constituted by the laws, or at least recognised by the civil law, and *Prætorian*, or those which the prætor has established by his own authority, also called honorary. There is a further division of obligations into four kinds, for they arise (1) *ex contractu*; (2) *quasi ex contractu*; (3) *ex maleficio*; (4) *quasi ex maleficio*—Title XIII., 1 & 2. First, it is shown what an Obligation is, and the causes producing a mixed Obligation—that is, partly natural and partly civil, as a contract, quasi-contract, crime, or offence.

Contracts are called Nominate, that is, distinguished by certain proper names authorized by law, which assigns to them a particular action; or Innominate, that is, having no special name or particular designation, and completed only by one of the parties fulfilling the agreement. Nominate Contracts are formed in four ways: by delivery of the things agreed, by solemn and formal words, by writing, and by the sole consent of the contractors. Innominate Contracts are made by the delivery of the thing itself, of which kind are loans, deposits, and pledges, all of which are treated of in Title XV.

Contracts made by words are called Stipulations, the general principles of which are first explained, in order to arrive at the chief divisions of that kind of contract. The first division is of the Stipulation made between the person who demands and him that promises, and of that made between several who stipulate or promise together.

The second is of the Stipulation made by free persons or slaves.

The third is of Stipulations that are called judicial, prætorian, common, or conventional.

The fourth is of Stipulations called equitable (*utiles*), or good in law, and of Stipulations which are *inutiles*.

The fifth is of Principal and Accessory Stipulations, called sureties or cautions.

Title XXII. treats of Written Contracts. The five following Titles explain contracts made by the sole consent of the contracting persons, which are the contracts of purchase, of hire, of partnership, and of mandate.

Title XXVIII. treats of Quasi-Contracts; the next shows how Obligations are to be acquired; and the last in what manner they may be extinguished. Having spoken of Obligations which arise from contracts or quasi-contracts, the first five titles of the fourth book treat of obligations arising out of faults and quasi-faults —*delicta* or *quasi delicta*. The rest of the book, from Title VI. to Title XVI. is devoted to the treatment of Actions.

It begins with the definition of an Action, which is followed by several divisions explained in Title VI.; according to the chief and principal of which, Actions are either real, personal, or mixed.

The second is of Actions derived from the Civil Law, and such as have their foundations in Prætorian equity.

The third is of Actions by which the plaintiff seeks to recover a thing belonging or due to him, and of those by which the punishment of the offender is only aimed at, and of such actions by which both are intended.

The fourth division is of Actions by which the plaintiff sues for the single, double, treble, or quadruple value of the thing he would recover.

The fifth is of Actions of good faith, strict law, and arbitrary.

The sixth is of Actions in which the total of what is due is sued for, and in which the defendant is either not sued for the whole, or in consequence of which he is condemned to pay only so much as his circumstances will allow.

After these divisions of Actions are explained, Title VII. treats of certain Prætorian Actions which are liable to and which proceed from contracts made by slaves or children under power, or else by persons to whom they have committed the management of their affairs.

Title VIII. speaks of Actions that may be brought against a master for an error committed by his slave.

Title IX. of Actions to which the owner is liable for the hurt or damage done by a beast.

Title X. directs what persons are to be employed in carrying on lawsuits.

Title XI. treats of the security required of the parties to a suit, or such as appear for them.

Title XII. sets forth the nature of temporary or perpetual Actions, and what Actions the law affords to or against heirs; which those are which lie in their favor, and not against them; and lastly those which are neither allowed for nor against them.

Title XIII. treats of Exceptions, and Title XIV. of Replications.

Title XV. of Injunctions, or Actions to put the party injured into possession.

Title XVI. declares the Penalty against such as commence vexatious suits.

Title XVII. prescribes Rules to be observed by judges in the several suits brought before them.

And Title XVIII. the last, shows what were the Roman public prosecutions which every one had free liberty to institute, and of which the penalties were established by the laws called *Judiciorum Publicorum Leges*.

The Institutes are quoted in the same manner as the Code and Pandects, with the letter *I.* or *Inst.* thus § *si adversus* 12, *I. De Nuptiis*, is nothing more than twelve paragraphs of the Title *De Nuptiis*, which, on reference to the index, will be found to be the tenth of the first book. This is usually now cited *I.* 1, 10, 12. 1 *Colqu. R. C. L.* s. 61; *Sand. Just.*

Instrument [*instrumentum*, Lat., fr. *instruo*, to prepare, or provide], a formal legal writing, e.g. a record, charter, deed, or written agreement.

Instrumenta, writings not under seal.

In subsidium (*in aid*).

Insucken multures, a quantity of corn paid by those who are thirled to a mill. See THIRLAGE.

Insufficiency, an answer in Chancery is said to be insufficient when it does not specifically reply to the specific charges in the bill.

If a plaintiff conceive an answer to be insufficient, he may take exceptions to it in writing, stating the parts of the bill which he alleges are not answered, and praying that the defendant may, in such respect, file a further and full answer to the bill. Scandal and impertinence in an answer must be disposed of before its sufficiency can be considered.

After the filing of a defendant's answer, the plaintiff has six weeks within which he may file exceptions thereto for insufficiency, otherwise the answer will be deemed sufficient. For the practice, see *Smi. Ch. Pr.* 344, and *Consol. Ord.* 1860, xvi.

In suo quisque negotio hebetior est quam in alieno.—Co. Litt. 377.—(Every one is duller in his own business than in the business of another.)

Insuper, debiting or charging a person in an account.—*Exchequer term.*

Insurance, the act of providing against a possible loss, by entering into a contract with one who is willing to give assurance, that is, to bind himself to make good such loss, should it occur. In this contract, the chances of benefit are equal to the insurer and the insured. The first actually pays a certain sum, and the latter undertakes to pay a larger, if an accident sho[uld] or

happen. The one, therefore, renders his property secure; the other receives money with the probability that it is clear gain. The instrument by which the contract is made is denominated a policy, and the stipulated consideration a premium. It is generally made to provide against risks at sea, losses by fire, or death.

Insurances are effected sometimes by companies or societies, and sometimes by individuals, the risk being in either case diffused amongst a number of persons. Companies formed for carrying on this business have generally a large subscribed capital, or such a number of proprietors as enables them to raise, without difficulty, whatever sums may at any time be required to make good their losses. Societies of this sort do not limit their risks to small sums; that is, they do not often refuse to insure a large sum upon a ship, a house, a life, &c. The magnitude of their capitals affords them the means of easily defraying a heavy loss; and their premiums being proportioned to their risks, their profit is, on an average, independent of such contingencies.

(I.) The practice of marine insurance, no doubt, from the extraordinary hazard to which property at sea is exposed, seems to have long preceded insurances against fire and upon lives.

While all fire and life insurances are made at the risk of companies, which include within themselves the desirable requisites of security, wealth, and numbers, a large proportion of marine insurances is made at the risk of individuals who are called underwriters.

Until 1824, all firms and companies, with the exception of the two chartered companies—the Royal Exchange and London, were prohibited by law from taking marine insurances. Towards the latter part of that year the prohibition was removed, and the business of marine insurance was placed on the same legal footing as other descriptions of business. There are at present many marine insurance companies in London—viz. the two old chartered companies, the Royal Exchange and London; two established immediately upon the passing of the act of the year 1824; the Alliance and the Indemnity Mutual; the Marine, established in 1836; and the General Maritime and Neptune, established in 1839, and several others since formed.

The underwriters meet in a subscription room at Lloyd's. The joint affairs of the subscribers to these rooms are managed by a committee chosen by the subscribers. Agents (who are commonly styled Lloyd's agents) are appointed in all the principal ports of the world, who forward regularly to Lloyd's accounts of the departures of ships from and arrivals at such ports, as well as of losses and other casualties; and, in general, all such information as may be supposed of importance towards guiding the judgments of the underwriters. These accounts are regularly filed, and are accessible to all the subscribers. The principal arrivals and losses are besides posted in two books, placed in two conspicuous parts of the room; and also in another book, which is placed in an adjoining room, for the use of the public at large.

The rooms are open from ten o'clock in the morning till five o'clock in the afternoon; but the most considerable part of the business is transacted between one and four.

Those merchants and shipowners who manage their own insurance business procure blank policies, which they fill up so as to meet the particular case, and submit them to those underwriters with whom they are connected, by whom they are subscribed or rejected. Each policy is handed about in this way until the amount required is complete.

Many merchants and shipowners do not transact their own insurance business. They give their orders for insurance to others, who undertake it for them, and are responsible for its proper management. These latter persons are called insurance-brokers, and some of them manage the business of a number of principals. To them likewise are transmitted the orders for insurance from the outports and manufacturing towns. They charge the whole premium to their principals, and their profit consists in 5 per cent. upon the premium, 12 per cent. upon the money that they pay to the underwriters, and $\frac{1}{2}$ per cent. that they deduct from all the claims they recover from the underwriters.

But where the business is transacted with a company, this inducement to consign their insurance business to brokers, if not destroyed altogether, is, at all events, very much diminished. Any party having property to insure has merely to go to the manager of the company and state the particulars of the risk to be insured; the premium being agreed upon, the manager writes out a memorandum for the policy, which the party signs, and he is thus effectually insured.

Besides the individual underwriters and companies above noticed, there are clubs or associations formed by shipowners, who agree, each entering his ships for a certain amount, to divide among themselves the losses which may be sustained by any of them. These clubs are institutions of long standing, but, since the alteration of the law in 1824, appear to be on the decline. Their formation originated in a twofold reason:—1st, that the underwriters charged premiums more than commensurate with the risk; and, 2ndly, that they did not afford adequate protection.

The losses against which a merchant or

shipowner is not protected by an insurance in this country, are the following:—

(1) Acts of our own Government. (2) Breaches of the revenue laws. (3) Breaches of the law of nations. (4) Consequences of deviation. (5) All losses arising from unseaworthiness. Unseaworthiness may be caused in various ways, such as want of repair, want of stores, want of provisions, want of nautical instruments, insufficiency of hands to navigate the vessel, or incompetency of the master. (6) All loss arising from unusual protraction of the voyage. (7) All loss to which the shipowner is liable when his vessel does damage to others. (8) Average clause.—This description of loss is described in the following clause of the policy:—'Corn, fish, salt, seed, flour, and fruit, are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides, and skins, are warranted free from average under five per cent. unless general, or the ship be stranded; and all other goods, also the ship and freight, are warranted free from average under three per cent. unless general, or the ship be stranded.'

Average is a name applied to certain descriptions of loss, to which the merchant and shipowner are liable. There are two kinds of average—general and particular:

(*a*) General average comprehends all loss arising out of a voluntary sacrifice of a part of either vessel or cargo, made by the captain for the benefit of the whole. Thus, if a captain throw part of his cargo overboard, cut from an anchor and cable, or cut away his masts, the loss so sustained being voluntarily submitted to for the benefit of the whole, is distributed over the value of the whole ship and cargo, and is called general average.

(*b*) Particular average comprehends all loss occasioned to ship, freight, and cargo, which is not of so serious a nature as to debar them from reaching their port of destination, and when the damage to the ship is not so extensive as to render her not worth repairing.

Losses where the goods are saved, but in such a state as to be unfit to forward to their port of destination, and where the ship is rendered unfit to repair, are called 'partial or salvage loss.' The leading distinction between particular average and salvage loss is, that, in the first, the property insured remains the property of the assured; the damage sustained, or part thereof, as the case may be, being made good by the insurer; and, in the second, the property insured is abandoned to the insurer, and the value insured claimed from him, he retaining the property so abandoned, or its value. See CONSTRUCTIVE TOTAL LOSS.

All the elements that can by possibility enter into general average may be classed under four heads:—(1) Sacrifice of part of the ship and stores. (2) Sacrifice of part of the cargo and freight. (3) Remuneration of service required for general preservation. (4) Expense of raising money to replace what has been sacrificed, and to remunerate services. See *Arnould on Marine Insurance*.

(II.) Insurance against fire is a contract of indemnity, by which the insurer, in consideration of a certain premium received by him, either in a gross sum or by annual payments, undertakes to indemnify the insured against all loss or damage he may sustain in his houses or other buildings, stock, goods, and merchandise, by fire, during a specified period.

Insurances against fire are hardly ever made by individuals, but almost always by corporations or joint-stock companies; of which there are several in all the considerable towns throughout the empire.

The conditions on which the different offices insure are contained in their proposals, which are printed on the back of every policy; and it is in most instances expressly conditioned that they undertake to pay the loss, not exceeding the sum insured, 'according to the exact tenor of their printed proposals.'

It often occurs that no one office will insure to the full amount required by a person who has a large property; and he in such a case, to cover his own interest, is obliged to insure at different offices. But, in order to prevent the frauds that might be practised by insuring the full value in various offices, there is, in the proposals issued by all the companies, an article which declares that persons insuring must give notice of any other insurance made elsewhere upon the same houses or goods, that the same may be specified and allowed by indorsement on the policy, in order that each office may bear its rateable proportion of any loss that may happen; and that unless such notice be given the insurance will be void.

The risk commences in general from the signing of the policy, unless there be some other time specified. Policies of insurances may be annual, or for a term of years at an annual premium; and it is usual for the office, by way of indulgence, to allow fifteen days after the expiration of each year for the payment of the premium for the next year; and provided the premium be paid within that time, the insured is considered as within the protection of the office. A policy of insurance is not in its nature assignable, nor can it be transferred without the express consent of the office.

Insurances are generally divided into common, hazardous, and doubly hazardous.

(*a*) *Common* insurances.

(1) Buildings covered with slates, tiles, or metals, and built on all sides with brick or

stone, or separated by party walls of brick or stone, and wherein no hazardous trade or manufacture is carried on, or hazardous goods deposited.

(2) Goods in buildings as above described, such as household goods, plate, jewels in private use, apparel, and printed books, liquors in private use, merchandise, stock, and utensils in trade, not hazardous. The premium upon these, with certain exceptions, is 1*s.* 6*d.* per cent. per annum.

(β) *Hazardous* insurances.

(1) Buildings of timber or plaster, or not wholly separated by partition-walls of brick or stone, or not covered with slates, tiles, or metals, and thatched barns and outhouses having no chimney, nor adjoining to any building having a chimney; and buildings falling under the description of common insurance, but in which hazardous goods are deposited, or some hazardous trade or manufacture is carried on.

(2) Ships and craft, with their contents (lime barges, with their contents, alone excepted). At 2*s.* 6*d.* per cent. per annum, with certain exceptions.

(γ) *Doubly hazardous* insurances.

(1) All thatched buildings having chimneys or communicating with or adjoining to buildings having one, although no hazardous trade shall be carried on, nor hazardous goods deposited therein: and all hazardous buildings, in which hazardous goods are deposited, or hazardous trades carried on.

(2) All hazardous goods deposited in hazardous buildings and in thatched buildings having no chimney, nor adjoining to any building having a chimney. At 4*s.* 6*d.* per cent. per annum, with certain exceptions.

That part of the business of life insurance which consists of granting annuities upon lives is treated of under interest and annuities, so that we have only to treat in this place of the insurance of sums payable at the death of the insurers or their nominees.

(III.) Life insurance companies are divided into three classes. The first class consists of corporations or joint-stock companies, who undertake to pay *fixed* sums upon the death of the individuals insuring with them; the profits made by such companies being wholly divided among the proprietors. Of this class are the Royal Exchange, Globe, &c. The second class are also corporations or joint-stock companies with proprietary bodies; but instead of undertaking, like the former, to pay certain specified sums upon the death of the insured, they allow the latter to participate to a certain extent along with the proprietors in the profits made by the business. The mode in which this sort of *mixed* companies allots the profits granted to the insured is not the same in all; and in some, the principle on which the allotment is made is not disclosed. The Rock, Sun, Alliance, Guardian, Atlas, &c. belong to this mixed class. The third species of company is that which is formed on the basis of mutual insurance. In this sort of company there is no proprietary body distinct from the assured; the latter share among themselves the whole profits of the concern, after deducting the expenses of management. The Equitable Society, the Amicable, the Norwich Life, &c. belong to this class.

In order to hinder the growth of gambling transactions upon life insurance, it was enacted by 14 Geo. III. c. 48, that no insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or any other event or events whatsoever, wherein the person or persons for whose use or benefit, or on whose account such policy or policies shall be made, *shall have no interest*, or by way of gaming or wagering; and that every insurance made contrary to the true intent and meaning of this act shall be null and void to all intents and purposes whatsoever (s. 1). It shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the name or names of the person or persons interested therein, or for what use, benefit, or on whose account such policy is so made or underwrote (s. 2). In all cases where the insured has an interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events (s. 3). As to abatement of income-tax in respect to insurance on lives, see 16 & 17 *Vict.* c. 91, continued by 20 & 21 *Vict.* c. 5.—*McCull. Comm. Dict.*; 2 *Selw. N. P.* 941. See DOUBLE INSURANCE.

Insurance Companies. See 'The Companies' Act, 1862,' 25 & 26 *Vict.* c. 89, and JOINT-STOCK COMPANY.

Intakers, receivers of stolen goods.

Integer [Lat.] (*whole; untouched*).

Intendant, a person who has the charge, direction, and management of some office or department.

Intendment of law [*intellectus legis*, Lat], the understanding, intention, and true meaning of law.—1 *Inst.* 78.

Intentio, a count.—*Bract.*

Intentione, a writ that lay against him who entered into lands after the death of a tenant in dower, or for life, &c., and held out to him in reversion or remainder.—*F. N. B.* 203.

Intentio cœca, mala.—2 *Buls.* 179.—(A hidden intention is bad.)

Intentio inservire debet legibus, non leges intentioni.—*Co. Litt.* 314.—(Intention ought to

be subservient to the laws; not the laws to the intention.)

Intentio mea imponit nomen operi meo.—Hob. 123.—(My intent gives a name to my act.)

Inter alia (*amongst other things*).

Inter canem et lupum (*between the dog and the wolf*), twilight; called also mock shadow, daylight's-gate, and betwixt hawk and buzzard. *Cowel.*

Intercedere, to become bound for another's debt.—*Civ. Law.*

Intercommoning, where the commons of two manors lie together, and the inhabitants of both have time out of mind depastured their cattle promiscuously in each. See COMMON.

Inter cuncta leges et percunctabere doctos.—Co. Litt. 232.—(In all things, you will inquire of laws and learned men.)

Interdict, Interdiction, an ecclesiastical censure prohibiting the administration of divine ceremonies, either to particular persons or in particular places, or both. This severe censure has been long disused.

In the civil law interdicts were certain *formulæ* by which the process ordered or forbade something to be done; they were chiefly employed in disputes as to possession, or *quasi* possession, and were nearly equivalent to our writ of injunction. For a division of them, see *Sand. Just.* 589.

Interdiction of fire and water [*interdictio ignis et aquæ*, Lat.], banishment by an order that no man should supply the person banished with fire or water, the two necessaries of life.

Interesse termini, an executory interest, being a right of entry which a lessee acquires in land by virtue of a demise. It cannot, before entry, be enlarged by a release from the lessor (*except* the term be created by an assurance under the Statute of Uses, which does not require an entry), because the lessee has no actual estate; yet such a release would extinguish the rent and also the *interesse termini.* The lessee can assign this interest, but it will not merge in the freehold subsequently acquired.—*Walk. Conv.* 34, and 3 *Pres. Conv.* 121.

Interest, a sum of money paid or allowed for the loan or use of some other sum, lent for a certain time according to a fixed rate. The sum lent is called the *principal*, the sum agreed on as interest is called the *rate per cent.*, and the principal and interest added together is called the amount. It is distinguished into simple and compound. (1) *Simple* interest is that which is paid for the principal or sum lent, at a certain rate or allowance made by law, or agreement of parties. (2) *Compound* interest is when the arrears of interest of one year are added to the principal, and the interest for the following year is calculated on that accumulation. See USURY, and 17 & 18 *Vict.* c. 90.

At Athens, Solon, amongst other reforms, abolished the law by which a creditor was empowered to sell or enslave a debtor, and prohibited the lending of money upon a person's own body. (*Plut. Sol.* c. xv.) No other restriction, we are told, was introduced by him, and the rate of interest was left to the discretion of the lender. (*Lys. in Theom.* xvii.) The only case in which the rate was prescribed by law was in the event of a man separating from his lawful wife, and not refunding the dowry he had received with her. Her trustees or guardians could in that case proceed against him for the principal, with interest, at the rate of eighteen per cent.

The Licinian laws, among the Romans, by which the grievances of debtors were to a certain extent redressed, did not lay any restriction on the rate of interest that might be legally demanded: and it is clear from various circumstances (*Niebuhr*, ii., p. 603), that the scarcity of money at Rome after the taking of the city by the Gauls had either led to the actual abolition of the old uncial rate (*unciarium fenus*) of the Twelve Tables, or caused it to fall into disuse. Nine years, however, after the passing of these laws (*Liv.* vii. 16) the rate of the Twelve Tables was re-established, and any higher rate prohibited by the bill (*rogatio*) of the tribunes Duilius and Mænius.

In cases of fenus nauticum, however, or bottomry, as the risk was the money-lender's, he might demand any interest he liked while the vessel on which the money was lent was at sea; but after she reached harbor, and while she was there, no more than the usual rate of 12 per cent. on the centesima could be demanded.

Justinian made it the legal rule for fenus nauticum under all circumstances.—*Smith's Dict. of Antiq.*

Also, a chattel-real, as a lease for years, or a future estate (1 *Inst.* 46), or indeed any estate, right, or title in realty.—1 *Inst.* 345.

Interest upon interest, compound interest.

Interest reipublicæ ut pax in regno conservetur, et quæcunque paci adversentur providè declinentur.—2 Inst. 158.—(It concerns the state, that peace be preserved in the kingdom, and that whatever things are averse to peace be prudently declined.)

Interest reipublicæ ne maleficia remaneant impunita.—Jenk. Cent. 31.—(It concerns the state, that crimes should not remain unpunished.)

Interest reipublicæ quod homines conserventur. 12 *Co.* 62.—(It concerns the state, that men be preserved.)

Interest reipublicæ res judicatas non rescindi. 2 *Inst.* 359.—(It concerns the state, that things adjudicated be not rescinded.)

Interest reipublicæ suprema hominum testamenta rata haberi.—*Co. Litt.* 236.—(It concerns the state, that men's last wills be confirmed.)

Interest reipublicæ ut carceres sint in tuto.—2 *Inst.* 589.—(It concerns the state, that prisons be in security.)

Interest reipublicæ ut quilibet re suâ bene utatur.—6 *Co.* 37.—(It concerns the state, that every one should use his property properly.)

Interest reipublicæ ut sit finis litium.—*Co. Litt.* 303.—(It concerns the state, that there be an end of lawsuits.)

Interested witness, a witness is not excluded from giving evidence by reason of his interest in the matter in question.—6 & 7 *Vict.* c. 85, s. 1.

Interim order, one made in the meantime, and until something is accomplished.

Interlineation, the insertion of any matter in a written instrument after it is engrossed or executed. A deed may be avoided by interlineation, unless a memorandum be made thereof at the time of the execution or attestation. If there be any interlineation or erasure in the *jurat* of an affidavit, that affidavit cannot be read.—140 *R. H. T.* 1853; 2 *Chit. Arch. Prac. by Pren.* 1552.

Interlocutory, that which is decided during the course of an action or suit, and does not determine it; intermediate; not finally or wholly determinate. Thus, in *equity* it seldom happens that the first decree can be final and conclude the cause; for, if any matter of fact be strongly controverted, the court is so sensible of the deficiency of trial by written depositions, that it will not bind the parties thereby, but pronounces an interlocutory decree, usually directing the matter to be tried by jury in a court of common law. But see 21 & 22 *Vict.* c. 27. So at *common law* a judgment in default of the defendant not pleading is interlocutory in all cases in which the sole object of the action is damages, and not until the damages are ascertained by a writ of inquiry before the sheriff, or an order to compute before the master, can a final judgment be signed.

Interloper [fr. *inter*, Lat., between, and *loopen*, to run], a person who intercepts the trade of others.

International copyright. By 7 Vict. c. 12 (repelling 1 & 2 Vict. c. 59), it shall be lawful for her Majesty, by any order in council, to direct that, as respects all or any particular class or classes of the following works (namely), books, prints, articles of sculpture, and other works of art, to be defined in such order, which shall after a future time, to be specified in such order, be first published in any foreign country to be named in such order, the authors, inventors, designers, engravers, and makers thereof respectively, their respective executors, administrators, and assigns, shall have the privilege of copyright therein during such period or respective periods as shall be defined in such order, not exceeding, however, as to any of the above-mentioned works, the term of copyright, which authors, inventors, designers, engravers, and makers of the like works respectively, first published in the United Kingdom, may be then entitled to under the copyright acts (see COPYRIGHT), or under any acts which may hereafter be passed in that behalf. See 9 & 10 *Vict.* c. 58; 10 & 11 *Vict.* c. 95; and 15 *Vict.* c. 12.

International law, the law of nations, strictly so called, was in a great measure unknown to antiquity, and is the slow growth of modern times, under the combined influence of Christianity and commerce. When the Roman empire was destroyed, the Christian world was divided into many independent sovereignties, acknowledging no common head and connected by no uniform civil polity. The invasions of the barbarians of the north, the establishment of the feudal system in the middle ages, and the military spirit and enterprise cherished by the crusades, struck down all regular commerce, and surrendered all private rights and contracts to mere despotic power. It was not until the revival of commerce on the shores of the Mediterranean, and the revival of letters and the study of the civil law by the discovery of the Pandects, had given an increased enterprise to maritime navigation, and a subsequent importance to maritime contracts, that anything like a system of international justice began to be developed. It first assumed the modest form of commercial usages; it was next promulgated under the more imposing authority of royal ordinances; and it finally became, by silent adoption, a generally connected system, founded in the natural convenience and asserted by the general comity of the commercial nations of Europe. The system, thus introduced for the purposes of commerce, has gradually extended itself to other objects, as the intercourse of nations has become more free and frequent. New rules, resting on the basis of general convenience and enlarged sense of national duty, have, from time to time, been promulgated by jurists, and supported by courts of justice, by a course of juridical reasoning, which has commanded almost universal confidence, respect, and obedience, without the aid, either of municipal statutes or of royal ordinances, or of international treaties.

It is plain that the laws of one country can have no intrinsic force, *proprio vigore*, except within the territorial limits and jurisdiction of that country. They can bind only its own subjects, and others who are within its juris-

dictional limits; and the latter only while they remain therein. No other nation, or its subjects, are bound to yield the slightest obedience to those laws. Whatever extra-territorial force they are to have is the result, not of any original power to extend them abroad, but of that respect which, from motives of public policy, other nations are disposed to yield to them, giving them effect, as the phrase is, *sub mutuæ vicissitudinis obtentu*, with a wise and liberal regard to common convenience and mutual benefits and necessities. Boullenois has laid down the same exposition as a part of his fundamental maxims. 'Of strict right,' says he, 'all the laws made by a sovereign have no force or authority except within the limits of his domains. But the necessity of the public and general welfare has introduced some exceptions in regard to civil commerce.' *De droit étroit, toutes les lois, que fait un souverain, n'ont force et autorité que dans l'étendue de sa domination; mais la nécessité du bien public et général des nations a admise quelques exceptions dans ce qui regarde le commerce civil* (1 *Boul. Prin. Gén.* p. 4). And, accordingly, it is laid down by all publicists and jurists as an incontestable rule of public law, that one may with impunity disregard the law pronounced by a magistrate beyond his own territory. *Extra territorium jus dicenti impune non paretur* is the doctrine of the *Digest* (l. 2, t. 1, l. 20); and it is equally as true in relation to nations as the Roman law held it to be in relation to magistrates. The other part of the rule is equally applicable. *Idem est, et si supra jurisdictionem suam velit jus dicere*; for he exceeds his proper jurisdiction when he seeks to make it operate extra-territorially as a matter of power. Vattel has deduced a similar conclusion from the general independence and equality of nations, very properly holding that relative strength or weakness cannot produce any difference in regard to public rights and duties; that whatever is lawful for one nation is equally lawful for another; and whatever is unjustifiable in one is equally so in another. And he affirms in the most positive manner (what indeed cannot well be denied), that sovereignty, united with domain, establishes the exclusive jurisdiction of a nation within its own territories, as to controversies, as to crimes, and as to rights arising therein.—*B.* 2, c. vii., s. 84.

The first and most general maxim or proposition in international jurisprudence is that which has been already adverted to: that every nation possesses an exclusive sovereignty and jurisdiction within its own territory.

Another maxim or proposition is, that no state or nation can, by its laws, directly affect or bind property out of its own territory, or bind persons not resident therein, whether they are natural-born subjects or others. This is a natural consequence of the first proposition.

From these two maxims or propositions there flows a third, and that is, that whatever force and obligation the laws of one country have in another, depend solely upon the laws and municipal regulations of the latter; that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent.

Huberus has laid down three axioms, which he deems sufficient to solve all the intricacies of the subject:—I. That the laws of every empire have force only within the limits of its own government, and bind all who are subjects thereof, but not beyond those limits. II. That all persons who are found within the limits of a government, whether their residence is permanent or temporary, are to be deemed subjects thereof. III. That the rulers of every empire, from comity, admit that the laws of every people, in force within its own limits, ought to have the same force everywhere, so far as they do not prejudice the powers or rights of other governments, or of their citizens. Lib. 1, tit. 3, *De Conflictu Legum*, s. 2, p. 538; *Story's Conflict of Laws*, cc. i. & ii.; and *Wheaton's Elements of International Law*.

Internuncio, or **Internuncius**, a messenger between two parties; also, the pope's representative in other countries.

Interpellation, a citation or summons.

Interpleader Act, 1 & 2 Wm. IV. c. 58. This statute comprehends two classes of persons:—

(1) Persons generally.

After reciting that 'it often happens that a person sued at law for the recovery of money or goods, wherein he has no interest, and which are also claimed of him by some third party, has no means of relieving himself from such adverse claims but by a suit in equity against the plaintiff and such third party, usually called a bill of interpleader, which is attended with expense and delay,' enacts, 'that upon application made by or on behalf of any defendant sued in any of His Majesty's Courts of Law at Westminster, or in the Court of Common Pleas of the county palatine of Lancaster, or in the Court of Pleas of the county palatine of Durham, in any action of *assumpsit*, *debt*, *detinue*, or *trover*, such application being made after declaration and before plea, by affidavit, or otherwise, showing that such defendant does not claim any interest in the subject-matter of the suit, but that the right thereto is claimed, or supposed to belong to some third party, who has sued, or is expected to sue, for the same; and that such defendant does not in any manner collude with such third party, but is ready to bring into court, or to pay or dispose of the

subject-matter of the action, in such manner as the court, or any judge thereof, may order or direct; it shall be lawful for the court, or any judge thereof, to make rules or orders calling upon such third party to appear and to state the nature and particulars of his claim, and maintain or relinquish his claim, and upon such rule or order to hear the allegations as well of such third party as of the plaintiff, and in the meantime to stay the proceedings in such action, and finally, to order such third party to make himself defendant in the same or some other action, or to proceed to trial on one or more feigned issue or issues (see FEIGNED ISSUE); and also to direct which of the parties shall be plaintiff or defendant on such trial, or with the consent of the plaintiff and such third party, their counsel or attornies, to dispose of the merits of their claims and determine the same in a summary manner, and to make such other rules and orders therein, as to costs and all other matters, as may appear to be just and reasonable' (s. 1).

'The judgment in any such action or issue as may be directed by the court or judge, and the decision of the court or judge, in a summary manner, shall be final and conclusive against the parties, and all persons claiming by, from, or under them' (s. 2).

'If such third person shall not appear upon such rule or order to maintain or relinquish his claim, being duly served therewith, or shall neglect or refuse to comply with any rule or order to be made after appearance, it shall be lawful for the court or a judge to declare such third party, and all persons claiming by, from, or under him, to be for ever barred from prosecuting his claim against the original defendant, his executors or administrators (saving nevertheless the right or claim of such third party against the plaintiff), and thereupon to make such order between such defendant and the plaintiff, as to costs and other matters, as may appear just and reasonable' (s. 3).

'No order shall be made in pursuance of this act by a single judge of the Court of Pleas of the said county-palatine of Durham, who shall not also be a judge of one of the said courts at Westminster; and every order to be made in pursuance of this act by a single judge, not sitting in open court, shall be liable to be rescinded or altered by the court, in like manner as other orders made by a single judge' (s. 4).

'If upon application to a judge, in the first instance, or in any later stage of the proceedings, he shall think the matter more fit for the decision of the court, it shall be lawful for him to refer the matter to the court, and thereupon the court shall and may hear and dispose of the same in the same manner as if the proceeding had originally commenced by rule of court instead of the order of a judge' (s. 5).

'All rules, orders, matters, and decisions to be made and done in pursuance of this act (except only the affidavits to be filed), may, together with the declaration in the cause (if any), be entered of record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, if required, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment (except only as to becoming a charge on any lands, tenements, and hereditaments), and in case any costs shall not be paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same, his agent or attorney, execution may issue for the same by *fieri facias*, or *capias ad satisfaciendum*, adapted to the case, together with the costs of such entry, and of the execution, if by *fieri facias*; and such writ and writs may bear teste on the day of issuing the same, whether in term or vacation; and the sheriff or other officer executing any such writ shall be entitled to the same fees, and no more, as upon any similar writ grounded upon a judgment of the court' (s. 7).

This act does not take away the remedy by bill of interpleader; and if proceedings in equity have been instituted, the court will not afterwards interfere.

(2) Sheriffs and other officers.

The act, after reciting that 'difficulties sometimes arise in the execution of process against goods and chattels, issued by or under the authority of the said courts, by reason of claims made to such goods or chattels by assignees of bankrupts, and other persons, not being the parties against whom such process has issued, whereby sheriffs and other officers are exposed to the hazard and expense of actions, and it is reasonable to afford relief and protection in such cases to such sheriffs and other officers,' enacts, 'that when any such claim shall be made to any goods or chattels taken, or intended to be taken, in execution under any such process, or to the proceeds or value thereof, it shall and may be lawful to and for the court from which such process issued, upon application of such sheriff or other officer, made before or after the return of such process, and as well before as after any action brought against such sheriff or other officer, to call before them, by rule of court, as well the party issuing such process as the party making such claim, and thereupon to exercise for the adjustment of such claims, and the relief and protection of the sheriff or other officer, all or any of the powers or authorities hereinbefore contained, and make such rules and decisions as shall appear to be just, according to the circumstances of the case, and the costs of all such

proceedings shall be in the discretion of the court' (s. 6).

By the 1 & 2 Vict. c. 45, s. 2, 'it shall be lawful for any judge of the Courts of Queen's Bench, Common Pleas, or Exchequer, with respect to any such process issued out of any of those courts, or for any judge of the said Court of Common Pleas of the county palatine of Lancaster, or Court of Pleas of the county palatine of Durham (being also a judge of one of the said three superior courts), with respect to process issued out of the said courts of Lancaster and Durham respectively, to exercise such powers and authorities for the relief and protection of the sheriff or other officer as may, by virtue of the said last-mentioned act, be exercised by the said several courts respectively, and to make such order therein as shall appear to be just, and the costs of such proceedings shall be in the discretion of such judge.'—2 *Chit. Arch. Prac. by Pren.* 1380. As to appeals in interpleader cases from the County Courts, see 19 & 20 *Vict.* c. 108, s. 68.

Interpleader, *Bill of.* Where two or more persons claim the same debt, duty, or thing from another, by different or separate interests, and he, not claiming any right in the matter, and not knowing to which of the claimants he ought rightly to render such debt, duty, or thing, fears that he may suffer injury from their conflicting claims, he can file a bill of interpleader, which is in its nature an original bill for relief.

The plaintiff should set forth specifically in his bill his clear title to maintain the suit (negativing all personal interest or claim in the subject of the controversy) and also the several claims of the several defendants, that they may appear to be of the same nature and character, and the fit subject of such a bill. Bills of interpleader (at least independently of statutable provisions) do not ordinarily lie, except in cases of privity of some sort between all the parties, such as privity of estate, or title, or contract, and where the claim by all is of the same nature and character. Where the claimants assert their rights under adverse titles and not in privity, and where their claims are of different natures, the bill is not maintainable. Thus, if an estate be put up for sale by auction, and A. becomes the purchaser, and pays his deposit, and then, by order of the same owner, it is put up again for sale, and B. becomes the purchaser, and pays his deposit; such a case is not a proper subject of interpleader if each demand his deposit from the stakeholder; for A. and B. do not claim in privity, and their deposits are distinct. The prayer of the bill is that the defendants may be compelled to set forth their several titles and to interplead, i. e. to contest *inter se* their respective claims, so that the court may adjudge to whom such debt, duty, or other thing belongs, in order that such plaintiff may be indemnified.—*Mitf. Eq. Pl.* 48. If actions at law have been commenced against the plaintiff, he may also pray that the claimants be restrained from proceeding until the right be determined; and if any money is due from him he should offer to pay it into court, otherwise either of the defendants may move the court for an order that it be paid into court, all further proceedings to be stayed in the meantime.

The plaintiff must annex to his bill an affidavit that there is no collusion between him and any of the defendants; as without this the bill is demurrable. If the bill be filed by an officer of a company on behalf of the company, he must annex a like affidavit, and add that, to the best of his knowledge and belief, the company do not collude with the defendants.

The bill generally praying an injunction to restrain the proceedings of the claimants, or either of them, at law, the interpleading plaintiff may, immediately on filing his bill, accompanied by an affidavit of no collusion, without waiting for the appearance of the defendants, and even before they have been served, move *ex parte* for an injunction to restrain all proceedings at law commenced against him until further order, offering at the same time to pay the money in dispute into court.

If the defendants do not deny the statements of the bill, the ordinary decree is that the defendants interplead; and the plaintiff then withdraws from the suit. But the defendants, or either of them, are or is at liberty to contest and deny the allegations in the bill, or to set up distinct and independent facts in bar of the suit; and, in such a case, the plaintiff must reply to the answer, and close the proofs in the usual manner, before he can bring the cause to a hearing between himself and the defendants; and at the hearing he can only insist (assuming such to be his right) upon a decree, that the defendants do interplead.—*Sto. Eq. Pl.* 345. Should the question between the defendants be in a state for decision, the court will then settle it; otherwise an issue is directed to be tried by a jury at law, or it is referred to the chief clerk, whichever course is the better suited to the nature of the case.

The plaintiff is entitled to his costs out of the fund in court, or, there being none, from the defendant, if he wrongfully occasion the suit.

But although a bill of interpleader, strictly so called, lies only where the party applying claims no interest in the matter, yet there are many cases where a bill, in the nature of a bill of interpleader, will lie by a party claiming an interest to ascertain and establish his own rights, where there are other conflicting rights

between third persons. Thus, if a plaintiff is entitled to equitable relief against the owner of property, and the legal title thereto is in dispute between two or more persons, so that he cannot ascertain to which it actually belongs, he may file a bill against the several claimants in the nature of a bill of interpleader for his relief.—*Sto. Eq. Jur.* c. xx. *ad fin.*

Interpretare et concordare leges legibus est optimus interpretandi modus.—8 *Co.* 169.—(To interpret and to reconcile the laws to laws is the best mode of interpretation.)

Interpretatio fienda est ut res magis valeat quam pereat.—Jenk. Cent. 198.—(Such an interpretation is to be adopted, that the thing may rather stand than fall.)

Interpretatio talis in ambiguis semper fienda est, ut evitetur inconveniens et absurdum.—4 *Inst.* 328.—(In doubtful matters, such an interpretation is to be made that inconvenience and absurdity may be avoided.)

Interregnum, the time during which a throne is vacant in elective kingdoms; for in such as are hereditary, as in England, there can be no interregnum, the sovereign, in his artificial capacity, never dying.

Interrogatory, a question in writing put to a witness, who answers it upon oath; his answer is taken down in writing, and being signed by the witness, is called a deposition.

1 Wm. IV. c. 22, extends the provisions of 13 Geo. III. c. 63, relating to examinations of witnesses in India, to all other colonies and places under the dominion of the Crown, and to all actions in the courts at Westminster.—1 *Chit. Arch. Prac. by Pren.* 329, *et seq.*

As to interrogatories for the examination of the litigants at law, see *C. L. P. A.* 1854, ss. 51, 52, and as to interrogatories on an attachment, see 2 *Chit. Arch. Prac. by Pren.* 1711.

As to plaintiff's interrogatories in Chancery, by 15 & 16 Vict. c. 86, s. 10, the bill is no longer to contain interrogatories.

Within *eight days* after the time limited for a defendant's appearance, the plaintiff in any suit commenced by bill may, if he require an answer to it from any defendant, file in the Record Office interrogatories duly prepared and signed by counsel, and engrossed on parchment, for the examination of the defendant or defendants, or such of them from whom he may require an answer, and deliver to the defendant or defendants so required to answer (if appearing in person), or to his or their solicitor (if appearing by one), an office copy (written on paper, and bearing a 5*s.* stamp), of such interrogatories, or of such of them as may be applicable to the particular defendant or defendants; but no defendant can be called upon or required to put in any answer to a bill, unless the interrogatories have been filed, and a copy of them delivered to him or his solicitor, within the time above mentioned, or within such further time as the court may think fit to direct. The copy to be delivered must be examined with the original, and the number of folios counted by the clerk of records and writs, who, on finding that such copy is duly stamped and properly written, is to mark the same as an office copy. When one solicitor appears for several defendants it seems that only one copy of the interrogatories need be served on him for all such defendants, provided the note at the foot is sufficiently explicit.

If a defendant do not appear in person, or by his own solicitor, within the time allowed for that purpose by the rules of the court, and the plaintiff has filed interrogatories for his examination, the plaintiff may deliver a copy of such interrogatories so examined and marked as already mentioned to the defendant, at any time after the time allowed to such defendant to appear, and before his appearance in person or by his own solicitor; or the plaintiff may deliver a copy of such interrogatories duly examined and marked to the defendant or his solicitor, after the appearance of such defendant in person or by his own solicitor, but *within eight days* after such appearance.

After the time allowed for filing interrogatories for the examination of any defendant, no interrogatories are to be filed for the examination of such defendant without special leave of the court, to be applied for upon notice of motion.—15 & 16 *Vict.* c. 86, s. 12, and *Consol. Ord.* 1860, xi.

Where a defendant is not required to answer and shall not answer a bill, he is, however, to be considered as having traversed its allegations, which must therefore be established by evidence.—15 & 16 *Vict.* c. 86, s. 26.

As to defendant's interrogatories for plaintiff's examination, any defendant in any suit, whether commenced by bill or by claim (but in suits commenced by bill which the defendant is required to answer, not until after he shall have put in a sufficient answer to the bill), may, without filing any cross-bill of discovery, file in the record office interrogatories for the examination of a plaintiff, to which must be prefixed a concise statement of the subjects on which a discovery is sought, and deliver a copy of such interrogatories to the plaintiff or his solicitor; and such plaintiff is bound to answer such interrogatories in like manner as if the same had been contained in a bill of discovery filed by the defendant against him on the day when such interrogatories are filed, and as if the defendant to such bill of discovery had on the same day duly appeared; and the practice of the court with reference to excepting to answers for insufficiency, or for scandal, extends and is applicable to answers put in to such interrogatories; provided that in determining the ma-

teriality or relevancy of any such answer, or of any exception thereto, the court is to have regard, in suits commenced by bill, to the statements contained in the original bill, and in the answer which may have been put in thereto by the defendant exhibiting such interrogatories for the examination of the plaintiff, and in suits commenced by claim to the statements therein, and in any affidavits which may have been filed either in support thereof or in opposition thereto: provided also, that a defendant, if he shall think fit so to do, may exhibit a cross-bill of discovery against the plaintiff instead of filing interrogatories for his examination.—15 & 16 *Vict.* c. 86, s. 19.

It would appear, then, that if a defendant seeks relief from a plaintiff, he must exhibit his cross-bill; should he, however, require a discovery merely from him, but at an early period of the suit, he should file interrogatories pursuant to the just quoted statute, the practice relating to which is the same as in the case of a plaintiff's interrogatories.

Where a defendant deems a plaintiff can give testimony to facts in support of the merits of his defence, he would then examine him as a witness by virtue of 14 & 15 Vict. c. 99, s. 2.

In terrorem (*by way of warning*).

Interruption, the true proprietor claiming his right during the course of prescription.—*Scotch term.*

Interruptio multiplex non tollit præscriptionem semel obtentam.—2 *Inst.* 654.—(Frequent interruption does not take away a prescription once secured.)

Intervention. A third person, not originally a party to a suit, but claiming an interest in the matter, may interpose at any stage of the suit, in defence of his own interest, whenever it is affected, either as to his person or property. The proceeding is called an intervention, and was peculiar to the ecclesiastical and admiralty courts. It is now practised in suits in the Courts of Probate, Divorce and Admiralty. An intervener must take the cause in which he intervenes as he finds it at the time of his intervention, and can only do what he of right may have done had he been a party in the first instance. The court may relax this rule under special circumstances.

By 23 & 24 Vict. c. 144, s. 7, the Queen's proctor, with the sanction of the attorney-general, and by leave of the court, may intervene in any suit for the dissolution of marriage, and pray that the petition may be dismissed, or if a decree *nisi* has been pronounced, may show cause against such decree being made absolute upon the ground of collusion, or any other person may intervene at any stage of the suit and oppose the prayer of the petition, or show cause against the decree *nisi*, on the ground that the parties have been guilty of collusion, or that material facts have been suppressed. For the mode of proceeding, see the *Further Rules*, 16 to 21.

In testamentis ratio tacita non debet considerari sed verba solum spectari debent, adeo per divinationem mentis a verbis recedere durum est. (In wills, an unexpressed meaning ought not to be considered, but the words alone ought to be looked to; so hard is it to recede from the words by guessing at the intention.)

Intestate, a person who has left no will. *Swinburne, Godolphin,* and others of the earlier writers on the subject of wills, apply the term 'intestate' to a person who dies leaving a will, but not appointing an executor; the term *testament* being formerly applied only to a will which appointed an executor. See *Swinburne,* pt. 1, s. 1; and 1 *Williams on Executors,* 6. See DISTRIBUTION.

Intestatus decedit, qui aut omnino testamentum non fecit; aut non jure fecit; aut id quod fecerat ruptum irritumve factum est; aut nemo ex eo hæres extitit.—Civil Law.—(A person dies intestate, who either has made no testament at all, or has made one not legally valid; or if the testament he has made be revoked, or made useless; or if no one becomes heir under it.)

Intol and **Uttol,** toll or custom paid for things imported or exported.

In totidem verbis (*in so many words*).

In traditionibus scriptorum, non quod dictum est sed quod gestum est inspicitur.—9 *Co.* 137. (In the traditions of writers, not what is said, but what is done, is regarded.)

In transitu (*during the passage*). See STOPPAGE IN TRANSITU.

Intrare mariscum, to drain a marsh or low ground, and convert it into herbage or pasture.

Intrinsecum servitium, common and ordinary duties within the lord's court.—*Kenn. Glos.*

Intromission, the assuming possession of property belonging to another, either on legal grounds or without such authority, which latter is termed *vitious intromission.—Scotch Law.*

Intruder. See INTRUSION.

Intrusion, the entry of a stranger after a particular estate of freehold is determined before him in reversion or remainder. Where a tenant for life dies seised of certain lands or tenements, and a stranger enters thereon after such death of the tenant, and before any entry of him in remainder or reversion, such stranger is called an intruder.

The writ of entry on intrusion is abolished by 3 & 4 Wm. IV. c. 27. See ABATEMENT.

Intrusion, *Information of.* See INFORMATION.

Inure, to take effect.

Inutilis labor, et sine fructu, non est effectus legis.—Co. Litt. 127.—(Useless labor, and without fruit, is not the effect of law.)

Invadiare, to pledge or mortgage lands.

In vadio (*in gage ; in pledge*).

Invasiones, the inquisition of serjeancies and knights' fees.

Invecta et illata, articles subject to certain liens or services.—*Scotch Law.*

Inveniens libellum famosum et non corrumpens punitur.—Moor, 813.—(He who finds a notorious libel, and does not destroy it, is punished.)

Invention, *Title by,* the mode of acquiring an ownership in patent-rights and copyrights. See COPYRIGHT, and LETTERS PATENT.

Inventiones, treasure-trove.

Inventory, a list or schedule, containing a true description of goods and chattels, or furniture, &c. made upon a sale, or by an executor of his testator's effects, or by an administrator of those of the intestate. See EXECUTOR.

In ventre sa mère (*in his mother's womb*). See UNBORN CHILD.

In verbis non verba sed res et ratio quærenda est.—Jenk. Cent. 132.—(In words, not the words, but the thing and the meaning is to be inquired after.)

Inveritare, to make proof of a thing.

Invest, to give possession, or lay out money. When a trustee, executor, or administrator shall not, by some instruments creating his trust, be expressly forbidden to invest any trust-fund on real securities, in any part of the United Kingdom, or on the stock of the Bank of England or Ireland, or on East India Stock, it shall be lawful for such trustee, executor, or administrator, to invest such trust-fund on such securities or stock; and he shall not be liable on that account as for a breach of trust, provided that such investment shall in other respects be reasonable and proper.—22 & 23 *Vict.* c. 35, s. 32.

Investiture, the open delivery of seisin or possession.

Invito domino [Lat.] (*without the assent of the lord*).

In vocibus videndum non à quo sed ad quid sumatur.—Ellesm: Postn. 62.—(In discourses it is to be seen not from what, but to what, it is advanced.)

Invoice [perhaps corrupted fr. *envoyez,* Fr., send], a written account of the particulars of goods sent or shipped to a purchaser, factor, &c. with the value, or prices, or charges annexed.

Involuntary manslaughter, the unintentional killing of a person by one engaged in an unlawful, but not felonious, act.—4 *Step. Com.* 148. See HOMICIDE.

Invultuacio, a species of witchcraft, the perpetrators of which were called *vultivoli,* and are described by John of Salisbury, *De Nugis Curial.* l. 1. c. xii. To this superstition Virgil (*Pharmaceutria*) alludes:—

Limus ut hic durescit, et hæc ut cera liquescit,
Uno eodemque igni, sic nostro Daphnis amore.

Of the practice of this superstition, both in England and Scotland, many instances are to be met with; among the most remarkable that of Eleanor Cobham, Duchess of Gloucester, and Stacey, servant to George, Duke of Clarence.—*Anc. Inst. Eng.*

I. O. U. a written acknowledgment of a debt, so called because it commences with those letters, which custom has substituted for the words *I owe you,* because they have the same sound. The following is the usual form of an I. O. U.:—

'To Mr. A. B.

I. O. U. Twenty Pounds.

C. D.

£20. January 1st, 1863.'

It is a common transaction for the lender of money to take an I. O. U. from the borrower.

If it is in the form above set out it requires no stamp, for it is neither a receipt, agreement, nor promissory note. If, however, it contains a promise to pay the money, it must be stamped as a promissory note; or, as an agreement, if it contain terms of agreement, the subject matter of which is of the value of 5*l.* It should be addressed to the creditor by name, but that is not essential to its validity. It is evidence of an account stated with the creditor, if he is named; or, if he is not named, it is *primâ facie* evidence of an account stated with the person who produces it. It is not negotiable. See *Chitty on Bills,* 357.

Ionian States. See 20 *Vict.* c. 4; 23 & 24 *Vict.* c. 86.

Ipsæ leges cupiunt ut jure regantur.—Co. Litt. 174.—(The laws themselves require that they should be governed by right).

Ipso facto (*by the very act itself*). A censure of excommunication in the ecclesiastical court, immediately incurred for divers offences, after lawful trial.

Ire ad largum (*to go at large; to escape; to be set at liberty*).

Ireland, one of the British islands lying westward of Great Britain, from which it is separated by the Irish Sea, or St. George's Channel, and bounded on the north, south, and west, by the Atlantic Ocean. It was a distinct kingdom until the 1st of January, 1801, when its union with Great Britain took place under the name of 'The United Kingdom of Great Britain and Ireland.'—39 & 40 *Geo. III.* c. 67; 40 *Geo. III.* c. 38. See *Step. Com.* 94.

Irregularity, disorder, going out of rule; also, an impediment to taking holy orders.

As to irregularities at Common Law, see 2 *Chit. Arch. Prac. by Pren.* 1457, and in Equity, see *Smi. Ch. Pr.* 168.

Irrepleviable, or **Irreplevisable,** that which cannot be replevied or delivered on sureties.

Irritancy, the becoming void.

Irritant clause, a provision by which certain acts specified in a deed are declared to be null and void. A *resolutive* clause dissolves and puts an end to the right of a proprietor on his committing the acts so declared void.—*Scotch Law.*

Is cui cognoscitur.—(He to whom it is acknowledged, i. e. a cognizee.)

Is qui cognoscit.—(He who acknowledges, i. e. a cognizor.)

Ish, expiry; the termination of a tack or lease.—*Ibid.*

Issint [Nor.-Fr.] (*thus, so*).

Issuable plea, a plea on which a plaintiff may take issue, and go to trial upon the merits.

Issuable Terms, Hilary and Trinity, because in them issues are made up for the assizes. But for town-causes, all the four terms are issuable.

Issue [fr. *exitus*, Lat.], used in several senses:—

(1) The legitimate offspring of parents. The word issue in a will is either a word of purchase or of limitation, as will best answer the intention of the testator, though in the case of a deed it is universally taken as a word of purchase.—2 *Fonbl. Eq.* 69.

(2) The profits arising from lands or tenements, amerciaments or fines.

(3) Event, consequence, evacuation, sending forth.

(4) The point in question, at the conclusion of the pleadings between contending parties in a suit or action, when one side affirms and the other denies. The cause is then fit for trial, in order that a decision may be made in the matter. The issue must be material, single, and certain in its quality. An issue is either *in fact*, and tried by a jury, either common or special, or *in law*, and then determined by the court *in banco*. A transcript of the pleadings is called, in an issue in law, *the demurrer-book*, in an issue in fact, simply *the issue*; it is delivered to the defendant's attorney, who, if it vary from the pleadings, is entitled to make application to the court to have it set right. The record is afterwards made up, if the issue be one in fact, and taken to trial.—*Step. Plead.* 24; 1 *Chit. Arch. Prac. by Pren.* 305, 916. See Feigned Issues.

(5) As to issues from Chancery, see *Smi. Ch. Pr.* 787.

Issue-roll, to enter issues joined upon, abolished by rules in 4 Wm. IV.

Ita semper fiat relatio ut valeat dispositio.—*Cro. Co.* 76.—(Let the relation be such that the disposition may stand.)

Item [Lat. *also*], a word used when any article is added to the former.

Iter, a foot-way; a right of passage.

Itinerant. See Eyre.

Iule [fr. *jol*, Got., a sumptuous treat], Christmas.—*Encyc. Lond.*

J.

Jacens [*lying in abeyance*].

Jack [*lorica*, Lat.], a kind of defensive coat-armour, worn by horsemen in war; not made of solid iron, but of many plates fastened together. Some tenants were bound by their tenure to find it upon any invasion.—*Cowel.*

Jack-Ketch [supposed to be fr. *John Ketch*, a noted hangman in 1682, of whom his wife said that any bungler might put a man to death, but only her husband knew how to make a gentleman die sweetly], a nick-name of the common hangman in the city of London. *Butler's Ghost*, p. 54.

Jacobus, a gold coin worth 25*s.*, so called from James I., who was king when it was struck.—*Encyc. Lond.*

Jactitation [fr. *jactito*, Lat., to boast], a false pretension to marriage.—*Canon Law term.*

A suit of jactitation of marriage (*jactitationis matrimonii causâ*), which is of very infrequent occurrence, is brought in the Divorce Court, when a person maliciously and falsely boasts or gives out that he or she is married to another, whereby a common reputation of their marriage may ensue. The party injured sues for the purpose of having perpetual silence enjoined upon the unjustifiable boaster.—20 & 21 *Vict.* c. 85.

Jactivus, lost by default; tossed away.

Jactus or **Jactura mercium** (*a throwing away of goods*), jetsam, which see.

Jaghire, Jaghur, Jagir (literally, the place of taking). An assignment to an individual of the government share of the produce of a portion of land. There were two species of *jaghires*; one, personal, for the use of the grantee; another, in trust for some public service, most commonly the maintenance of troops.—*Indian.*

Jaghir-dar, a person holding a jaghire.—*Ibid.*

Jail [fr. *geôle*, Fr.], a prison or gaol.

Jailer, a keeper of a prison or gaol.

Jambeaux [fr. *jambe*, leg], leg-armour.—*Blount.*

Jamma, Jumma, total amount, collection, assembly. The total of a territorial assignment. *Indian.*

Jammabundy, Jummabundy. A written schedule of the whole of an assessment.—*Ibid.*

Jampnum, furze or grass, or ground where furze grows; as distinguished from arable, pasture, or the like.—*Cowel*, and *Co. Litt.* 5 *a.*

Jaques, small money.—*Staund. P. C.* c. xxx.

Jejunium, fasting.

Jeman, a yeoman.—*Cowel.*

Jeofail [corrupt of *j'ai failli*, Fr.; *ego lapsus sum*, Lat., I have failed], an oversight in pleading or other law proceedings.

The statutes of amendment, whereby slips and mistakes in proceedings are rectified under certain circumstances, are called Statutes of *Jeofails.* They are 14 Edw. III. Stat. I. c. 6; 9 Hen. V. c. 4; 4 Hen. VI. c. 3; 8 Hen. VI. cc. 12, 15; 32 Hen. VIII. c. 30; 2 & 3 Edw. VI. c. 32; 18 Eliz. c. 14; 27 Eliz. c. 5; 21 Jac. I. c. 13; 16 & 17 Car. II. c. 8 (called the 'Omnipotent Act'); 22 & 23 Car. II. c. 4; 4 & 5 Anne, c. 16; 9 Anne, c. 20; 5 Geo. I. c. 13; 4 Geo. II. c. 26, s. 4; 7 & 8 Vict. c. 61.—2 *Chit. Arch. Prac. by Pren.* 1548; 2 *Reeves,* 448.

Jerguer, or **Jerquer,** an officer of the custom-house, who superintends the waiters.—*Phillips.*

Jetsam, Jettison, or **Jetson** [fr. *jeter*, Fr.], goods or other things which having been cast overboard in a storm, or after shipwreck, are thrown upon the shore.

Jeux de Bourse, speculating in the public funds, stock-jobbing.—*French phrase.*

Jewish Law of Descent. See *Hale's Hist.* 292.

Jews. Several statutes have been passed during the present reign respecting the Jews. See 8 & 9 *Vict.* c. 52, giving them relief as to municipal offices; 9 & 10 *Vict.* c. 59, removing disabilities in regard to religious opinions; 10 & 11 *Vict.* c. 58, as to their marriages; 21 & 22 *Vict.* c. 48, s. 5, amended by 23 & 24 *Vict.* c. 63, as to their making declarations as a qualification for office, and c. 49, admitting them to sit in parliament.

Jobber, one who buys or sells cattle for others; a person who jobs, i. e. does chance work, as distinguished from one in regular employment.

Jocalia, jewels, paraphernalia.

Jocelet, a little manor or farm.

Jocus partitus, an election between two proposals.

John Doe, the name which was usually given to the fictitious lessee of the plaintiff in the mixed action of ejectment; but he was sometimes called Goodtitle. See EJECTMENT. So the Romans had their fictitious personages in law proceedings, as *Titius, Seius.*—*Juv. Sat.* iv. 13.

Joinder of causes of action, coupling two or more matters in a suit or proceeding.

Causes of action of whatever kind, provided they be by and against the same parties, and in the same rights, may be joined in the same suit; but this shall not extend to replevin or ejectment; and where two or more of the causes of action so joined are local, and arise in different counties, the venue may be laid in either of such counties, but the court or a judge shall have power to prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case such court or judge may order separate records to be made up, and separate trials to be had.—*C.L.P.A.* 1852, s. 41.

Joinder of parties. The holder of any bill of exchange or promissory note, may, if he think fit, issue one writ of summons according to 18 & 19 Vict. c. 67, against all or any number of the parties to such bill or note, and such writ of summons shall be the commencement of an action or actions against the parties therein named respectively; and all subsequent proceedings against such respective parties shall be in like manner, so far as may be, as if separate writs of summons had been issued (s. 6). See MISJOINDER and NON-JOINDER.

Joinder in pleading, accepting the issue, and mode of trial tendered, either by demurrer, error, or issue in fact, by the opposite party.

Joint, combined; shared amongst many; in the same possession.

Joint-fiat, a fiat which was issued against two or more trading partners. Abolished, see FIAT.

Joint-heir, a co-heir.

Joint-stock Banks are joint-stock companies formed for the purpose of carrying on the business of banking. Several Acts of Parliament have been passed from time to time for their regulation. See 7 *Geo. IV.* c. 46; 7 & 8 *Vict.* c. 113; 9 & 10 *Vict.* c. 45 (as to Joint Stock Banks in Scotland and Ireland); 20 & 21 *Vict.* c. 49. They are now regulated by 'The Joint-stock Companies' Act, 1862,' 25 & 26 Vict. c. 89, and are subject to the same law as other joint-stock companies, with the exception of the following special provisions:—The Board of Trade may, upon the application of members holding not less than one-third of the shares of the company, appoint an inspector or inspectors to examine into its affairs and report thereon (25 & 26 Vict. c. 89, s. 56). No banking company claiming to issue notes in the United Kingdom is entitled to limited liability in respect of such issue (s. 182). Every banking company existing at the date of the passing of the Act, which registers itself as a limited company, must, thirty days at least previous to obtaining a certificate of registration with limited liability, give notice to all its customers of its intention so to register (s. 188). Every limited banking company, before it commences business, and also on the first Monday in February and in August in every year during which it carries on its business, is required to state in a

certain form the capital of the company, and the number of shares into which such capital is divided, and the number issued, the calls made and received, and the liabilities of the company on the preceding 1st of January and July respectively, and the assets of the company on such day. A copy of the statement is to be put up in a conspicuous place in the registered office of the company, and in every branch office (s. 44). See *Thring's Law of Joint-Stock Companies*; *Smith's Mercantile Law*; and JOINT-STOCK COMPANY.

Joint-stock Company is an association of a large number of persons united together for the common purpose of carrying on a trade or some useful enterprise capable of yielding profit. The common property of the members, applicable to the purposes of the company, is called its joint-stock, and hence the name Joint-stock Company. The capital is generally divided into equal parts called shares. Each member holds one or more of these, and in proportion to the number held by him is entitled to participate in the profits. A due succession of members is kept up by the transfer of shares by living members to others, or by the transmission of the shares of deceased members to their representatives. The management of the affairs of the company is vested in certain of the members called directors; and the general body of shareholders, beyond exercising a control over the acts of the directors upon special occasions, take no active part in the concerns of the company. Originally joint-stock companies were formed by an instrument called a *Deed of Settlement*, by which the constitution of the company and the conduct of its affairs were regulated. The courts of law and equity considered companies so formed as ordinary partnerships, and the rights and liabilities of the members *inter se*, and as between themselves and the public, were determined upon the principles applicable to an ordinary partnership.

From this doctrine of the courts in many instances great inconveniences resulted. Thus, courts of law acting upon the rule that one partner cannot maintain an action against a co-partner, held that the directors could not sue the shareholders for calls, and courts of equity, acting upon the rule that a general account must be taken before one partner can be compelled to pay money to another partner, required the whole of the affairs of the company to be thrown into Chancery before a call could be recovered. Moreover, courts of equity declined to entertain suits for determining disputes between members unless the company consented to a dissolution, and a suit for dissolution was rendered so expensive and difficult, by the necessity of making all the members parties to it, as to be practically unavailable. Again, no action could be maintained against a debtor of the company unless all the shareholders were made plaintiffs. These and other inconveniences induced joint-stock companies in many cases to obtain a private Act of Parliament, or a royal patent, giving them some of the privileges of corporations. Several attempts were made by the legislature to deal with the subject generally, see 16 *Geo. IV.* c. 91; 4 & 5 *Wm. IV.* c. 94; 1 *Vict.* c. 73; but these proving to be utterly insufficient to meet the exigency of the case, in 1844 was passed 'An Act for the Registration and Incorporation of Joint-stock Companies,' 7 & 8 Vict. c. 110, now repealed. This Act was followed by others amending it and giving facilities for the winding up of joint-stock companies (see a list of them in 25 & 26 Vict. c. 88, Schedule III., pt. 1). These have all been repealed by 'The Companies' Act, 1862,' 25 & 26 Vict. c. 89, the statute by which joint-stock companies are now regulated. The following is an outline of the chief provisions of the Act, which came into force on the 2nd of November, 1862:—The 4th section enacts that no company, association, or partnership, consisting of more than ten persons, shall be formed after the commencement of this Act, for the purpose of carrying on the business of banking, unless it is registered as a company under the Act, or is formed in pursuance of some other Act, or of letters-patent; and no company, association, or partnership, consisting of more than twenty persons, shall be formed after the commencement of this Act for the purpose of carrying on any business that has for its object the acquisition of gain, unless it is registered as a company under this Act, or is formed in pursuance of some other Act, or of letters-patent, or is a company working mines within and subject to the jurisdiction of the Stannaries. The Act is then divided into nine parts.

Part I. relates to the constitution and incorporation of companies and associations. It provides that any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of the Act in respect of registration, form an incorporated company with or without limited liability. A company may be registered in one of three forms: (*a*) as a 'company limited by shares,' where the liability of each member is limited to the amount unpaid on his shares; (*b*) as a 'company limited by guarantee,' where the liability of each member is limited to such amount as he undertakes in the memorandum of association to contribute to the assets of the company if it should be wound up; and (*c*) an 'unlimited company,' where there is no limit to the liability

of the members. A form of memorandum of association appropriate to each case is given, which must be accompanied by articles of association providing for the internal management of the company.

Part II. relates to the distribution of the capital and liability of the members of companies and associations formed under this Act.

Part III. relates to the management and administration of companies and associations.

Part IV. relates to the winding-up of companies and associations formed under the Act, and provides for three distinct systems of winding-up :—

(*a*) A compulsory winding-up, i. e. a winding-up by a court.

(*b*) A voluntary winding-up, i. e. by the company itself.

(*c*) A winding-up partly compulsory and partly voluntary.

Part V. relates to the constitution of the registration office.

Part VI. relates to the application of the Act to companies registered under the Joint-stock Companies' Acts of 1856 and 1857 (19 & 20 Vict. c. 47 ; 20 & 21 Vict. c. 14), and declares that companies formed under those Acts shall be subject to this Act as if they had been formed under it, and that companies registered but not formed under those Acts, shall be subject to this Act in the same manner as companies registered under Part VII.

Part VII. relates to companies authorized to register under this Act.

Part VIII. contains provisions for the winding-up of unregistered companies, which in all cases must be by the court.

Part IX. contains a repeal of previous Acts relating to the formation and winding-up of companies.

To the Act there are three schedules. The first contains a model code for the regulation of companies ; the second, forms to be used in registration, and forms of deeds of association ; the third contains a list of the Acts repealed by Part IX.

See *Thring's Law of Joint-Stock Companies ; Smith's Mercantile Law ; 3 Step. Com.* 143 ; *Levi's International Commercial Law.*

Joint-tenancy. This tenancy is created where the same interest in real or personal property is, by the act of the party, passed by the same matter of conveyance or claim *in solido*, and not as merchandise, or for purposes of speculation, to two or more persons in the same right, either simply, or by construction or operation of law jointly, with a *jus accrescendi*, that is, a gradual concentration of property from more to fewer, by the accession of the part of him or them that die to the survivors or survivor, till it passes to a single hand, and joint-tenancy consequently ceases.

This *jus accrescendi* holds place as well in equity as at law. Equitable estates, therefore, are subject to joint-tenancy, and its properties. The trust as well as the term passes to the survivor ; and if the estate of two joint-tenants is assigned in trust for them, or such a trust is raised by implication, the equitable interest follows the nature of the former legal estate.

The courts of law and equity disfavor this mode of holding property *beneficially*.

During the feudal rigor, however, and when assurances were simple, joint-tenancy was found to be most useful. It was adopted to prevent dower and courtesy attaching. It avoided wardship, primer seisin, and other feudal imposts of the same description ; for the title by the survivorship is paramount. A conveyance was made to the father and son, or to several co-trustees, of whom the interested owner was one, and a descent was thus avoided. By the Dower Act, 3 & 4 Wm. IV., c. 105, no title of dower affects a joint estate, whether legal or equitable.

Anciently, joint-tenancy was favored, because it did not induce fractions of estates.

And now, for the purpose of limitations over, it is much more accommodating than a tenancy in common, unless cross-remainders are expressed or implied. The law itself adopts it sometimes, as in the cases of executors, assignees in bankruptcy, and others, though they differ in some respects from simple joint-tenants.

There may be a joint-tenancy for life, or in fee, or in remainder, but not in tail, unless the donees, being male and female, may lawfully marry ; for if not, the donees possess estates for life only, with several inheritances in tail. An estate cannot be granted to two or more jointly *and* severally, for severally is repugnant, and they take as joint-tenants.

When an estate is granted to two or more persons without any modifying and disjunctive words, they take, according to the common law rule, as joint tenants. For example, if an estate be granted to A. and B. for their lives, they become joint-tenants of the freehold ; if to A. and B. and their heirs, they are then joint-tenants of the fee. While equity recognizes this rule, yet it has laid down many exceptions to it, amongst the most important of which are the following :—

(1) If two join in lending money on mortgage, though they take a joint security, yet equity holds, that it could never have been intended that their interests should survive, the fair presumption being that each means to lend his own money, and to be repaid his own again. The consequence is, that on the death of one, the survivor, who holds the entire legal estate by survivorship, is deemed by equity a trustee for the personal representatives of the

deceased co-mortgagees, until the money be repaid. Equity then treats the two mortgagees as tenants in common. Where a mortgage is made to trustees, who do not appear in that character on the face of the deed (as it is desirable they should not, lest the title to the land be incumbered with notice of their trust), it is usual to insert a clause providing against the application of this rule of equity to their case.

(2) When two persons purchase an estate, and advance the purchase-money between them in *unequal* portions, equity treats them as tenants in common, notwithstanding the transfer be made to them generally, but the inequality must appear on the face of the conveyance. If, however, the consideration-money be paid by them in *equal* portions, and the transfer is general, then equity has not any ground to infer that this was not a joint purchase of the chance of survivorship, and they must be deemed, even in equity, as joint tenants. Should one expend money in the repair and improvement of the estate, he will have a claim or lien on the estate for the amount of such money.

(3) When partners in trade purchase property for the partnership concern, equity treats them as tenants in common, holding the survivor to be trustee of the legal estate for the personal representatives of the deceased partner as to his share. Wares, merchandise, and stock in trade belonging to partners, survive to the representatives of the deceased partner. The *lex mercatoria* excludes the *jus accrescendi* for the benefit of commerce, which is *pro bono publico*, the maxim being *jus accrescendi inter mercatores locum non habet.*

A joint-tenancy, being created by the convention of parties, must arise out of the *same* deed, will or claim, for there must exist a unity of *title* between them which must be by purchase, and not by mere operation of law, and the estate must vest in them at one and the same *time*; for a joint-tenancy must subsist *ab initio*; an estate cannot become a joint-tenancy by the happening of any circumstances *ex post facto.* The same *interest* must be given to the parties, for one joint-tenant cannot have one estate in the property as for life, and the other another as for years; and they must hold it by the same undivided possession, for each has an undivided moiety of the whole, and not the whole of an undivided moiety, though since the 3 & 4 Wm. IV. c. 27, s. 12, the possession of one joint-tenant is no longer to be deemed the possession of the other or others.

Joint-tenants being seised *per my et per tout*, or, as Coke says, *totum conjunctim et nihil per se separatim*, enjoy a survivorship (*jus accrescendi*) which is held to be as good as a right by descent, the title of the survivor being paramount. It is a continuation of the estate by the survivorship of the tenants, the estate passing among the joint-owners without any perceptible degree of transition, but the diminution of the number of persons to enjoy it. The last survivor takes the whole, as if the estate had originally been given to him only, unless any of his companions have conveyed away his own share in his lifetime, which, of course, each can do; so a partial alienation is a severance *pro tanto*, for *alienatio rei præfertur juri accrescendi.*

The right of survivorship is necessarily reciprocal: for otherwise there would be different degrees of interest in the same estate, which is inconsistent with the nature of joint-tenancy. A body-corporate, therefore, whose existence has no natural termination, cannot be joint-tenant with a natural person; and as survivorship is necessarily included in joint-tenancy, two corporations cannot be joint-tenants together; for both being considered by the law as of perpetual duration, it is impossible for one to survive the other.

If joint-tenants join in a conveyance, each transfers but his own part. The freehold in joint-tenants is so entire that they cannot grant, nor bargain and sell, nor surrender or devise to each other, much less exchange with or enfeoff one another. No right of dower or curtesy attaches to this estate, for the *jus accrescendi* is preferred to all charges and incumbrances which do not amount to at least a partial alienation of his share as a lease; and a devise by a joint-tenant, during the existence of the joint-tenancy, is void. The maxim is, *jus accrescendi præfertur ultimæ voluntati nec-non oneribus.* By the Wills' Act, a general devise passes after-acquired property; lands, acquired *jure accrescendi*, will, consequently, pass.

A curious question sometimes arises as to what is the law in case it cannot be proved which of two or more joint-tenants is the survivor. In one case, indeed, it was given in favor of him who struggled the longer, both being hanged together.—*Broughton* v. *Randall*, *Cro. Eliz.* 502.

By the Roman law the relative strength of the parties, presumable from age and sex, was adopted as the criterion for asserting the priority of right. And the Code Napoleon has adopted the same principle.

By our courts, however, this rule is not considered applicable. Sir W. Wynne in one case (2 *Salk.* 593), where a father, his children and wife, all perished by shipwreck, considered it more reasonable, in such cases, to consider all the persons as having died at the same instant, and as being incapable of transmitting rights to each other.

The case of General Stanwix, who, with his daughter, perished by shipwreck (which afforded

an interesting topic for the pen of Mr. Fearne, who composed, for amusement, an argument for each of the two claimants, published in his posthumous works) was compromised at the instigation of the court. The personal representatives of the daughter were claimants on one side, and those of the father on the other, the former being entitled in case she survived her father. Where one or two persons, who died under similar circumstances, had the legal right and was in possession, the Master of the Rolls, in *Mason* v. *Mason*, 1 *Mer.* 309, held that the representatives of the party not entitled to the possession were bound to prove that he survived the other, in order to be considered entitled; and Lord Hardwicke appears to have acted on the same ground in a case where husband and wife were shipwrecked together, and the husband, to whom a bill of exchange had been given by his wife's father, had agreed to settle it on her three or four years afterwards, but before that period both were lost. His lordship inclined to think that since the husband had the legal right, in order that the representatives of the wife might claim, they must have proved that she survived. So where a husband appointed his wife executrix and residuary legatee, and both perished together, it was held that administration was to be given to the representatives of the husband, the law favoring the last possessor, the proof of survivorship lying on the other side. And where a husband and his wife and child perished in shipwreck together, administration was granted to the husband's effects as of a widower. See 13 & 14 *Vict.* c. 60, ss. 13, 19.

All emblements go to the survivor. Judgment and crown-debts against a deceased joint-tenant do not affect the estate in the hands of the survivor; but if a joint-tenant alien so as to sever the jointure, or if he become the survivor or sole owner by release, prior judgments against him become available charges on the property.

The severance and destruction of this estate may be effected in several ways, as—

(1) By a voluntary deed of partition among the tenants agreeing to hold the property in severalty, for this is a disunion of their possession, and they have then but a separate interest in the several parts of the land, and the *jus accrescendi* is gone.

(2) By alienation without partition, as by one joint-tenant either releasing his share to the other, or conveying it away to a third person, for this is a destruction of the unity of title. A covenant to sell by a joint-tenant severs the estate in equity, provided it can be specifically performed, but not at law.

(3) By accession of interest, either by one joint-tenant purchasing the interest of the others, or by his acquiring the whole estate by survivorship, whereby the unity of interest is dissolved.

(4) By a decree in Chancery upon a bill filed by one joint-tenant, a commission issues to divide the land, and when this has been returned, the court directs a compulsory partition, and orders the execution of reciprocal transfers. See 13 & 14 *Vict.* c. 60, s. 30; and also 41 *Geo. III.* c. 109, s. 16; and 1 *Wm. IV.* c. 65, s. 27.

Jointress, or **Jointuress,** she who has an estate settled upon her by her husband, to hold during her life, at least, provided she survive him.

Jointure. The original law of dower became among our ancestors, with the increase of alienation, highly inconvenient and obstructive of the free course of conveyances. The legislature, by the 27 Henry VIII. c. 10 (the Statute of Uses), set about a method of diminishing the evil by providing a *jointure* in lieu of *dower*. By effect of this statute no widow can claim both jointure and dower. Jointure, in its strict acceptation, means a joint estate, limited to both husband and wife; but it is now understood to be a sole estate, limited only to the wife. To a strict legal jointure these six things are requisite:—

(1) The provision for the wife must take effect in possession or profit immediately after her husband's death.

(2) It must be for her own life at least, and not *pour autre vie*, or for any term of years, or for any smaller estate. But the widow will be bound by the acceptance of a precarious interest if she were adult at the time she agreed to the jointure.

(3) It must be made to herself, and no other in trust for her.

(4) It must be made in satisfaction of the whole, and not of part of her dower.

(5) It must be either expressed or averred to be in satisfaction of dower; and

(6) It may be made either before or after marriage; if made *after* marriage she may waive it, and claim her dower, unless it be provided by Act of Parliament.

The Statute of Jointures, 11 Henry VII. c. 20, is repealed by 3 & 4 Wm. IV. c. 74, s. 17, except as to lands comprised in settlements made before the passing of this act.

Jokelet [fr. *yokelet*], a little farm, such as requires a small yoke of oxen to till it.

Joncaria, or **Juncaria** [fr. *jonc*, Fr., a rush], land where rushes grow.—*Co. Litt.* 5 *a.*

Journal, a day-book, or diary of transactions used by merchants, mariners, tradesmen, &c., in their business.

Journals of Parliament, minutes of proceedings in Parliament which are matters *quasi* of record. They are proved by examined copies from the minute books of the Houses of Lords and Commons.—*Doug.* 594.

Journey-hoppers, regrators of yarn.—8 *Hen. VI.* c. 5.

Journeymen [fr. *journée,* Fr., a day's work], a workman hired by the day, or other given time.

Journey's accounts, the shortest possible time between an abatement of one writ and the issuing of another. Obsolete.

Judaismus, usury; also the dwelling-places of the Jews.

Judex ad quem, a judge to whom an appeal is made.

Judex ante oculos æquitatem semper habere debet.—*Jenk. Cent.* 58.—(A judge ought always to have equity before his eyes.)

Judex æquitatem semper spectare debet.—*Jenk. Cent.* 45.—(A judge ought always to regard equity.)

Judex a quo, a judge from whom there is an appeal.

Judex bonus nihil ex arbitrio suo faciat, nec propositione domesticæ voluntatis, sed juxta leges et jura pronunciet.—7 *Co.* 27.—(A good judge may do nothing from his own judgment, or from a dictate of private will; but he will pronounce according to law and justice.)

Judex damnatur cum nocens absolvitur.—(The judge is condemned, when a guilty person escapes punishment.)

Judex est lex loquens.—7 *Co.* 4.—(A judge is the law speaking.)

Judex habere debet duos sales, salem sapientiæ, ne sit insipidus, et salem conscientiæ ne sit diabolus.—3 *Inst.* 147.—(A judge should have two salts: the salt of wisdom, lest he be insipid; and the salt of conscience, lest he be devilish.)

Judex non potest esse testis in propriâ causâ. 4 *Inst.* 279.—(A judge cannot be a witness in his own cause.)

Judex non potest injuriam sibi datam punire. 12 *Co.* 113.—(A judge cannot punish an injury done to himself.)

Judex non reddit plus quam quod petens ipse requirit.—2 *Inst.* 286.—(A judge restores not more than that which the plaintiff himself requires.)

Judge [fr. *juge,* Fr.; *judex,* Lat.], one invested with authority to determine any cause or question in a court of judicature, appointed by the Queen's letters-patent.

To secure the dignity and political independence of the judges of the superior courts at Westminster, it is enacted by 12 & 13 Wm. III. c. 2, that their commissions shall be made, not as formerly, *durante bene placito,* but *quamdiu bene se gesserint,* and that it may be lawful to remove them on the address of both Houses of Parliament. By 1 Geo. III. c. 23, the judges are continued in their offices during good behaviour, notwithstanding any demise of the Crown (which was formerly held to vacate their seats), and their full salaries are absolutely secured to them during the continuance of their commissions. Their salaries are regulated by 2 & 3 Wm. IV. c. 116. It is treason to kill 'The Chancellor, &c., or the King's Justices of the one bench or the other, &c., justices in assize, and all other justices assigned to hear and determine, being in their places doing their offices.'—25 *Edw.* III. c. 2. The barons of the Exchequer, as such, are not within the protection of this Act.—1 *Hale P. C.* 231. It is a highly penal offence to assault or to threaten them.—1 *Chit. Arch. Prac. by Pren.* 4.

The Roman *Judex* answered nearly to our judge sitting at *Nisi Prius; Judices* resembled our special jurymen.

Judger, a Cheshire juryman.

Judge Advocate, Judge Advocate-General. All general military courts-martial are attended by either the Judge Advocate-General, an officer appointed by letters patent under the Great Seal; by a Judge Advocate appointed by commission under the sign manual; by a deputy Judge Advocate acting by deputation, either general or special, under the hand and seal of the Judge Advocate-General; or by a person appointed by general officers commanding the forces abroad, to execute the office of Judge Advocate, the warrants held by such general officers empowering them to make such appointments. The duties of an officiating Judge Advocate at a court-martial are to provide accommodation for the court, to administer the oaths to the members of the court and to the witnesses, to summons the witnesses, to make a minute of the proceedings, and to advise the court on points of law, of custom and of form, and so far to assist the prisoner, if necessary, as to elicit as full a statement as possible of the facts material to the defence. The proceedings of general courts-martial held at home are transmitted by the officiating Judge Advocate to the Judge Advocate-General, in order that they may be laid before the Crown, together with a statement, by the officiating Judge Advocate, of any circumstances which in his opinion may affect the legality of this decision. The proceedings of courts-martial held abroad are also transmitted to the Judge Advocate-General, and are preserved in his office. See *Simmons on Courts-Martial.*

In the navy, when a court-martial has been ordered, the person nominated president appoints an officiating Judge Advocate, in the absence of a Judge Advocate or his deputy. His duties are nearly the same as those of the officiating Judge Advocate on military courts-martial. See *Thring's Criminal Law of the Navy*; '*The Naval Discipline Act,* 1861,' 24 & 25 *Vict.* c. 115; *and Naval Regulations and Instructions,* chap. xi.

Judgment [fr, *jugement*, Fr.], judicial determination; decision of a court.

The several species of judgments are either:—

(α) *Interlocutory*, given in the midst of a cause, upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the action. See INQUIRY, WRIT OF.

(β) *Final*, putting an end to the action by an award of redress to one party, or discharge of the other, as the case may be.

By the C. L. P. Act 1852, s. 120, a plaintiff or defendant having obtained a verdict, in a cause tried out of term, shall be entitled to issue execution in fourteen days, unless the judge who tries the cause, or some other judge, or the court, shall order execution to issue at an earlier or later period, with or without terms. By r. 57, H. T. 1853, when a plaintiff or defendant has obtained a verdict in term, or in case a plaintiff has been nonsuited at the trial in or out of term, judgment may be signed and execution issued thereon in fourteen days, unless the judge who tried the cause, or some other judge, or the court, shall order execution to issue at an earlier or later period, with or without terms. By r. 55, H. T. 1853, no rule for judgment shall be necessary; and after the return of a writ of inquiry judgment may be signed at the expiration of four days from such return. A party may, however, be prevented from signing judgment by his opponent moving to set the verdict or nonsuit aside, and have a new trial; or moving to enter a nonsuit; or in arrest of judgment. The unsuccessful party may also move for judgment *non obstante veredicto*; or for a repleader; or trial *de novo*. By the C. L. P. Act, 1852, s. 95, in all actions where the plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such is recovered by way of debt or damages.

All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day. Provided that it shall be competent for the court or a judge to order a judgment to be entered *nunc pro tunc*. Every pleading, as well as the declaration, shall be intituled of the day of the month and year when the same was pleaded, and shall bear no other time or date; and every declaration and other pleading shall also be entered on the record made up for trial, and on the judgment roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the court or a judge. No entry of continuances, by way of imparlance, *curia adviseri vult*, *vicecomes non misit breve*, or otherwise, shall be made upon any record or roll whatever, or in the pleadings. Provided that such regulation shall not alter or affect any existing rules of practice as to the times of proceeding in the cause.—*C. L. P. A.* 1852–54, and *General Rules; H. T. & T. T.* 1853.

As soon as judgment is signed by the master, the party in whose favor it is given may immediately sue out execution before the judgment is entered on the roll. The judgment, however, must be entered on the roll and filed in the treasury of the court; 1st, in order to enable the plaintiff to bring debt or revivor, or *scire facias* on the judgment; 2nd, to proceed against the bail on their recognizance; and 3rd, in case error is brought.

As to judgments affecting lands, &c., the 1 & 2 Vict. c. 110, s. 13, enacts, that a judgment already entered up, or to be thereafter entered up, against any person in any of Her Majesty's superior courts at Westminster, shall operate as a charge upon all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments (including lands and hereditaments of copyhold or customary tenure), of or to which such person shall, at the time of entering up such judgment, or at any time afterwards, be seised, possessed, or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder, or expectancy, or over which such person shall, at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might, without the assent of any other person, exercise for his own benefit, and shall be binding as against the person against whom judgment shall be so entered up, and against all persons claiming under him after such judgment, and shall also be binding as against the issue of his body, and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion, or other interest in or out of any of the said lands, tenements, rectories, advowsons, tithes, rents, and hereditaments; and that every judgment-creditor shall have such and the same remedies in a court of equity against the hereditaments so charged, by virtue of this act, or any part thereof, as he would be entitled to in case the person against whom such judgment shall have been so entered up, had power to charge the same hereditaments, and had, by writing under his hand, agreed to charge the same, with the amount of such judgment-debt and interest thereon: provided that no judgment-creditor shall be entitled to proceed in equity to obtain the benefit of such charge until after the expiration of one year from the time of entering up such judgment, or in cases of judgments already entered up

or to be entered up, before the time appointed for the commencement of this act (1st October, 1838), until after the expiration of one year from the time appointed for the commencement of this act; nor shall such charge operate to give the judgment-creditor any preference in case of the bankruptcy of the person against whom judgment shall have been entered up, unless such judgment shall have been entered up one year at least before the bankruptcy: provided also that, as regards purchasers, mortgagees, or purchasers who shall have become such before the time appointed for the commencement of this act, such judgment shall not affect lands, tenements, or hereditaments, otherwise than the same would have been affected by such judgment if this act had not passed: provided also, that nothing therein contained shall be deemed or taken to alter or affect any doctrine of courts of equity whereby protection is given to purchasers, for valuable consideration, without notice.

The 19th section enacts, that no judgment of any of the said superior courts, nor any decree or order in any court of equity, nor any rule of a court of common law, nor any order in bankruptcy or lunacy, shall, by virtue of such act, affect any lands, tenements, or hereditaments, as to purchasers, mortgagees, or creditors, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the court and the title of the cause or matter in which such judgment, decree, order, or rule shall have been obtained or made, and the date of such judgment, decree, order, or rule, and the amount of the debt, damages, costs, or monies thereby recovered or ordered to be paid, shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the same particulars in a book, in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, decree, order, or rule; and such officer shall be entitled for any such entry to the sum of five shillings; and all persons shall be at liberty to search the same book on payment of the sum of one shilling.

The 2 & 3 Vict. c. 11, after reciting that it is desirable that further protection shall be afforded to purchasers against judgments, crown-debts, and *lis pendens*, enacts, 'that no judgment shall hereafter (June 4th, 1839) be docketted under 4 & 5 W. & M. c. 20, but that all such dockets shall be finally closed immediately after the passing of this act, without prejudice to the operation of any judgment already docketted and entered under the said recited act, except so far as any such judgment may be affected by the provisions thereinafter contained' (s. 1).

'That no judgment already docketted and entered under the said recited act of their late Majesties King William and Queen Mary, shall, after August 1st, 1841, affect any lands, tenements, or hereditaments as to purchasers, mortgagees, or others, unless and until such memorandum or minute thereof, as is prescribed in 1 & 2 Vict. c. 110, s. 19, shall be left with the senior master of the Court of Common Pleas at Westminster, who shall forthwith enter the same in manner thereby directed in regard to judgments; and such officer shall be entitled for any such entry to the sum of five shillings' (s. 2).

'That in addition to the entry by the said last-mentioned act, or by this act required to be made in a book by the senior master of the particulars to be contained in every memorandum or minute left with him of any judgment, decree, or order, rule or order, he shall insert in such book the year and the day of the month when every such memorandum or minute is so left with him' (s. 3).

The 4th section makes judgments, though registered under 1 & 2 Vict. c. 110, or 2 & 3 Vict. c. 11, void after five years from registration, as against purchasers, mortgagees, and creditors, unless a fresh registry be made within five years before the execution of the conveyance, settlement, mortgage, lease, or other deed or instrument vesting or transferring the legal or equitable right, title, estate, or interest in or to any such purchaser or mortgagee for valuable consideration, or as to creditors, within five years before the right of such creditors accrued, and so *toties quoties*, at the expiration of every succeeding five years. The re-entry fee is one shilling. See 18 & 19 *Vict.* c. 15, ss. 5, 6, 13. (By 22 & 23 Vict. c. 35, s, 22, this provision as to registry is extended to crown debts.)

'That as against purchasers and mortgagees, *without notice* of any such judgments, decrees, or orders, rules or orders as aforesaid, none of such judgments, decrees or orders, rules or orders, shall bind or affect any lands, tenements, or hereditaments, or any interest therein, further or otherwise or more extensively in any respect, although duly registered, than a judgment of one of the superior courts aforesaid would have bound such purchaser or mortgagee before the 1 & 2 Vict. c. 110, where it had been duly docketted according to the law then in force' (s. 3).

'That nothing in the said recited act of her present Majesty, nor in this act contained, shall extend to revive or restore any judgment which shall be extinguished or barred, nor shall the same extend to affect or prejudice any judgment as between the parties thereto,

or their representatives, or those serving as volunteers under them' (s. 6).

The 3 & 4 Vict. c. 82, s. 2, after reciting that doubts had been entertained whether a purchaser, mortgagee, or creditor, having notice of any such judgment, decree, order, or rule as aforesaid, would not in equity be affected thereby, notwithstanding such a memorandum or minute of the same, as in the said act is mentioned, may not have been left with the senior master of the said Court of Common Pleas, enacted, that no such judgment, decree, order, or rule as aforesaid, shall, by virtue of the 1 & 2 Vict. c. 110, affect any lands, tenements, or hereditaments, at law or in equity, as to purchasers, mortgagees, or creditors, unless and until such a memorandum or minute, as in the said act in that behalf mentioned, shall have been left with the senior master of the said Court of Common Pleas at Westminster, any notice of any such judgment, decree, order, or rule to any such purchaser, mortgagee, or creditor, in anywise notwithstanding. And see 18 & 19 *Vict.* c. 15; and by 23 & 24 Vict. c. 38, it is enacted that no judgment statute or recognizance to be entered up after the passing of this act shall affect any land (of whatever tenure) as to a *bonâ fide* purchaser for valuable consideration, or a mortgagee (whether such purchaser or mortgagee have notice of any such judgment, &c.), unless a writ or other due process of execution of such judgment, &c., shall have been issued and registered as hereinafter is mentioned, before the execution of the conveyance or mortgage to him, and the payment of the purchase or mortgage money by him: provided always that no judgment, &c. entered up after the passing of this act, nor any writ of execution or process thereon, shall affect any land of whatever tenure as to a *bonâ fide* purchaser or mortgagee, although execution or other process shall have issued thereon and have been duly registered, unless such execution or other process shall be executed and put in force within three calendar months from the time when it was registered (s. 1).

The registry required of the writ of execution or other due process is to be made by a memorandum or minute referring to the judgment, &c., so as to correct the registry of the writ of execution or other process therewith (s. 2). The effect of these sections was to place freehold, copyhold, and customary estates on the same footing as leasehold estates as against purchasers and mortgagees in respect of judgments, &c. Sects. 3 & 4 of the same statute (passed in consequence of a decision of the Master of the Rolls in *Fuller* v. *Redman*, 26 *Beav.* 600, that under the existing law an administrator who had paid simple contract debts could not be allowed them against a judgment-creditor, though the judgment was unregistered when the payment was made, and though he had neither notice or knowledge of its existence) enact that no judgment which has not been duly entered or docketted so as to bind lands, tenements, or hereditaments, as against purchasers, mortgagees, or creditors, shall have any preference against heirs, executors, or administrators, in their administration of their ancestors, testators, or intestates' effects (s. 3). No registered judgment shall have any such preference unless, at the death of the testator or intestate, five years shall not have elapsed from the date of the entry thereof on the docket, or from the only or last re-registry thereof; but it shall be deemed sufficient to secure such preference if such a memorandum as was required in the first instance is again left with the senior master of the Common Pleas within five years before the death of the testator or intestate, although more than five years shall have expired since the last previous registration before such memorandum was left (s. 4).

In order to bind lands in Middlesex or Yorkshire, it is necessary to file a memorial of the judgment in the registry-office of such counties respectively; until this is done the lands will not be affected or bound by the judgment.

As to registering judgments of the Palatinate Courts to bind lands in the Counties Palatine, see 18 & 19 *Vict.* c. 15.

The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice, nevertheless, to the rights of all persons interested in the hereditaments or property remaining unreleased, and not concurring in or confirming the release (22 & 23 Vict. c. 35, s. 11).

As to the entry of satisfaction on Crown debts and on judgments, see 23 & 24 *Vict.* c. 115.

As to judgments becoming a charge on public stock and shares in companies by order of a judge, the 14th section of 1 & 2 Vict. c. 110, enacts, 'that if any person against whom any judgment shall have been entered up in any of Her Majesty's superior courts at Westminster shall have any Government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a judge of one of the superior courts, on the application of any judgment-creditor, to order that such stock, funds, or annuities, or shares, or such of them or such part thereof respectively as he

shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon; and such order shall entitle the judgment-creditor to all such remedies as he would have been entitled to if such charge had been made in his favor by the judgment-debtor; provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order.'

And 'in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares thereby authorized to be charged for the benefit of the judgment-creditor under an order of a judge,' it is further enacted by s. 15, 'that every order of a judge charging any Government stock, funds, or annuities, or any stock or shares in any public company under this act, shall be made in the first instance *ex parte* and without any notice to the judgment-debtor, and shall be an order to show cause only; and such order, if any Government stock, funds, or annuities standing in the name of the judgment-debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the Governor and Company of the Bank of England from permitting a transfer of such stock in the meantime and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company standing in the name of the judgment-debtor in his own right or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and that if, after notice of such order to the person or persons to be restrained thereby, or in case of corporations, to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment-creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment-debtor in the meantime shall be valid or effectual as against the judgment-creditor; and further, that, unless the judgment-debtor shall, within a time to be mentioned in such order, show to a judge of one of the said superior courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment-debtor, his attorney or agent, be made absolute: provided that any such judge shall, upon the application of the judgment-debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit.'

A creditor who causes his debtor to be taken or charged in execution thereby relinquishes all claim to any charge or security to which he may be entitled under these acts (s. 16).

The 17th sect. enacts that every judgment-debt shall carry interest at the rate of 4 per cent. per annum from the time of entering up the judgment, or from the time of the commencement of this act, in cases of judgments then entered up, and not carrying interest, until the same shall be satisfied; and such interest may be levied under a writ of execution on such judgment.

Where there are cross judgments in the same, or different actions in the same, or different courts between parties substantially the same, the one may be set off against the other. This may be effected by applying to the court in which the opposite party has obtained judgment, for a rule to show cause why satisfaction should not be entered on the roll, on the applicant's acknowledging satisfaction for the same amount in his judgment, or *vice versâ* if the applicant's judgment be less, the other party's attorney being first satisfied his lien upon the judgment for costs in that particular case.—1 *Chit. Arch. Prac. by Pren.* 711.

The following are the several species of judgments most usually occurring in practice:—

(1) Judgment, on plea in *abatement*. If it be for the plaintiff upon verdict, it is peremptory, *quod recuperet*, and therefore, in actions for damages, if the jury do not assess them, a trial *de novo* must be awarded. But if it be on demurrer, or on replication of *nul tiel* record, it is not final, but merely a *respondeas ouster*. Judgment for the defendant is, that the writ be quashed, unless the matter pleaded in abatement is some temporary disability, such as infancy, &c., in which case the judgment is, that the plaintiff must remain without day, until, &c.—*Tidd*, 642; 1 *Chit. Arch. Prac. by Pren.* 904.

(2) Judgment in *ejectment*. See EJECTMENT.

(3) Judgment on a *cognovit*. If the *cognovit* be made unconditionally, the plaintiff may, of course, sign judgment and sue out execution as soon as he pleases. If there be conditions inserted in it, judgment must be in strict pursuance thereto. See COGNOVIT.

(4) Judgment in *default* of appearance or for want of a plea. See 2 *Chit. Arch. Prac. by Pren.* 970.

(5) Judgment on *demurrer*. It is either interlocutory or final, in the same manner as judgment by default. If a defendant plead

several matters to the same or several counts of a declaration, and the plaintiff demur to some of the pleas, and take issue upon others; if the defendant succeed upon any of the pleas demurred to, and that plea be an answer to the whole action, the plaintiff shall not have judgment upon the issues in fact, should they be found for him; but the only judgment that shall be entered is *nil capiat per breve.*—*Ibid.* 921; and 1 *Saund.* 80, n. (1).

(6) Judgment *de melioribus damnis.* See DE MELIORIBUS DAMNIS.

(7) Judgment in *error.* See ERROR.

(8) Judgment against *executors* or *administrators.* In an action against an executor or administrator, suggesting a *devastavit*, the judgment against the defendant shall be *de bonis propriis*, and so if he plead a plea which he knows to be false, and also if he be made liable and charged as assignee; but otherwise the judgment would be *de bonis testatoris.*—2 *Chit. Arch. Prac. by Pren.* 1220.

(9) Judgment against *heirs* or *devisees.* If an heir have aliened the lands previously to the suing out of the writ, he is expressly rendered liable for the specialty debts of his ancestor, to the amount of the lands aliened, by 11 Geo. IV. and 1 Wm. IV. c. 47, s. 6. And an action is maintainable against a devisee (s. 2), rendering wills in fraud of creditors void. And the 3 & 4 Wm. IV. c. 104, renders the lands liable to every kind of debt.—2 *Chit. Arch. Prac. by Pren.* 1227.

(10) Judgment against *prisoners.* The plaintiff shall proceed to trial or final judgment against a prisoner in the term next after issue is joined, or at the sittings or assizes next after such term, unless the court or a judge shall otherwise order, and shall cause the defendant to be charged in execution within the term next after such trial or judgment. Otherwise the prisoner may be discharged or superseded. *R.* 124, *H. T.* 1853.

(11) Judgment of assets *quando acciderint.* If, on the plea of *plenè administravit* in an action against an executor or administrator, or on the plea of *riens per descent*, in an action against an heir, the plaintiff, instead of taking issue on the plea, take judgment of assets *quando acciderint*, in this case, if assets afterwards come to the hands of the executor or heir, the plaintiff must first sue out a *scire facias* before he can have execution, If upon this *scire facias*, assets be found for part, the plaintiff may have judgment to recover so much immediately, and the residue of the assets *in futuro.*—1 *Sid.* 448; 2 *Chit. Arch. Prac. by Pren.* 1122, 1132, 1219, 1227.

(12) Judgment *non obstante veredicto.* Where the defence put upon the record is not a legal defence to the action in point of substance, and the defendant obtain a verdict, the court, upon motion, will give the plaintiff leave to sign judgment notwithstanding the verdict, provided the merits of the case be very clear. But where the plea contains no confession of the cause of action, the proper course is to award a repleader, and not to give judgment *non obstante veredicto.* A defendant cannot obtain this judgment in any case: he must move in arrest of judgment. The motion must be made within four days from the time of trial, if there are so many days in term; it cannot in any case be moved for after the expiration of the term, provided the jury precept be returnable in the same term. The judgment is interlocutory; after which a writ of inquiry must be executed, and final judgment signed, as in ordinary cases. If the defendant have succeeded on any of his pleas he will be entitled to retain his verdict on them; and there must be a trial *de novo*; the successful party is entitled to the costs of the material issues.—*C. L. P. A.* 1852, s. 145; 2 *Chit. Arch. Prac. by Pren.* 1538.

(13) Judgment of *non pros.* It is a final judgment for costs, signed by a defendant only, whenever a plaintiff, in any stage of the cause, neglects to prosecute his action, or part of it, within the times limited by the rules of the court. See DECLARATION.—2 *Chit. Arch. Prac. by Pren.* 1466.

(14) Judgment as in case of *nonsuit.* With respect to judgment by default in not proceeding to trial, the Act passed in the fourteenth year of the reign of His Majesty King George the Second, c. 17, intituled, 'An Act to prevent inconveniences arising from Delays of Causes after Issue joined, so far as the same relates to Judgment as in the Case of a Nonsuit,' is repealed, except as to proceedings taken or commenced thereupon before the commencement of this Act.—*C. L. P. A.* 1852, s. 100.

Where any issue is or shall be joined in any cause, and the plaintiff has neglected or shall neglect to bring such issue on to be tried, that is to say, in town causes where issue has been or shall be joined in, or in the vacation before any term, for instance, Hilary Term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried during or before the following term and vacation, for instance, Easter Term and vacation, and in country causes where issue has been or shall be joined in, or in the vacation before, Hilary or Trinity Term, and the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the second assizes following such term, or if issue has been or shall be joined in, or in the vacation before, Easter or Michaelmas Term, then, if the plaintiff has neglected or shall neglect to bring the issue on to be tried at or before the first assizes after such term, whether the plaintiff shall in the meantime

have given notice of trial or not, the defendant may give twenty days' notice to the plaintiff to bring the issue on to be tried at the sittings or assizes, as the case may be, next after the expiration of the notice; and if the plaintiff afterwards neglects to give notice of trial for such sitting or assizes, or to proceed to trial in pursuance of the said notice given by the defendant, the defendant may suggest on the record that the plaintiff has failed to proceed to trial, although duly required so to do (which suggestion shall not be traversable, but only be subject to be set aside if untrue), and may sign judgment for his costs; provided that the court or judge shall have power of extending the time for proceeding to trial, with or without terms (s. 101).—2 *Chit. Arch. Prac. by Pren.* 1484.

(15) Judgment upon *nul tiel record.* The judgment for the plaintiff is interlocutory or final, just as it is upon demurrer or default; but the defendant's judgment would be final. A rule for judgment is not now necessary.

Where a defendant shall plead a plea of judgment recovered, he shall, in the margin of such plea, state the date of such judgment, and if such judgment shall be in a court of record, the number of the roll on which such proceedings are entered, if any; and in default of his so doing, the plaintiff shall be at liberty to sign judgment as for want of a plea; and in case the same be falsely stated by the defendant, the plaintiff, on producing a certificate from the proper officer, or person having the custody of the records or proceedings of the court where such judgment is alleged to have been recovered, that there is no such record or entry of a judgment as therein stated, shall be at liberty to sign judgment as for want of a plea. *H. T.* 1853, r. 10; 2 *Chit. Arch. Prac. by Pren.* 927.

(16) Judgment in *replevin.* See REPLEVIN.

(17) Judgment in *scire facias.* The judgment is the same as in ordinary cases. See REVIVOR.

(18) Judgment on *warrant of attorney.* Judgment may be entered upon a warrant of attorney, at the time therein specified for that purpose; and if the warrant were given to secure the payment of money, it is not necessary that the plaintiff should delay the signing of the judgment until default be made in the payment, unless that be expressly stipulated for in the defeazance. If the warrant specify any particular time at which the judgment is to be signed, it cannot be entered up at any other time. Within a year and a day from the date of a warrant, judgment may be entered up as of course; but leave to enter up judgment on a warrant of attorney above one and under ten years old, must be obtained by order of a judge made *ex parte*; and if ten years old or more, upon a summons to show cause. The application for such leave is founded upon an affidavit, stating the consideration for the warrant of attorney, its execution, the amount remaining due to the plaintiff, and alleging positively that the defendant was alive at a certain time therein mentioned.—*H. T.* 1853, r. 26; 2 *Chit. Arch. Prac. by Pren.* 938.

(19) In *criminal* cases, judgment, unless any matter be offered in arrest thereof, follows upon conviction, being the pronouncing of that punishment which is expressly ordained by law. 4 *Bl. Com.* c. xxix.

Judicandum est legibus non exemplis.—4 *Co.* 33.—(We are to judge by the laws, not by examples.)

Judicatores terrarum, persons in the county palatine of Chester, who, on a writ of error, were to consider of the judgment given there, and reform it, otherwise they forfeited 100*l.* to the Crown by custom.—*Jenk. Cent.* 71.

Judices non tenentur exprimere causam sententiæ suæ.—*Jenk. Cent.* 75.—(Judges are not bound to explain the reason of their sentence.)

Judices pedaneos, judges chosen by the litigants.—*Civ. Law.*

Judicial Acts. Numerous statutes give summary power to justices of the peace, and declare that certain acts shall only be valid if done by two magistrates. If it be only a *ministerial* act, it is not requisite that the two magistrates should be together at the time of doing the act; if it be *judicial*, they must.

Judicial authority, the power of a judge.

There is a wide distinction between a special authority to act under particular circumstances and a judicial authority to act in particular cases. So long in either case as the party acts within the limits of his authority, he is, of course, justified in what he does, and in either case, if he plainly exceed the limits of his authority, he is without justification; the material difference is this, that in the former case, i. e. where he has a mere authority to execute, it is open to inquiry whether facts existed which warranted his act; in the latter, where he acts judicially in a matter within his jurisdiction, his adjudication is usually conclusive upon the question, whether the particular facts warranted that judgment or did not, and to protect him from an act of trespass.—3 *Stark. Evid.* 1140 *q.*

Judicial Committee of the Privy Council, a tribunal established in its present form by 2 & 3 Wm. IV. c. 92; 3 & 4 Wm. IV. c. 41; and 6 & 7 Vict. c. 38, for the disposal of appeals and such other matters as the Queen in council may refer to them.

'It is admirably adapted,' said Lord Lyndhurst, 'for the business it has to perform. There are various kinds of law agitated and discussed, considered and decided before the

tribunal. Questions of civil and ecclesiastical law come before it. There are judges who have been brought up in practising and administering the civil and ecclesiastical laws; and when questions of this kind arise, their attendance is required, and they form part of the court for deciding these questions. Then there are questions of what in England is called equity. There are judges from the equity courts members of this tribunal; and when questions of that kind are discussed, their attendance is required, and they form part of the court. Again, questions of common law are considered and decided. There are members of that court who are judges of common law; and they attend on these occasions to assist in decision. Nay, more, there are questions of Hindoo and Mahometan law discussed before that tribunal; the result of which is of the utmost importance to the parties. The court has then the assistance of persons, who, having practised as judges in India, are familiar with such questions.'—*Debates*, April 12, 1842.

Judicial documents, proceedings relating to litigation. They are divided into: (1) judgments, decrees, and verdicts; (2) depositions, examinations, and inquisitions taken in the course of a legal process; (3) writs, warrants, pleadings, bills, and answers, &c. which are incident to judicial proceedings.—1 *Stark. Evid.* 252.

Judicial sale and ranking. When there are so many adjudications in process against an estate that it may be considered as bankrupt, while the debtor does not come within the class of persons liable to mercantile bankruptcy, it is usual to sweep all the operations into one process, thus called.—*Scotch Law.*

Judicial separation, the proceeding in the Divorce Court which has taken the place of a divorce *à mensâ et thoro.* See MARRIAGE.

Judicial writs, writs issuing from the court in which proceedings are commenced under its seal, and tested in the name of its chief judge, as distinguished from original writs which issue out of the Court of Chancery.

Judici officium suum excedenti non paretur.—*Jenk. Cent.* 139.—(To a judge exceeding his office, there is no obedience.)

Judici satis pœna est quod Deum habet ultorem.—1 *Leon.* 295.—(It is punishment enough for a judge, that he has God as his avenger.)

Judicia in curiâ regis non adnihilentur, sed stent in robore suo quousque per errorem aut attinctum adnullentur.—2 *Inst.* 539.—(Let not judgments in the King's Court go for naught, but let them remain in force until annulled by error or attaint.)

Judicia in deliberationibus crebro matures-cunt, in accelerato processu nunquam.—3 *Inst.* 210.—(Judgments become frequently matured by deliberations: never by hurried process.)

Judicia posteriora sunt in lege fortiora.—8 *Co.* 97.—(The latter decisions are the stronger in law.)

Judicia sunt tanquam juris dicta, et pro veritate accipiuntur.—2 *Inst.* 537.—(Judgments are, as it were, the words of the law, and are received as truth.)

Judiciis posterioribus fides est adhibenda.—13 *Co.* 14.—(Credit is to be given to the later decisions.)

Judicis est judicare secundum allegata et probata.—*Dyer*, 12.—(It is the duty of a judge to decide according to facts alleged and proved.)

Judicis officium est opus diei in die suo perficere.—2 *Inst.* 256.—(It is the duty of a judge to finish the work of each day, within that day.)

Judicis officium est ut res ita tempora rerum quærere, quæsito tempore tutus eris.—*Co. Litt.* 171.—(It is the duty of a judge to inquire as well into the time of things as into things themselves; by inquiring into the time, you will be safe.)

Judicium à non suo judice datum nullius est momenti.—10 *Co.* 76.—(A judgment given by an improper judge is of no moment.)

Judicium est quasi juris dictum.—*Co. Litt.* 39 *a* and 168 *a.*—(Judgment is, as it were, the voice of law.)

Judicium non debet esse illusorium; suum effectum habere debet.—2 *Inst.* 341.—(A judgment ought not to be illusory; it ought to have its consequence.)

Judicium redditur in invitum, in præsumptione legis.—*Co. Litt.* 248.—(Judgment, in presumption of law, is given against an unwilling party.)

Judicium semper pro veritate accipitur.—2 *Inst.* 380.—(Judgment is always taken for truth.)

Judicium Dei (*judgment of God*), a term applied by our ancestors to the now prohibited trials of secret crimes; as those by arms and single combat; and the ordeals, or those by fire or red-hot ploughshares, by plunging the arms into boiling water, or the whole body into cold water; which were founded on the belief that God would work a miracle rather than suffer truth and innocence to perish. *Si super defendere non possit, judicio Dei, scil. aquâ vel ferro, fieret de eo justitia.* These customs were a long time kept up even among Christians; and they are still now in use among some nations. Trials of this sort were usually held in churches in presence of the bishops, priests, and secular judges; after three days' fasting, confession, communion, and many adjurations and ceremonies, described at large by Du Cange.—*Encyc. Lond.*

Judicium parium, the judgment of one's peers.

Jugulator, a cut-throat or murderer.

Jugum terræ, a yoke of land, containing half a plough-land.—*Domesday; Co. Litt.* 5 *a.*

Juncare, to strew rushes.—*Pat.* 14 *Ed. I.*

Juncaria. See JONCARIA.

Junta, or **Junto** [Ital.], a select council for taking cognizance of affairs of great consequence requiring secrecy; a cabal or faction.

Jura ecclesiastica limitata sunt infra limites separatos.—3 *Bulst.* 53.—(Ecclesiastical laws are limited within separate bounds.)

Jura eodem modo destruuntur quo constituuntur.—(Laws are abrogated by the same means as those by which they are made.)

Jura naturæ sunt immutabilia.—(The laws of nature are unchangeable.)

Jura personarum (*the rights of persons*).

Jura publica anteferenda privatis.—*Co. Litt.* 130.—(Public rights are to be preferred to private.)

Jura publica ex privato promiscue decidi non debent.—*Co. Litt.* 181 *b.*—(Public rights ought not to be promiscuously determined in analogy to a private right.)

Jura regis specialia non conceduntur per generalia verba.—*Jenk. Cent.* 103.—(The special rights of the king are not granted by general words.)

Juramenta corporalia, corporal oaths.

Juramentum est indivisibile, et non est admittendum in parte verum et in parte falsum.—4 *Inst.* 279.—(An oath is indivisible; it is not to be received as partly true and partly false.)

Jurare est Deum in testem vocare, et est actus divini cultus.—3 *Inst.* 165.—(To swear, is to call God to witness, and is an act of religion.)

Jura regalia, royal rights; royal prerogatives. See 1 *Bl. Com.* 241, *et seq.*; *Bac. Abr. Prerogative.* As to these rights in the county of Durham, see 21 & 22 *Vict.* c. 45.

Jura rerum (*the rights which a person may acquire in things*).

Jura sanguinis nullo jure civili dirimi possunt. Bacon.—(The rights of blood can be taken away by no civil law.)

Jura summa imperii (*the supreme rights of dominion*).

Jurato credito in judicio.—3 *Inst.* 79.—(In judgment, credit is given to a sworn witness.)

Juratores debent esse vicini, sufficientes, et minus suspecti.—*Jenk. Cent.* 141.—(Jurors ought to be neighbors, of sufficient estate, and free from suspicion,)

Jurat, the memorandum of the time, place, and person before whom an affidavit is sworn. There must be neither erasure nor interlineation in it. See 2 *Chit. Arch. Prac. by Pren.* 1609, and *Smith's Ch. Pract.*

Jurata, the jury-clause in a *Nisi Prius* record. The entry *jurata ponitur in respectu,* is abolished.—*C. L. P. A.* 1852, s. 104.

Juration, the act of swearing; the administration of an oath.

Jurator, a juror.

Juratores sunt judices facti.—*Jenk. Cent.* 61.—(Juries are the judges of fact.)

Juratory caution, a proceeding in Scotch law.

Jurats, officers in the nature of aldermen, sworn for the government of many corporations.

Jure divino (*by divine right*).

Jure emphyteutico (*by the law of rents and services*).

Juri non est consonum quod aliquis accessorius in curiâ regis convincatur antequam aliquis de facto fuerit attinctus.—2 *Inst.* 183.—(It is not consonant to justice, that any accessory should be convicted in the King's Court, before anyone has been attainted of the fact.)

Juridical, acting in the distribution of justice.

Juridical days, days in court on which the laws are administered.

Jurisconsult [fr. *jurisconsultus,* Lat., abbrev. *jctus.*], one who gives his opinion on cases of law; a master of the Roman jurisprudence.

Jurisconsulti, or *Jurisprudentes,* men who studied the forms and, in time, the principles of civil law, and expounded them for the benefit of their friends and dependants. See *Smith's Dict. of Antiq.*

Jurisdiction, legal authority; extent of power; declaration of the law.

There are three sorts of inferior jurisdictions: (1) To *hold pleas,* which is the lowest, in which case a person may either sue there or in the Queen's Courts. (2) The *cognizance of pleas,* by which an exclusive right is vested in the lord of a franchise to hold pleas in matters arising within his jurisdiction. (3) An *exempt* jurisdiction, as where the Crown grants to some city that its inhabitants shall be sued within such city, and not elsewhere.—3 *Salk.* 79.

Jurisdictio est potestas de publico introducta cum necessitate jurisdicendi.—10 *Co.* 73, and 4 *Inst. Proœm.*—(Jurisdiction is a power introduced concerning the public, with the necessity of expounding the law.)

Jurisdictio istius curiæ (*B. R.*) *est originalis seu ordinaria, et non delegata; designatio Justiciariorum est à regi, jurisdictio verò ordinaria à lege.*—4 *Inst.* 74.—(The jurisdiction of this Court (Queen's Bench) is original or ordinary, and not delegated; the nomination of the judges is from the sovereign, but their ordinary jurisdiction is from the law.)

Juris effectus in executione consistit.—*Co. Litt.* 289.—(The effect of law consists in execution.)

Juris et de jure (*of law and from law*). A

conclusive presumption, which cannot be rebutted, is called a presumption *juris et de jure.*

Jurisinceptor, a student of the civil law.

Jurisprudence, the science of law, especially Roman law.

Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia. Civ. Law.—(Jurisprudence is the knowledge of things divine and human; the science of the right and the wrong.—*Sand. Just.* 86.)

Jurisprudentia legis communis Angliæ est scientia socialis et copiosa.—7 *Co.* 28.—(The jurisprudence of the common law of England is a social and copious science.)

Jurist, a civil lawyer, a civilian.

Juris utrum, an abolished writ which lay for the parson of a church, whose predecessor had alienated the lands and tenements thereof. *F. N. B.* 48.

Jurnedum, a day's travelling.

Juror, one who serves on a jury.

Juror's Book, a list of persons qualified to serve on juries.

Jury [fr. *jurata*, Lat.; *juré*, Fr.], a company of men sworn to deliver a verdict upon such evidence of facts as shall be delivered to them touching the matter in question. 'In this recess of the jury,' observes Hale (*Com. Law*, c. 12, s. 11), 'they are to consider the evidence, to weigh the credibility of the witnesses and the force and efficacy of their testimonies; wherein, as I before said, they are not precisely bound to the rules of the civil law, viz. to have two witnesses to prove every fact, unless it be in cases of treason, nor to reject one witness because he is single; or always to believe two witnesses, if the probability of the fact does not upon other circumstances reasonably encounter them; for the trial is not here simply by witnesses, but by jury; nay, it may so fall out, that a jury upon their own knowledge may know a thing to be false that a witness swore to be true, or may know a witness to be incompetent or incredible, though nothing be objected against him, and may give their verdict accordingly.'

Trial by jury is, no doubt, an institution of progressive growth, and its principle may be traced to the earliest Anglo-Saxon times. One of the judicial customs of the Saxons was, that a man might be cleared of an accusation of certain crimes, if an appointed number of persons (*juratores*), came forward and swore to a *veredictum* that they believed him innocent of the allegation. It is remarkable that for accusations of any consequence among the Saxons on the continent, twelve *juratores* were the number required for an acquittal. Similar customs may be observed in the laws of the continental Angli and Frisiones, though the number of juratores varied in certain cases; for in the laws of the Ripuarii we find that in certain cases the oaths of even seventy-two persons were necessary for an acquittal.

Dr. Pettengal in his inquiry into the use and practice of juries among the Greeks and Romans, deduces the origin of juries from these ancient nations. He begins with determining the meaning of the word *δικασταί* in the Greek, and *judices* in the Roman writers. 'The common acceptation of these words (says he), and the idea generally annexed to them, is that of *presidents of courts*, or, as we call them, judges; as such they are understood by commentators, and rendered by critics.' Dr. Middleton, Archbishop Potter, and other philologists so render these terms. It is submitted that this is an erroneous signification, for the presidents of the courts in criminal trials at Athens were the nine archons, the one presiding being called *ἡγεμὼν δικαστηρίου*, or president of the court. The archon, properly so called, had belonging to his department all pupillary and heritable causes; the *βασιλεύς*, or *rex sacrorum*, the chief priest, all cases where religion was concerned; the polemarchus or general, all military cases; and the six thesmothetæ, the other ordinary suits. Whenever, then, the *ἄνδρες δικασταί* are addressed by the Greek orators, as we find in the speeches of Demosthenes, Æschines, and Lysias, they are not to be understood to be the presiding magistrates, but men whose duty it was, after hearing the witnesses and other evidence, to report their opinion and verdict to the president, who then declared it. The term *ἄνδρες δικασταί*, as used by Greek orators, being equivalent to the term gentlemen of the jury, as used by counsel at the English bar when addressing a jury.

So likewise among the Romans the *judices* never signified judges of the bench or presidents of the court, but a body or order of men, whose office in the courts of judicature was distinct from that of the prætor or *judex quæstionis*, which answered to our judge of the bench; and was the same with the archon, or *ἡγεμὼν δικαστηρίου* of the Greeks; whereas the duty of the judices consisted in being impannelled, challenged, and sworn to try uprightly the case before them; and when they had agreed upon their opinion or verdict, to deliver it to the president, who was to pronounce it. This kind of judicial process was developed in the Athenian polity of Solon, and thence copied into the Roman republic.

When the Romans were settled in Britain, as a province, they carried with them their *jura* and *instituta*, their laws and customs, hence the Britains, like the Germans and Gauls, learned the Roman laws and customs, and, upon the irruption of the northern nations into the southern countries of Europe, the Roman institutions remained when the power

that introduced them was destroyed. Indeed Montesquieu tells us, that under the first race of kings in France, about the fifth century, the Romans that remained and the Burgundians their new masters lived together under the same Roman laws and police, and particularly the same forms of judicature. And, speaking of those times, he mentions the *paires* or *hommes de fief*, homagers or peers, whom, in the same chapter, he calls *juges*, *judges*, or *jurymen*; so that we hence see how at that time the *hommes de fief* or men of the fief, were called peers, and those peers were judges or jurymen. These were the same as are called in the laws of the Confessor *pers de la tenure*, the peers of the tenure, or homagers, out of whom the jury of peers were chosen to try a matter in dispute between the lord and his tenant, or any other point of controversy in the manor. So, likewise, in all other parts of Europe where the Romans had been, the Goths succeeding them continued to make use of the same laws and institutions which they found to have been already established.

All persons between twenty-one and sixty, possessing the necessary qualification (presently stated), may be jurors, with the following exceptions: viz. aliens, unless on a jury *de medietate linguæ*; persons attainted of treason, felony, or infamous crime, unless pardoned; outlaws, excommunicated persons, or women, unless on a writ *de ventre inspiciendo*.

Those exempted from serving are peers, judges of the courts of record at Westminster, clergymen in holy orders, qualified Roman Catholic clergymen, qualified Protestant dissenting clergymen, serjeants and barristers at law actually practising, doctors and advocates of the civil law actually practising; attorneys and proctors duly admitted and actually practising; officers of the superior courts, coroners, gaolers, and keepers of houses of correction; members and licentiates of the Royal College of Physicians in London, actually practising; surgeons who are members of one of the Royal Colleges of Surgeons in London, Edinburgh, or Dublin, and actually practising; apothecaries certificated by the court of examiners of the Apothecaries' Company, and actually practising; officers of the navy and army on full pay; pilots licensed by the Trinity House of Deptford, Hull, or Newcastle; masters of ships in the buoy and light service, and pilots licensed by the lord warden of the cinque ports, or under any act of Parliament or charter in any other port; the household servants of her Majesty; officers of the customs or excise; sheriffs' officers, high constables, parish clerks, and persons in the service of the Post-office.

In Middlesex, no person shall be returned to serve on a jury at *Nisi Prius*, who has served as a juror in either of the two preceding terms or vacations, having the sheriff's certificate of having so served; and no person shall be returned to serve on a jury at the assizes, who has before served on a jury in Yorkshire within four years; in Wales, or in the county of Hereford, Cambridge, Huntingdon, or Rutland, within one year; or in any other county within two years; having the sheriff's certificate of having so served, which certificate the sheriff is bound to give to every common juror serving or attending as such, but not to grand or special jurors.—6 *Geo. IV.* c. 50, s. 2; and 2 & 3 *Vict.* c. 71.

Every man between the ages of twenty-one and sixty, who shall have, within the county in which he resides, in his own name or in trust for him, 10*l.* by the year, above reprizes, in lands or tenements of freehold, copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of such lands or tenements, as in lands, tenements, and rents taken together in fee simple, fee-tail, or for the life of himself or some other person; or who shall have, within the same county, 20*l.* by the year, above reprizes, in lands or tenements held by lease for twenty-one years or longer, or for a term of years determinable on any life or lives, or who, being a householder, shall be rated or assessed to the poor-rate or to the inhabited house-duty, in Middlesex, on a value of not less than 30*l.*, or in any other county, on a value of not less than 20*l.*, or who shall occupy a house containing not less than fifteen windows, shall be qualified to serve on juries.—6 *Geo. IV.* c. 50, s. 1.

In London a juror must be a householder, or the occupier of a shop, warehouse, counting-house, chambers, or office, for the purpose of trade or commerce within the said city, and have lands, tenements, or personal estate of the value of 100*l.* (s. 50).

All those described in the jurors book as esquires, or persons of higher degree, or as bankers or merchants, shall be qualified and liable to serve on special juries, and the sheriff or under-sheriff shall set down their names in alphabetical order, in a list to be called 'the special jurors' list,' and shall prefix to each name a number, which numbers shall also be written out on distinct pieces of parchment or card, and put into a drawer or box, to be kept for the purpose of nominating special juries (s. 31).

If any man, summoned to attend on a jury, shall not attend in pursuance of such summons, or being thrice called shall not answer to his name; or if any such man, or any talesman, after being called, shall be present, but not appear, or after appearance shall wilfully withdraw himself from the presence of the court, the court shall set such fine upon him as the court shall think fit, and in the case of a viewer not less than 10*l.* unless some reasonable excuse be proved by oath or affidavit; or, upon such

default, at the execution of a writ of inquiry, the under-sheriff, &c. may set a fine not exceeding 5*l.* (s. 53).

In *civil* causes a jury may be either *common* or *special*. In *criminal* causes there are both the *grand* and *petit* jury. See GRAND JURY; SPECIAL JURY; and *Juries' Act* 1862, 25 & 26 *Vict.* c. 107.

Jury-box, the place in court where the jury sit.

Jury-man, one who is impannelled on a jury.

Jury process, the writ for the summoning of a jury. They were the *distringas juratores*, or *habeas corpora juratorum*, and the *venire juratores facias* now abolished. A jury is summoned by precept. See 1 *Chit. Arch. Prac. by Pren.* 344.

Jury-women. Women are impannelled as a jury in two cases only: (1) upon a writ *de ventre inspiciendo*, which see; (2) where a female prisoner is condemned to be executed, and pleads pregnancy, as a ground to postpone the completion of the sentence until after her confinement. Upon this a jury of matrons, or discreet women, is formed to inquire into the truth of the plea; should they bring in their verdict that the prisoner is *enceinte*, the execution will be stayed until after the birth of the child, and sometimes the Crown will commute the punishment to perpetual exile. It would, perhaps, be better, if the matter were submitted to three or more medical men.

It is said in the text-books, that if a woman have once had the benefit of this reprieve, and been delivered, and afterwards become pregnant again, she shall not be entitled to a further respite, but may be hanged before the child is quick!

The grave error as to quickening has been entirely exploded, for medical science has demonstrated the fact, that the child lives from the moment of conception and that motion is only imparted to it by quickening. This being so, by hanging the mother at any period of the gestation, the child is destroyed, and seeing that the respite is for the purpose of saving the innocent babe, the second child is surely as much an object for the law's humanity as the first. Should such an instance now happen, so great an injustice could not be perpetrated, as to slay the helpless child for the crime of the guilty mother.

Jus, law, right, equity, authority, and rule.

A Roman magistratus generally did not investigate the facts in dispute in such matters as were brought before him; he appointed a judex for that purpose and gave him instructions. Accordingly the whole civil procedure was expressed by the two phrases *Jus* and *Judicium*; of which the former comprehended all that took place before the magistratus (*in jure*), and the latter all that took place before the judex (*in judicio*). Originally, even the magistratus was called judex, as, for instance, the consul and prætor (*Liv.* iii. 55); and under the empire, the term judex often designated the præses.—*Smith's Dict. of Antiq.*

All law (*jus*) is distributed into two parts—*Jus Gentium* and *Jus Civile*—and the whole body of law peculiar to any state is its *Jus Civile* (*Cic. de Orat.* i. 44). The Roman law, therefore, which is peculiar to the Roman state, is its Jus Civile, sometimes called Jus Civile Romanorum, but more frequently designated by the term Jus Civile only, by which is meant the Jus Civile of the Romans.

The Jus Gentium is viewed by Gaius as springing out of the *Naturalis Ratio*, common to all mankind, which is still more clearly expressed in another passage (i. 89), where he uses the expression '*omnium civitatum jus*,' as equivalent to the Jus Gentium, and as founded on the Naturalis Ratio.

The Naturale Jus and the Jus Gentium are therefore identical. Cicero (*Off.* iii. 5), opposes Natura to Leges, where he explains Natura by the term Jus Gentium, and makes Leges equivalent to Jus Civile.

In the Partitiones (c. 37), he also divides Jus into Natura and Lex.

There is a threefold division of Jus made by Ulpian and others, which is as follows:—Jus Civile; Jus Gentium, or that which is common to all mankind; and Jus Naturale, which is common to man and beasts. The foundation of this division seems to have been a theory of the progress of mankind from what is commonly termed a state of nature; first to a state of society, and then to a condition of independent states. This division had, however, no practical application, and must be viewed merely as a curious theory.

The Jus Civile of the Romans is divided into two parts—Jus Civile in the narrower sense; and Jus Pontificium, or the law of religion. This opposition is sometimes expressed by the words *Jus* and *Fas* (*Fas et jura sinunt.—Virg. Georg.* i. 269); and the law of things not pertaining to religion, and of things pertaining to it, are also respectively opposed to one another by the terms *Res Juris Humani et Divini* (*Instit.* ii. tit. 1).

The terms *Jus Scriptum* and *Non Scriptum*, as explained in the Institutes (i. tit. 2), comprehended the whole of the Jus Civile; for it was all either Scriptum or Non Scriptum, whatever other divisions there might be (*Ulp. Dig.* l. tit. 1, s. 6). *Jus Scriptum* comprehended everything, except that '*quod usus approbavit.*' This division of Jus Scriptum and Non Scriptum does not appear in Gaius. It was borrowed from the Greek writers, and seems to

have little or no practical application among the Romans.

There is another division of the matter of law which appears among the Roman jurists, viz. the Law of Persons, the Law of Things, which is expressed by the phrase '*jus quod ad res pertinet*;' and the Law of Actions, '*jus quod ad actiones pertinet*' (*Gaius*, i. 8).—*Smith's Dict. of Antiq.*

Jus accrescendi (*the right of survivorship*). See JOINT-TENANCY.

Jus accrescendi inter mercatores locum non habet, pro beneficio commercii.—*Co. Litt.* 182. (The right of survivorship does not exist among merchants, for the benefit of commerce.)

Jus accrescendi præfertur oneribus.—*Co. Litt.* 185.—(The right of survivorship is preferred to incumbrances.)

Jus accrescendi præfertur ultimæ voluntati.—*Co. Litt.* 185 *b.*—(The right of survivorship is preferred to the last will.)

Jus ad rem, an inchoate and imperfect right; such as a parson promoted to a living acquires by nomination and institution.

Jus æsneciæ, the right of primogeniture.

Jus albinatus, the *droit d'aubaine*, which see.

Jus Anglorum, the laws and customs of the West Saxons, in the time of the Heptarchy, by which the people were for a long time governed, and which were preferred before all others.

Jus civile, the interpretation of the laws of the twelve tables, and now, of the whole system of the Roman laws.

Jus civitatis, the freedom of the city of Rome. It differs from *Jus Quiritium*, which comprehended all the privileges of a free native of Rome. The difference is much the same as between denization and naturalization with us.

Jus commune, the common law.

Jus coronæ, the right of the Crown.

Jus curialitatis Angliæ, the courtesy of England, which see.

Jus deliberandi, the right which an heir has in Scotch law, of deliberating for a certain time whether he will represent his predecessor.

Jus descendit et non terra.—*Co. Litt.* 345.—(the right descends, and not the land.)

Jus devolutum, the right of the church of presenting a minister to a vacant parish, in case the patron shall neglect to exercise his right within the time limited by law.

Jus disponendi, the right to call upon a trustee to execute conveyances of the legal estate as the *cestui que* trust directs.—*Lewin on Trusts*, 595.

Jus dividendi [Mid. Lat.], the right of disposing of realty by will.—*Duc.*

Jus duplicatum, the right of possession as well as the right of property of a thing.

Jus est norma recti; et quicquid est contra normam recti est injuria.—3 *Buls.* 313.—(Law is the rule of right; and whatever is contrary to the rule of right, is an injury.)

Jus ex injuriâ non oritur.—4 *Bing.* 639.—(A right does not arise out of a wrong.)

Jus feciale, the law of nations.—*Roman Law.*

Jus fiduciarium, a trust.

Jus fodiendi, a right of digging.

Jus gentium, the law of nations.

Jus gladii, the right of the sword; the executory power of the sovereign.

Jus habendi, the right to be put in actual possession of property.—*Lewin on Trusts*, 585.

Jus habendi et retinendi, a right to have and to retain the profits, tithes, and offerings, &c. of a rectory or parsonage.

Jus hæreditatis, the right of inheritance. See DESCENT.

Jus honorarium, the body of Roman law, which was made up of edicts of the supreme magistrate, particularly the prætors.

Jus imaginis, the right of using pictures and statues amongst the Romans. It had some resemblance to the right of bearing a coat of arms amongst us.

Jus in personam, a right which gives its possessor a power to oblige another person to give or procure, to do or not to do, something.

Jus in re, a complete and full right; a real right, or a right to have a thing to the exclusion of all other men.

Jus in re inhærit ossibus usufructuarii.—(A right in the thing cleaves to the person of the beneficiary.)

Jusjurandi forma verbis differt, re convenit; hunc enim sensum habere debet, ut Deus invocetur.—*Grotius*, l. 2, c. xiii., s. 10.—(The form of taking an oath differs in language, agrees in meaning; for it ought to have this sense, that the Deity is invoked.)

Jusjurandum inter alios factum nec nocere nec prodesse debet.—4 *Inst.* 279.—(An oath made in another cause ought neither to hurt nor profit.)

Jus liberorum, a privilege granted to such persons in ancient Rome as had three children, by which they were exempted from all troublesome offices.

Jus mariti, the right to his wife's movable estate which a husband acquires by virtue of the marriage.

Jus merum, pure or mere right.

Jus naturale est quod apud omnes homines eandem habet potentiam.—7 *Co.* 12.—(Natural right is that which has the same force among all men.)

Jus nec inflecti gratiâ, nec frangi potentiâ, nec adulterari pecuniâ potest: quod si non modo oppressum, sed desertum aut negligentiâ asservatum fuerit, nihil est quod quisquam se habere certum, aut à patre accepturum, aut liberis esse relicturum, arbitretur.—*Cic.*—(Favor ought not to be able to bend justice, power to warp it, nor

money to corrupt it; for if it be overborne, or abandoned, or negligently observed, no one can feel secure that he will receive the inheritance transmitted by his ancestors, or be able to leave his own estate to his children.)

Jus non habenti, tute non paretur.—*Hob.* 146. (It is safe not to obey him who has no right.)

Jus non patitur ut idem bis solvatur.—(Law does not suffer that the same thing be twice paid.)

Jus Papirianum, the laws of Romulus, Numa, and other kings of Rome, collected by Sextus Papirius, who lived in the time of Tarquin the Proud.

Jus pascendi, the right of grazing.

Jus patronatûs, a commission granted by a bishop to some persons, usually his chancellor and others, of competent learning, to inquire who is the rightful patron of a church.—3 *Step. Com.* 71, 447, 532.

Jus possessionis, a right of possession.

Jus postliminii [Lat., fr. *post*, after, and *limen*, the threshold], the right in virtue of which persons and things taken by an enemy are restored to their former state on their coming again into the power of the nation to which they belonged, persons being re-established in their former rights, and things being restored to the original owner. See *Vattel by Chit.* 391; *Sand. Justin.* 132; *Smith's Dict. of Antiq.* 782.

Jus præsentandi est incorporale.—*Co. Litt.* 85.—(The right of presentation is incorporeal.)

Jus prætorium, the discretion of the prætor in Roman law, as distinguished from the *leges* or standing law.—See CIVIL LAW.

Jus precarium, a precarious or courteous right for which the remedy was only by intreaty or request.

Jus presentationis, a right of presenting.

Jus preventionis, the preferable right of jurisdiction acquired by a court in any cause to which other courts are equally competent by having exercised the first act of jurisdiction.—*Scotch Law.*

Jus privatum, the civil or municipal law of Rome.

Jus publicum privatorum pactis mutari non potest.—(A public right cannot be altered by the agreements of private persons.)

Jus publicum et privatum quod ex naturalibus præceptis aut gentium aut civilibus est collectum; et quod in jure scripto jus appellatur, id in lege Angliæ rectum esse dicitur.—*Co. Litt.* 158.—(Public and private law is that which is collected from natural principles, either of nations or in states; and that which in written law is called jus, in the law of England is said to be right.)

Jus recuperandi, intrandi, &c., a right of recovering and entering land, &c.

Jus relictæ, the right of a widow in her deceased husband's personalty; if there be children, she is entitled to a third of it; if there be none, to a half.

Jus respicit æquitatem.—*Co. Litt.* 24.—(Law regards equity.)

Jus superveniens auctori accrescit successori. (A right growing to a possessor accrues to the successor.)

Jus tertii, the right of a third person to attach money belonging to his debtor, &c. in the hands of another person.

Jus testamentorum pertinet ordinario.—4 *H.* 7, 13 *b.*—(The right of testaments belongs to the ordinary.)

Jus triplex est; proprietatis, possessionis, et possibilitatis.—(Right is threefold; of property, of possession, and of possibility.)

Jus venandi et piscandi (*the right of hunting and fishing.*)

Jus vendit quod usus approbavit.—*Ellesm. Postn.* 35.—(The law dispenses what use has approved.)

Justa, a certain measure of liquor, being as much as was sufficient to drink at once.—*Mon. Angl.* t. 1, p. 149.

Justice [fr. *justitia*, Lat.], the virtue by which we give to every man what is his due, opposed to injury or wrong. It is either *distributive*, belonging to magistrates, or *commutative*, respecting common transactions among men.

Justicements, all things appertaining to justice.

Justicer, administrator of justice.

Justices, officers deputed by the Crown to administer justice and do right by way of judgment. The judges of the superior courts are sometimes called justices, but the word is now chiefly applied to petty magistrates who sit to administer summary justice in minor matters, and who are commonly called *justices of the peace.* 'Men,' according to Lord Cowper, 'sometimes illiterate, and frequently bigoted and prejudiced.'—2 *Reeves*, 468.

The Queen's Majesty is, by her office and dignity, the principal conservator of the peace within all her dominions, and may give authority to any other to see the peace kept, and to punish such as break it; hence it is called the Queen's peace. Also, all the superior judges are conservators of the peace; but justices of the peace, properly so called, are appointed by the Queen's special commission under the Great Seal, the form of which was settled by all the judges in 1590, and continues, with little alteration, to this day. This appoints them all, jointly and severally, to keep the peace in the county named; and any two or more of them to inquire of and determine felonies and other misdemeanors in such county committed, in which number some particular justices, or one of them, are directed to be always included, and no business done without their presence, the words of the

commission running thus:—*Quorum aliquem vestrum*, A., B., C., D., &c., *unum esse volumus*, whence the justices so named are usually called justices of the *quorum*. When any justice named in the commission intends to act under it, he sues out a writ of *dedimus potestatem* from the Clerk of the Crown in Chancery, empowering certain persons therein named, to administer the usual oaths to him, i. e. an oath of office and of qualification as to estate, to which are added the oaths of allegiance, supremacy, and abjuration, which done, he is at liberty to act. These justices (some particular classes of them excepted) act gratuitously, receiving neither salary nor fees.

The 18 Geo. II. c. 20, enacts that every justice of the peace acting for a county (except such privileged persons as are therein excepted) must have in possession, and for his own benefit, an estate, either legal or equitable, of freehold, copyhold, or customary tenure, in fee, for life, or such term of years as in the act specified, of the clear yearly value of 100*l.* or a reversion or remainder expectant upon such lease as in the act mentioned, with reserved rents of the clear yearly value of 300*l.* per annum. To prevent improper practices, the 6 & 7 Vict. c. 73, s. 33, provides that no attorney or solicitor shall be capable of being a justice of the peace for any county during such time as he shall practise as an attorney or solicitor. The office subsists during the Crown's pleasure, and is determinable (1) by demise of the Crown; (2) by express writ under the great seal; (3) by writ of *supersedeas*; (4) by a new commission; (5) by accession to the office of sheriff, during the year of the shrievalty.

As to justices in boroughs, see 4 & 5 Wm. IV. c. 27; 5 & 6 Wm. IV. c. 76; 6 & 7 Wm. IV. c. 105; and in and near the metropolis, 10 Geo. IV. c. 44; 2 & 3 Vict. cc. 47, 71, & 94; and generally, 3 & 4 Vict. c. 84; 20 & 21 Vict. c. 43; 21 & 22 Vict. c. 73; and 26 & 27 Vict. c. 77.

The power, office, and duty of a justice of the peace depend on his commission, and on the several statutes which define his jurisdiction. The 5 & 6 Vict. c. 38, defines the jurisdiction of justices at quarter sessions.

Justices, Lords of Appeal in Chancery. See CHANCERY.

Justice-seat, the principal court of the forest.

Justiceship, rank or office of a justice.

Justiciable, proper to be examined in courts of justice.

Justiciar, an officer instituted by William the Conqueror; a lord chief justice.

Justiciarii tanquam justi in concreto, justiciarii de banco dicti, nunquam judices de banco.—*Co. Litt.* 71 *b.*—(Justices, from '*justi in concreto*,' called justices of the bench, never judges of the bench.)

Justiciary, Chief, an office of high importance in our early history. He presided in the king's court and in the exchequer, and his authority extended over all other courts. He was *ex officio* regent of the kingdom in the king's absence. Writs ran in his name and were tested by him. The last who filled the office and bore the title of *Capitalis Justitiarius Angliæ* was Philip Basset, temp. Hen III.

Justiciary, *High Court of*, the supreme criminal court of Scotland, composed of five of the lords of session, added to the lord justice-general and justice-clerk; of whom the lord justice-general, and in his absence the lord justice-clerk, is president. Its jurisdiction extends to the whole of Scotland. It has also the power of revising the sentences of all the Scottish inferior criminal courts, and from it there is no appeal whatever.

Justiciatus, judicature; prerogative.

Justicies, a writ directed to the sheriff in some special cases, by virtue of which he may hold plea of debt in his county-court for a large sum; whereas, by his ordinary power, he is limited to sums under 40*s.*—*F. N. B.* 117; 3 *Bl. Com.* 36.

As the sheriff cannot, by this process, or the judgment to be obtained thereupon, arrest the defendant's body, but only take his goods; and as the cause may be removed at the defendant's pleasure into the superior courts, this process is not much in use.

Justifiable homicide, the killing of a human creature, without incurring any legal guilt. It is of various kinds:—

(1) The due execution of public justice, in putting a malefactor to death who has forfeited his life by the laws of his country.

(2) It may be committed for the advancement of public justice, as in the following instances:—(*α*) Where an officer or his assistant, in the due execution of his office, either in a criminal or civil case, arrests, or attempts to arrest, a person who resists, and is killed in the struggle. (*β*) In case of a riot or rebellious assembly, officers endeavouring to disperse the mob are justified in killing them, both at common law and by the Riot Act, 1 Geo. I. c. 5. (*γ*) Where the prisoners in a gaol assault the gaoler or officer, and he in his defence kills any of them, it is justifiable, for the sake of preventing an escape. (*δ*) Where an officer or his assistant, in the due execution of his office, arrests, or attempts to arrest, a person for felony, or a dangerous wound given, and he having notice thereof, flies, and is killed by such officer or assistant in pursuit. (*ε*) Where, upon such offence as last described, a private person, in whose sight it has been committed, arrests or endeavours to arrest the offender, and kills him in resistance or flight, under similar circumstances.

(3) When committed for the prevention of any forcible or atrocious crime, but not if the crime is unaccompanied by force.

(4) Where two persons being shipwrecked, get on the same plank, but finding it not able to save them both, one of them thrusts the other from it, whereby he is drowned. This is justifiable upon the great universal principle of self-preservation.—4 *Step. Com.* 136.

Justification, a maintaining or showing a sufficient reason in court why the defendant did what he is called upon to answer. See 1 *Selw. N. P.* 32.

Justificators, a kind of compurgators, or those who by oath justified the innocence or oaths of others, as in the case of wager of law.

Justifying bail, proving the sufficiency of bail or sureties in point of property, &c.

Justifying security. Administrators in certain cases are required by the Court of Probate to give justifying security, i. e. the sureties to the administration bond must, in an affidavit, swear that they are, after the payment of their debts, worth a sum specified. Justifying security is required by the court, according to the circumstances of each particular case, subject to the general rule, that whenever administration is granted in default of the appearance of persons cited, but not personally served with the citation, or for the use and benefit of a lunatic or person of unsound mind, unless it is granted to a committee appointed by the Court of Chancery, justifying security must be given. See *Probate Court N. C. B. Rules,* r. 42; 1 *Williams on Executors,* 473; and *Waddilove's Digest,* 26.

Justinianist, a civilian; one who studies the civil law.

Justitia, a statute-law, or ordinance. Also, a jurisdiction, or the office of a judge.

Justitia debet esse LIBERA, *quia nihil iniquius venali justitiâ*; PLENA, *quia justitia non debet claudicare*; *et* CELERIS, *quia dilatio est quædam negatio.*—2 *Inst.* 56.—(Justice ought to be unbought, because nothing is more hateful than venal justice; full, for justice ought not to halt; and quick, for delay is a certain denial.)

Justitia est duplex; *viz. severè puniens et verè præveniens.*—3 *Inst. Epil.*— (Justice is double; punishing with severity, and preventing with verity.)

Justitia est virtus excellens et Altissimo complacens.—4 *Inst.* 58.—(Justice is excellent virtue, and pleasing to the Most High.)

Justitiâ firmatur solium.—3 *Inst.* 140.—(By justice the throne is established.)

Justitia nemini neganda est.—*Jenk. Cent.* 178.—(Justice is to be denied to none.)

Justitia non est neganda, non differenda.—*Jenk. Cent.* 93.—(Justice is neither to be denied nor delayed.)

Justitia non novit patrem nec matrem, solam veritatem spectat justitia.—1 *Bulst.* 199.—(Justice knows neither father nor mother; justice regards truth alone.)

Justitia piepoudrous, speedy justice.—*Bract.* 333 *b.*

Justitiam facere, to hold a plea of anything.

Justitium, a ceasing from the prosecution of law, and exercising justice in places judicial.—*Cowel.*

Justs, or **Jousts,** exercises between martial men and persons of honor with spears on horseback; differing from *tournaments,* which were military exercises between many men in troops.—24 *Hen. VIII.* c. 13.

Justum non est aliquem antenatum mortuum facere bastardum, qui pro totâ vitâ suâ pro legitimo habetur.—8 *Co.* 101.—(It is not just to make one born before marriage, who all his life has been accounted legitimate, a bastard after his death.)

Juvenile Offenders, trial and punishment of. See 10 & 11 *Vict.* c. 82; 11 & 12 *Vict.* c. 59; 13 & 14 *Vict.* c. 37; and 21 & 22 *Vict.* c. 67, s. 1 (5). The 18 & 19 Vict. c. 87, amending 17 & 18 Vict. c. 86, enforces contributions not exceeding 5*s.* a week, by parents or stepparents, for the maintenance of juvenile offenders in reformatory schools.

Juverna, an ancient name of Ireland.

Juxta formam statuti (*according to the form of the statute*).

K.

Kabani, a person who, in oriental states, supplies the place of our notary-public. All obligations, to be valid, are drawn by him; and he is also the public weigh-master; and everything of consequence ought to be weighed before him.—*Encyc. Lond.*

Kabin, a species of marriage among the Turks and Persians, which is not considered as binding for life, but is solemnized on condition that the husband allows the wife a certain sum of money in case of a separation.—*Ibid.*

Kabooliut [Bengalee], an agreement.—*Indian.*

Kaia, a key, quay, or wharf.—*Old Records.*

Kaiage, or **Kaiagium,** a wharfage-due.

Kain, poultry payable by a tenant to his landlord.—*Scotch term.*

Kalalconna, a duty paid by shopkeepers in, Hindostan, who retail spirituous liquors; also, the place where spirituous liquors are sold.—*Indian.*

Kalendæ, rural chapters, or conventions of the rural deans and parochial clergy, which were

formerly held on the calends of every month; hence the name.—*Paroch. Antiq.* 604.

Kalendar [now spelled calendar], an account of time.

Kalends. See CALENDS.

Kantref [Brit.], the division of a county; a hundred in Wales. See CANTRED.

Karite, the best beer in a religious house. See CARITAS.

Karle, a churle.—*Domesday.*

Karrata fœni (*a cart-load of hay*).

Kavass, an armed constable in Turkey.

Kay, a quay, or key.

Kazy, a Mahometan judge or magistrate in the East Indies, appointed originally by the court at Delhi, to administer justice according to their written law; but particularly in matters relative to marriages, the sales of houses, and transgressions of the Koran. He attests or authenticates writings, which, under his seal, are admitted as the originals in proof. *Encyc. Lond.*

Kebbar, or **Culler,** the refuse of sheep drawn out of a flock.—*Cooper's Thesau.*

Keelage, a privilege to demand money for the bottom of ships resting in a port or harbour.—*Termes de la Ley.*

Keelhale, Keelhaul, or **Keelrake,** to drag a person under the keel of a ship by means of ropes from the yardarms—a punishment formerly practised in the navy.—*Encyc. Lond.*

Keels, river vessels for the carriage of coals.

Keeper of the Forest, the chief warden of the forest, who has the superintendence over all the other officers, &c.—*Manwood,* p. i., p. 156.

Keeper of the Great Seal, Lord, a judicial officer, who used to be appointed in lieu of the Lord Chancellor.—5 *Eliz.* c. 18.

Keeper of the Privy Seal, now called the Lord Privy Seal, through whose hands all charters, &c. pass, before they come to the Great Seal. The office of Lord Privy Seal is always held by a Cabinet Minister.

Keeper of the Queen's Prison. This officer is appointed by the Secretary of State for the Home Department during pleasure.—5 & 6 *Vict.* c. 22, s. 22; 11 & 12 *Vict.* c. 7, s. 4; and 23 & 24 *Vict.* c. 60.

Keeper of the Touch, the Master of the Assay in the Mint.

Keepers of the Liberty of England. See CUSTODES LIBERTATIS, &c.

Keeping the peace, *security for.* A recognizance or obligation to the Crown, taken in some court, or by some judicial officer, whereby a person acknowledges himself to be indebted to the Crown in a certain sum, with condition to be void and of none effect if he shall appear in court on such a day, and in the meantime shall keep the peace either generally towards the sovereign and all her liege people, or particularly towards the person who craves the security; or with condition so to keep the peace for a certain period, not dependent on any appearance in court.

If the condition of such recognizance be broken, the recognizance becomes forfeited or absolute; and the person and his sureties become the Crown's debtors, for the sums in which they are respectively bound.—4 *Step. Com.* 372.

Kendal, an ancient barony.

Kenelworth edict (*dictum sive edictum de Kennelworth*). An edict or award between Henry III. and those who had been in arms against him; so called because made at Kenelworth Castle, in Warwickshire, anno 51 Hen. III., A. D. 1266. It contained a composition of those who had forfeited their estates in that rebellion, which composition was five years' rent of the estates forfeited.—*Hale's Hist.* p. 10, n (*d*).

Kentlage, permanent ballast, consisting usually of pigs of iron, cast in a particular form, or other weighty material, which, on account of its superior cleanliness, and the small space occupied by it, is frequently preferred to ordinary ballast.—*Abbott on Shipping,* 5.

Kerhere, a customary cart-way; also, a commutation for a customary carriage-duty.—*Cowel.*

Kernellatus, fortified or embattled.—*Co. Litt.* 5 *a.*

Kernes, idlers, vagabonds.

Key, a quay or long wharf by the side of a harbour or river, to lade or discharge merchant-ships.

Keyage. See KAIAGE.

Keyus, a guardian, warden, or keeper.

Khalsa, pure, unmixed. An office of government in which the business of the revenue department is transacted. The Exchequer-Khalsa-lands are lands the revenue of which is paid into the Exchequer.—*Indian.*

Khirajee pottah, a lease reserving rent.—*Ibid.*

Kidder, an engrosser of corn to enhance its price.—*Ainsworth.*

Kiddle, Kidel, or **Kedel** [fr. *kidellus,* Lat.], a dam or open wear in a river, with a loop or narrow cut in it, accommodated for the laying of wheels or other engines to catch fish.—2 *Inst.* 38.

Kidnapping [fr. *kind,* Dut., a child, and *nap,* to steal], the forcible abduction or stealing away of a man, woman, or child from their own country and sending them into another. It is an offence punishable at the common law by fine and imprisonment.—4 *Bl. Com.* 219.

The 24 & 25 Vict. c. 100, s. 56, enacts that whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy, or entice

away, or detain any child under the age of fourteen years, with intent to deprive any parent, guardian, or other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong, and whosoever shall, with any such intent, receive or harbour any such child, knowing the same to have been by force or fraud so led, taken, decoyed, enticed away, or detained, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labor, and if a male, under the age of sixteen years, with or without whipping. Provided that no person who shall have claimed any right to the possession of such child, or shall be the mother, or shall have claimed to be the father, of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child, or taking such child out of the possession of any person having the lawful charge thereof.

Kilderkin, a measure of 18 gallons.

Kilketh, an ancient servile payment made by tenants in husbandry.—*Cowel.*

Kill, an Irish word, signifying a church or cemetery, which is used as a prefix to the names of many places in Ireland.—*Encyc. Lond.*

Killagium, keelage, which see.

Killythstallion, a custom by which lords of manors were bound to provide a stallion for the use of their tenants' mares.—*Spelm.*

Kin, or **Kindred** [fr. *cynren*, Sax.], relation either of consanguinity or affinity.

There are two degrees of either kindred; the one in the lineal or direct line ascending or descending, and the other in the collateral or indirect line.

The reckoning of degrees of kindred or relationship is as follows:—

I. Lineal.

- (a) Consanguinity
  - (1) Ascending. — Father, mother, grandfather, grandmother, great grandfather, great grandmother; and so on, *ad infinitum.*
  - (2) Descending. — Son, daughter, grandson, granddaughter; and so on, *ad infinitum.*
- (β) Affinity
  - (1) Ascending. — Father-in-law, mother-in-law, or step-father, step-mother.
  - (2) Descending. — Son-in-law, daughter-in-law, or step-son, step-daughter.

II. Collateral.

- (a) Consanguinity — Brother, sister, brother's children, sister's children, uncle, aunt, &c.
- (β) Affinity — Brother's wife, sister's husband, uncle's wife, aunt's husband, &c.

The right of representation of kindred for the purposes of distribution of personalty, in the descending line, reaches beyond the great grand-children of the same parents; but in the collateral line it is not allowed to reach beyond brother's and sister's children. Our law agrees in its computation with the civil and ecclesiastical laws, as to the right line, and with the civil as to collaterals, in computing who are entitled to administration and distribution of the personal property of intestates.

There are several rules to know the degrees of kindred; in the ascending line, take the son and add the father, and it is one degree ascending; then add the grandfather, and it is a second degree; a person added to a person in the line of consanguinity making a degree; if there are many persons, take away one, and you have the number of degrees, as if there be four persons, it is the third degree; if five, the fourth, &c.; so that the father, son, and grandchild, in the descending line, though three persons, make but two degrees. To know in what degree of kindred the sons of two brothers stand, begin with the grandfather, and descend to one brother, the father of one of the sons, which is one degree; then descend to his son, the ancestor's grandson, which is a second degree; and then descend again from the grandfather to the other brother, father of the other of the sons, which is one degree, and descend to his son, &c., which is a second degree: thus reckoning the person from whom the computation is made, it appears there are two degrees, and that the sons of two brothers are distant from each other two degrees; for in what degree either of them is distant from the common stock, the person from whom the computation is made, they are distant between themselves, in the same degree; and in every line the person must be reckoned from whom the computation is made. If the kindred are not equally distant from the common stock, then in what

degree the most remote is distant, in the same degree they are distant between themselves, and so the line of the most remote makes the degree.—*Wood's Inst.* 48.

Kin-bote, compensation for the murder of a kinsman.—*Old Saxon Law.*

Kindlie, a tenant's right to have a renewal of his lease.—*Scotch term.*

Kindred, relation by birth or marriage; cognation; consanguinity; affinity. See KIN.

King [a contraction of the Teutonic word *cuning*, or *cyning*, the name of sovereign dignity. In the primitive tongue it signifies stout, or valiant; the kings of most nations being, in the beginning, chosen by the people on account of their valor and strength.—*Verstegan. Camden* derives the word from the Saxon *cyning*, and that from *can*, power, or *ken*, knowledge, wherewith every monarch is supposed to be invested. The Latin *rex*, the Scythian *reix*, the Punic *resch*, the Spanish *rey*, and the French *roi*, come all, according to *Postel*, from the Hebrew *rosch*, chief, or head], monarch; supreme governor.

Bacon uses the word in the feminine gender. He says: 'Ferdinand and Isabella, *Kings* of Spain, recovered the great and rich kingdom of Granada from the Moors.' See QUEEN.

King-craft, the art of governing.

King de facto et de jure. See DE FACTO.

King-geld, a royal aid; an escuage.

King's Advocate. See ADVOCATE, QUEEN'S.

King's Bench. See QUEEN'S BENCH.

King's Bench Prison, now called the Queen's Prison.—5 & 6 *Vict.* c. 22; 11 & 12 *Vict.* c. 7; and 23 & 24 *Vict.* c. 60.

Kings of Arms, the principal herald of England was of old designated king of the heralds, a title which seems to have been exchanged for king of arms about the reign of Henry IV.

The kings of arms at present existing in England are three: Garter, Clarenceux, and Norroy, besides Bath, who is not a member of the college. Scotland is placed under an officer called Lyon king of arms, and Ireland is the province of one named Ulster.

King's Books, they contain the *Valor Beneficiorum*, i. e. value of every ecclesiastical benefice, and preferment, according to which valuation, the first fruits and tenths are collected and paid, and the clergy rated. This value was certified by certain commissioners, pursuant to 26 Hen. VIII. c. 3, confirmed by 1 Eliz. c. 4.—2 *Step. Com.* 553.

King's Household. See CIVIL LIST.

King's Silver, the money which was paid to the king, in the Court of Common Pleas, for a license granted to a man to levy a fine of lands, tenements, or hereditaments, to another person; and this must have been compounded, according to the value of the land, in the alienation-office, before the fine would have passed.—2 *Inst.* 511. See FINE.

King's Stores. See PUBLIC STORES.

King's Widow, a widow of the king's tenant-in-chief, who was obliged to take oath in Chancery that she would not marry without the king's leave.

Kingdom, the territories subject to a monarch, either king or queen.

Kinsfolk, relations; those who are of the same family.

Kinsman, a man of the same race or family.

Kinswoman, a female relation.

Kintal, or **Kintle** [fr. *centum*, Lat.], a hundred pounds in weight. See QUINTAL.

Kintledge, a ship's ballast. See KENTLAGE.

Kiorckiowariandes, churchwardens.—*Swedish word.*

Kipper-time, the space of time between the 3rd and 12th of May, in which fishing for salmon in the Thames, between Gravesend and Henley-on-Thames, was forbidden.—*Rot. Parl.* 50 *Edw. III.*

Kirby's Quest, an ancient record remaining with the remembrancer of the Exchequer, so called from its being the inquest of John de Kirby, treasurer to King Edward I.

Kirk [fr. *cyrce*, Sax.; *κυριακή*, Gk.], a church. *Scotch term.*

Kirk-note, or **Kirk-mote,** a meeting of parishioners on church affairs.

Kirk-officer, the beadle of a church in Scotland.

Kirk-sessions, a petty ecclesiastical sessions in Scotland, consisting of the minister, elders, and deacons of a parish.

Kist, stated payment, instalment of rent.—*Indian.*

Kleptomania [fr. *κλέπτω*, Gk., to steal, and *μανία*, frenzy], insanity in the form of an irresistible propensity to steal.

Knaveship, a portion of grain, given to a mill-servant from tenants who were bound to grind their grain at such mill. See THIRLAGE.

Knight [fr. *ἱππότης*, Gk.; *eques*, Lat.; *cniht*, Sax.; *chevalier* and *cavalier*, Fr.; *cavagliere*, Ital.; *caballiere*, Span.; *ritter*, Germ. Its etymology has puzzled the most profound and learned antiquaries; its origin, however, appears to have arisen from the Greek, or some more ancient language from which the Greek itself and all other languages were derived. Chryses, in the beginning of the Iliad, addresses the chieftains by the appellation of *ἐϋκνήμιδες Ἀχαιοί*; an honorable epithet often used by Homer in both his epic poems. Now, the word *ἐϋκνήμιδες* cannot be applied but to horsemen, as it means *bene ocreati*, well-booted, the use of boots or greaves being, at that time, and indeed to a very late period, exclusively confined to men who were in the habit of riding. From *κνήμη*, the leg, from which is derived the

English word knee (or *vice versâ*, from knee, a more ancient word perhaps from which the Greeks derived their *κνήμη*), arose *κνημίς*, a boot, part of the usual accoutrement of a horseman. Therefore it is not improper to conclude that the word *knight* is derived from *κνημίς*, the boot which covered the knee and leg, *κνήμη*, and that its proper meaning is 'a man wearing boots to be used on horseback.' The address of the priest of Apollo might be translated, 'knights of Greece.' But the Greeks had another expression for the same meaning, of which our word *knight* seems to be still a nearer representative, not as to etymology, but as to signification. Ἱππότης, and in the Doric dialect, *ἱππότα* (which the Mæonian bard introduced when the quantity of his line required it) was used also as a title of great honor for those warriors who had long experienced the fatigues of the field, and were generally seen on horseback at the head of their respective phalanx. The veteran Nestor is often and nearly always distinguished by this epithet. And the same epithet is bestowed upon Phyleus. This title of *knight* or *horseman* was also given in another way to other chieftains: *ἱππόδαμος* is applied to Diomedes, and several others, and means more especially a man skilled in taming and leading a horse. We have not, however, any particular data to guess whether this title was bestowed upon them by their generals or superiors, or merely acquired by their long and distinguished exploits; but it seems obvious that it was owing to one of these causes. It is clear, besides, that the word used to denote the degree of knighthood in the dialects of other nations, is also derived from that useful animal who shares with the brave the fatigues and dangers of war—the horse], a title of honor next to baronets, entitling the person on whom it is conferred to be styled *sir*, and his wife *lady*. A knight is now made by the sovereign touching him with a sword as he kneels, and saying, 'Rise, Sir—.' *Encyc. Lond.*

Knightencourt, a court which used to be held twice a year by the Bishop of Hereford.

Knightenguild, an ancient guild or society formed by King Edgar.

Knighthood, the character or dignity of a knight.

This institution gave rise to three others, each of which is only a deviation from itself: (1) The primitive objects of chivalry induced men to enter into intimate associations, whence sprung the several orders of knighthood. From these, by the degeneracy usually befalling all establishments, are derived the orders still subsisting in modern Europe. (2) The primitive dignity of chivalry gave birth to that species of knighthood as at present conferred. The two species here mentioned, however, are severally distinguished by historians as *regular*, and *honorary*; of these the first comprehend such as still adhere to their constitutions, as in requiring vows of celibacy, &c., and the second those which are merely titular. The Teutonic Order is an example of the former; the Order of the Garter of the latter. (3) The union of chivalry with the feudal system, and the decay of both, gave rise to knight-service, and the compulsion of landowners to become knights or pay a fine. By 16 Car. I. c. 20, no man can be compelled to take the Order of Knighthood. See *Sir H. N. Nicholas' History of the Orders of Knighthood of the British Empire.*

Knight-marshal, an officer in the royal household who has jurisdiction and cognizance of offences committed within the household and verge, and of all contracts made therein, a member of the household being one of the parties.

Knight-service, formerly the most universal and most honorable species of tenure, being entirely military; a feudal tenure. Abolished by 12 Car. II. c. 24. See TENURE.

Knights Bachelors [fr. *bas chevalier*, Fr.], the most ancient though lowest order of knighthood.—1 *Bl. Com.* 404. See BAS-CHEVALIERS.

Knights Banneret [*milites vexillarii*, Lat.], those created by the sovereign in person on the field of battle. They rank, generally, after Knights of the Garter.—1 *Bl. Com.* 403.

Knights of the Bath [*milites balnei*, Lat.], an order instituted by Henry IV., and revived by George I. They are so called from the ceremony formerly observed of bathing the night before their creation.—*Dugd. Antiq. of Warw.* 531.

Knights of the Chamber [*milites cameræ*, Lat.], those that are created in the sovereign's chamber in time of peace, and not in the field. 2 *Inst.* 666.

Knights' fee, [*feodum militare*, Lat.], twelve plough-lands, the value of which was 20*l. per annum* (2 *Inst.* 596). Selden contends that it was as much as the king was pleased to grant upon condition of having the service of a knight.—*Tit. of Hon.* p. ii. c. v., ss. 17 & 26. See TENURE.

Knights of the Garter [*equites garterii, vel periscelidis*, Lat.], otherwise called *Knights of the Order of St. George.* This order was founded by Edward III. A. D. 1344. They form the highest order of knights. See GARTER.

Knights of St. Patrick, instituted in Ireland by George III. A. D. 1763. They have no rank in England.

Knights of the Post, hireling witnesses.

Knights of the Shire, members of Parliament representing counties or shires, in contradistinction to citizens or burgesses, who represent boroughs or corporations. A knight of the shire is so called, because, as the terms of

the writ for election still require, it was formerly necessary that he should be a knight. This restriction was coeval with the tenure of knight-service, when every man who received a knight's fee immediately of the Crown, was constrained to be a knight; but at present any person may be chosen to fill the office who is not an alien. The money qualification is abolished by 21 Vict. c. 26.

Knights of the Thistle. This order is said to have been instituted by Achaius, King of Scotland, A.D. 819. The better opinion, however, is that it was instituted by James V. in 1534, was revived by James VII. (James II. of England) in 1687, and re-established by Queen Anne in 1703. See *Penny Cyclopædia* and *Nicholas' History of the Orders of Knighthood of the British Empire.* They have no rank in England.

Knopa, a knob, nob, bosse, knot.

Know-men, or *just-fast-men,* the Lollards in England.

Koran, or **Alcoran,** the Mohammedan book of faith. It contains both the ecclesiastical and secular laws by which Mohammedans are governed; and its chief civil provisions, if, indeed, this distinction can be made in the written law, relate to marriage and its incidents, divorce, fornication, and adultery, incest, inheritances, bastardy, wills, contracts, homicide, larceny, retaliation, injuries, law of peace and war. The Koran is by Mohammedans in general regarded as the fundamental part of their civil law, and the decisions of the Sonna, among the Turkish, and of the Imaums, among the Persian sects, together with the decisions of the great doctors, form the rule and precedent in judicial cases; in the secular tribunals these precedents are, however, departed from when not consonant with equity; whence arises the real distinction between the written and common laws—the former more strictly confined to ecclesiastical, and the latter applicable to civil cases. In the latter, which is more modern, the principles of the Roman Civil Law may often be traced, while the former is more directly referable to the Old Testament. The law of the Mohammedans ruled at one period of history no contemptible portion of the habitable globe, viz., Persia, Syria, Egypt, Africa, and Spain. For the characteristics of the Koran, see 2 *Hall. M. A.* 115.

Ksar, a czar.—*Milton.*

Kushoon, Cushoon, a body of military, corresponding nearly to our term *brigade,* varying from one to six or eight thousand men.—*Indian.*

Kut-Kubala, a mortgage-deed or deed of conditional sale, being one of the customary deeds or instruments of security in India as declared by Regulation 17 of 1806, which regulates the legal proceedings to be taken to enforce such a security. It is also called *Bye-bil-wuffa.* See a form 8 *W. Rep.* 29.

Kymortha [Welsh], waster, rhymer, minstrel, or other vagabond who makes assemblies and collections.—*Barr. on Stat.* 360.

Kyst, Kysta, or **Kyste** [Sax.], a chest or coffin.

Kyth [fr. *cognatus,* Lat.], kin or kindred.

L.

Laas [fr. *laqueus,* Lat. by met., fraud], a net, gin, or snare.

Label [fr. *labellum,* Lat.], anything appendent to a larger writing, as a codicil; a narrow slip of paper or parchment affixed to a deed or writ, in order to hold the appending seal.

Labina, watery land.—*Old Records.*

Labor. It is in the physical world always and solely employed in putting objects in motion; the properties of matter, the laws of nature, do the rest. Labor is indispensable to production, but has not always production for its effect. There is much labor, and of a high order of usefulness, of which production is not the object. Labor has accordingly been distinguished into productive and unproductive. Productive is employed in creating permanent utilities, whether embodied in human beings or in any other animate or inanimate objects. Unproductive does not terminate in the creation of material wealth, and, however largely or successfully practised, does not render the community and the world at large richer in material products, but poorer by all that is consumed by the laborers while so employed.—1 *Mill's Pol. Eco.* 33.

The greatest improvements in the productive powers of labor, and the greater part of the skill, dexterity, and judgment with which it is anywhere directed or applied, seem to have been the effects of the division of labor. 'Labor,' observed Adam Smith (*Wealth of Nat.* b. 1, c. v.) 'is the real measure of the exchangeable value of all commodities.'

Labor, *hard,* this punishment is said to have been introduced by 5 Anne, c. 6, and is frequently added to the sentence of imprisonment.

Laborariis, an ancient writ against persons who refused to serve and do labor, and who had no means of living; or against such as, having served in the winter, refused to serve in the summer.—*Reg Orig.* 189.

Laborers, servants in husbandry or manufactures, not living *intra mœnia.* These are sometimes engaged by the day or week, but are understood to be hired for a year where no particular time is limited, and the wages

are so much *per annum*. And with respect to these, regulation is made by various Acts of Parliament, which vest in the justices of the peace, the power of compelling persons not having any visible livelihood to go out to service in husbandry, or in certain specific trades, for the promotion of honest industry; and also empower the justices to determine differences arising between such laborers and their masters. See 23 *Edw. III.*; 25 *Edw. III.* st. 1; 12 *Ric. II.* c. 3; 13 *Ric. II.* st. 1, c. 8; 7 *Hen. IV.* c. 17; 4 *Edw. IV.* c. 1; 23 *Hen. VI.* c. 13; 3 & 4 *Edw. VI.* c. 22; 5 *Eliz.* c. 4; 1 *Jac. I.* c. 6; 5 & 6 *W. & M.* c. 9; 1 *Anne*, st. 2, c. 18; 9 *Anne*, c. 30; 13 *Geo. II.* c. 8; 20 *Geo. II.* cc. 19 & 27; 27 *Geo. II.* c. 6; 31 *Geo. II.* c. 11; 6 *Geo. III.* c. 25; 17 *Geo. III.* c. 56; 39 & 40 *Geo. III.* c. 77; 53 *Geo. III.* c. 40; 58 *Geo. III.* c. 51; 1 *Geo. IV.* c. 93; 4 *Geo. IV.* c. 34; 5 *Geo. IV.* cc. 95 & 96; 10 *Geo. IV.* c. 52; 1 & 2 *Wm. IV.* c. 37; 6 & 7 *Vict.* c. 40; 8 & 9 *Vict.* cc. 77 & 128; 18 & 19 *Vict.* c. 108, s. 11; 19 & 20 *Vict.* cc. 38 & 46. See 2 *Reeves*, 388.

Laborers' Dwellings. For facilitating the erection of healthful and commodious dwellings for the laboring classes by public companies, the 18 & 19 Vict. c. 132, was passed. As to Scotland, see 23 & 24 *Vict.* c. 95.

Lacerta, a fathom.—*Old Records.*

La Chambre des Esteilles, the Star-Chamber.—*Law French.*

Laches [fr. *lâcher*, Fr., to loosen], slackness, negligence.

It is laid down generally as a maxim, that no laches or negligence shall be imputed to an infant; but this is chiefly true of the exemption that he enjoys from the ordinary bar by lapse of time. It cannot safely be understood in a much larger sense.—*Co Litt.* 380 *b.*

The law determines that, in the Sovereign, there can be no negligence or laches. *Nullum tempus occurrit regi* was formerly the standing maxim on all occasions, and no delay in resorting to his remedy was held to bar the king's right. From this doctrine it followed, not only that the civil claims of the Crown received no prejudice by the lapse of time, but that criminal prosecutions for felonies or misdemeanors (which are always brought in the Sovereign's name) might be commenced, at any distance of time from the commission of the offence. And all this is, in general, still law; but by statute it has been in modern times largely qualified; for by 9 Geo. III. c. 16, the Crown is now barred from its civil right in suits relating to landed property by the lapse of sixty years; and by 32 Geo. III. c. 58, is barred in informations for usurping corporate offices or franchises by the lapse of six years; and by 7 Wm. III. c. 3, an indictment for treason (except for an attempt to assassinate the sovereign) must be found within three years after the commission of the act of treason.

Lac, Lack, Laak, or **Lauk,** in Indian computation 100,000. The value of a lac of rupees is about 12,500*l.* sterling.

Lacta, a defect in the weight of money.—*Law Latin.*

Lacuna, a ditch or dyke; a furrow for a drain; a blank in a writing.—*Old Records.*

Lad, purgation, exculpation. There were three kinds:—(1) That wherein the accused cleared himself by his own oath, supported by the oaths of his consacramentals (compurgators), according to the number of which the *lad* was said to be either simple or threefold; (2) Ordeal, which see; (3) Corsned, which see.

Also, a service which consisted in supplying the lord with beasts of burthen; or, as defined by Roquefort: *Service qu'un vassal devoit à son seigneur, et qui consistoit à faire faire quelques voyages par ses bêtes de somme.—Anc. Inst. Eng.*

Lada [fr. *lathian*, Sax.], a lath or inferior court of justice; also a course of water; or a broad-way.

Lade, or **Lode,** the mouth of a river.

Laden in bulk, freighted with a cargo which is neither in casks, boxes, bales, nor cases, but lies loose in the hold, being defended from wet or moisture by a number of mats and a quantity of dunnage. Cargoes of corn, salt, &c., are usually so shipped.

Lading. See Bill of Lading.

Lady [fr. *hlæf dig*, Sax., loaf-day, which words have in time been contracted into the present appellation. As to the original application of this expression, it may be observed, that heretofore it was the fashion for families whom God had blessed with affluence to live constantly at their mansions in the country, and for the lady of the manor, once a week or oftener, to distribute to her poor neighbors, with her own hands, a certain quantity of bread. The practice which gave rise to this title is now as little known as the meaning of it; it may be, however, from that hospitable custom, that to this day ladies in this kingdom serve the meat at their own tables], a woman of rank. The title properly belongs to the wives of knights, and of all degrees above them, except the wives of bishops.—*Encyc. Lond.*

Lady-court, the court of a lady of the manor.

Lady-day, the 25th of March in every year, being the Annunciation of the Blessed Virgin, and one of the usual quarterly days for the payment of rent, &c.

Lady's Friend, an officer of the House of Commons, whose duty it was to take care that a husband, who sued for a divorce, made a suitable provision for his divorced wife, if the

House of Lords had not provided for it. A parliamentary divorce has been superseded by a dissolution of marriage by the Divorce Court.

Ladyship, the title of lady.

Lædorium, reproach.

Læsæ majestatis, Crimen, the crime of treason.—*Glanville*, l. 1, c. ii.

Læsio ultra dimidium vel enormis, the injury sustained by one of the parties to an onerous contract when he had been overreached by the other to the extent of more than one-half of the value of the subject matter of the contract, e. g. when a vendor had not received half the value of property sold, or the purchaser had paid more than double value.—*Colq. Rom. Civ. Law*, s. 2094.

Læsione fidei, *suits pro*, proceedings in the ecclesiastical courts for spiritual offences against conscience, for non-payment of debts, or breaches of civil contracts. By entertaining them the clergy attempted to turn the spiritual courts into tribunals for the administration of equity; but these suits were prohibited by the Constitutions of Clarendon.—10 *Hen. II.* c. 15.

Læt [fr. *litus*, *lidus*, *letus*], one of a class between servile and free.—*Palgrave*, i. 354.

Lætare Jerusalem, Easter-offerings, so called from these words in the hymn of the day. They are also denominated *quadragesimalia*.

Læthe, or **Lathe,** a division or district peculiar to the county of Kent.—*Spelm.*

Lafordswic [fr. *hlaford*, Sax., lord, and *swic*, betrayal], a betraying of one's lord or master.

Laga, law.—*Old term.*

Lagan [fr. *liggan*, Sax.], goods tied to a buoy and sunk in the sea; also a right which the chief lord of the fee had to take goods cast on shore by the violence of the sea.—*Bract.* l. 3, c. ii.

Lage-day, a day of open court; the day of the county-court.

Lage-man, a juror.

Lagen, a measure of six sextarii.—*Fleta*, l. 2, c. viii.

Lagh [fr. *laga*, Sax.], law. Obsolete.

Lagh-lite, a breach of law; a punishment for breaking the law.

Lagon. See LAGAN.

Lagotrophy [fr. λαγώς, Gk., a hare, and τρέφω, to nourish], a warren of hares.—*Encyc. Lond.*

Lagu, law; also used to express the territory or district in which a particular law was in force, as *Dena lagu*, *Mercna lagu*, &c., which may be looked upon as abbreviated forms of *the district under Danish law*, *Mercian law*, &c., without supposing, with Bishop Nicholson, that in these instances the word *lagu* does not stand for *law*, but for *regio provinciæ*.—See *Præfatio ad Wilkins & L. Anglo-Sax.* p. 16.

Lahman, or **Lagemannus,** an old word for a lawyer.—*Domesday I.* 189.

Lah-slit, a mulct for offences committed by the Danes.—*Anc. Inst. Eng.*

Laia, a roadway in a wood.—*Mon. Ang.* t. 1, p. 483.

Laic [fr. λαός, Gk., people], one who is not in holy orders, or not engaged in the ministry of religion.

Lair-wite, or **Lairesite,** a fine for adultery or fornication, anciently paid to the lords of some manors.

Laird, a lord of a manor in Scotland.

Laity [fr. λαός, Gk., people], the people as distinguished from the clergy.

The laity are divisible into three states:—

(1) *Civil*, which includes all the nation, except the clergy, the army, and the navy. It is subdivided into:—

(α) *Nobility*, as dukes, marquesses, earls, viscounts, and barons.

(β) *Commonalty*, as knights of the garter, knights-bannerct, baronets, knights of the bath, knights-bachelors, esquires, gentlemen, yeomen, tradesmen, artificers, and laborers.

(2) *Military*, consisting, by the standing constitutional law, of the militia of each county raised from among the people, officered by the principal landowners, and commanded by the lord-lieutenant. The more disciplined occasional troops of the kingdom are kept on foot only from year to year, by Parliament; and during that period, are governed by martial law, or arbitrary articles of war formed at the pleasure of the Crown.

(3) *Maritime*, consisting of the officers and mariners of the British Navy, who are governed by express and permanent laws, or the articles of the Navy, established by Act of Parliament. 1 *Bl. Com.* cc. xii. & xiii.

Lambards' Archaionomia, a work printed in 1568 containing the Anglo-Saxon laws, those of William the Conqueror and of Henry I.

Lambards' Eirenarcha, a work upon the office of a Justice of Peace, which, having gone through two editions, one in 1579, the other in 1581, was reprinted in English in 1599. The office of these magistrates had become burdensome, owing to the increase of laws, and the multitude of concerns they were to determine on. It was very necessary that some pains should be taken to smooth the way towards the attainment of the requisite knowledge by some well-digested treatise. The criminal law is treated, by this author, in a very different way from any who went before him. It has none of the concise starchness discovered in the compilations of Stannforde and Fitzherbert; but discourses more at large in the liberal style, which few writers upon the

law had condescended to imitate since the time of Bracton, Fleta, and Britton.—5 *Reeves*, 245.

Lambeth Degrees. See CANTERBURY, ARCHBISHOP OF.

Lame Duck, a person unable to meet his engagements.—*Stock Exchange cant term.*

Lammas [said to be derived from a custom by which the tenants of the Archbishop of York were obliged, at the time of mass, on the 1st of August, to bring a live lamb to the altar. In Scotland they are said to wean lambs on this day. It may be corrupted from *latter-math.* Others derive it from a Saxon word, signifying *loaf-mass*, because on that day our forefathers made an offering of bread composed of new wheat], the gule or 1st of August, and the second of the four cross quarter-days of the year. *Encyc. Lond.; Wheat. Com. Pr.*

Lancaster, a county of England erected into a palatine in the reign of Edward III. and granted by him to his son John for life, that he should have *jura regalia* and a king-like power to pardon treasons, outlawries, &c., and make justices of the peace and justices of assize within the county, and all processes and indictments to be in his name. It is now vested in the Crown. See COUNTY PALATINE. The northern and southern divisions of this county are two different venues.

Lanceti, vassals who were obliged to work for their lord one day in the week, from Michaelmas to autumn, either with fork, spade, or flail, at the lord's option.—*Spelm.*

Land [fr. *terra*, Lat., fr. *terrendo*, because it is ploughed], in its restrained sense, means soil, but in its legal acceptation it is a generic term, comprehending every species of ground or earth, as meadows, pastures, woods, moors, *waters*, marshes, furze, and heath; it includes also messuages (i. e. dwelling-houses with some adjacent land assigned to the use of them, usually called a curtilage), tofts (i. e. places where houses formerly stood), crofts (derived from the old English word *creaft*, meaning *handy-craft*, because such grounds are usually manured by the skilful hand of the owner; they are small enclosures for pasture, &c., adjoining to dwelling-houses), mills, castles, and other buildings, for with the conveyance of the *land*, the *structures* upon it pass also. And besides an indefinite extent *upwards*, it extends *downwards* to the globe's centre, hence the maxim:—*Cujus est solum ejus est usque ad cœlum et ad inferos*, or more curtly expressed, *Cujus est solum, ejus est altum.* But although the term 'land' includes everything on its surface, as well as under or over it, yet it must be understood with the exception of royal mines, i. e. mines of gold and silver, which belong by prerogative to the Queen, who has the privilege of entering upon the lands of a subject, and digging and carrying away such ores; in this country, however, no mines of gold or silver have yet been discovered, so that this branch of the revenue has been hitherto valueless. A slight intermixture of gold and silver will not constitute a royal mine, it being enacted by 1 W. & M. sess. 1, c. 30, s. 4, and 5 & 6 W. & M. c. 6, that no mine of copper, tin, iron, or lead, should be adjudged to be a royal mine, although gold and silver might be extracted from them, but that the king, or persons claiming royal mines under his authority, may have the ore (other than tin-ore in the counties of Devon and Cornwall), paying for the same a price stated in the act, which is called a right of pre-emption. This is not that prerogative of purveyance and pre-emption by which the Crown could buy up provisions and other necessaries through the intervention of purveyors, at an appraised valuation, in preference to all others and even without the owner's consent, as well as forcibly impressing carriages and horses to do the king's business, however inconvenient to the proprietor, upon paying him a settled price; for all these grievances were abolished by the 12 Car. II. c. 24. The pre-emption mentioned above is for the protection of the subject, preserving, at the same time, the just rights of the revenue. The rate of purchase is provided by the 55 Geo. III. c. 134. In customary or copyhold lands (the nature of which has been already explained) neither the lord of the manor, who possesses the freehold, nor his tenant who enjoys the surface, can open new mines without a special custom, or an express compact. In the case of *Bourne* v. *Taylor*, reported in 10th volume of *East*, p. 205, the reader will find discussed the leading cases on this subject.

Water, by a solecism, is, in legal language, held to be a species of land; and yet it is to be observed, that a grant of *a certain water* will not convey the soil, but only a right of fishing; but it is doubtful whether, by the grant of a *several piscary* the soil passes or not, or, in other words, whether a person can have a *several fishery* without being owner of the soil.—*Kinnersley* v. *Orpe*, *Dougl.* 56 *a.* And in order to recover possession of a pool or rivulet of water, the action must be brought for the land, e.g. ten acres of *land, covered with water*, and not in the name of *water* only.—*Challoner* v. *Thomas*, *Brownl.* 142.

In modern statutes of any importance, a glossary-clause is introduced explaining the extent of the meaning of many technical words and phrases made use of in them, which words and phrases have very often, in their ordinary signification, a more confined, and, in many cases, a different meaning. Every considerable statute thus carries its own peculiar dictionary, the effect of which is evidently to produce doubt, confusion and perplexity. It really be-

comes a very serious question whether there should not be passed a general glossarial statute, exactly defining such technical terms, by which their meaning in every subsequent Act of Parliament, should be ascertained and interpreted. However, we find in the 3 & 4 Wm. IV. c. 74, commonly called the Fines and Recoveries Abolition Act, the word 'land' thus defined:—It is to extend, so far as its enactments are concerned, or where the nature of the provision, or the context of the act, shall not exclude such construction, to 'manors, advowsons, rectories, messuages, lands, tenements, tithes, rents, and hereditaments, of any tenure (*except* copy of court-roll), and whether corporeal or incorporeal, and any undivided share thereof, *but when* accompanied by some expression including or denoting the tenure by copy of court-roll, it shall extend to manors, messuages, lands, tenements, and hereditaments of such tenure, and any undivided share thereof.' There are also definitions of the word 'land' to be found in the Dower Act (3 & 4 Wm. IV. c. 105), and in the Inheritance Act (3 & 4 Wm. IV. c. 106), where it is provided to extend to money to be laid out in the purchase of land. This last phrase requires explanation:—It is a great principle of equity that money agreed or directed to be laid out in the purchase of land is considered, in the Court of Chancery, as land, because there is recognised the maxim, 'Whatever is agreed to be done, is considered as actually done.' The true meaning of which maxim is this:—That equity will treat the subject, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as *they ought to have been done*, and not as the parties *might have executed them*. Such money, then, has all the incidents of real estate—it is no longer considered as personal estate—it descends to the *heir-at-law*, and is not distributable among the *next of kin*; but if the purposes for which it was directed fail, this will destroy the 'transubstantiated real quality,' and it will result back into personalty. The Fines and Recoveries Act thus fixes the extent of the expression 'money subject to be invested in the purchase of lands;' it is to include 'money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks, and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands; and the lands to be purchased with such money or produce shall extend to lands held by copy of court-roll, and also to lands of any tenure in Ireland, or elsewhere out of England, where such lands, or any of them, are within the scope or meaning of the trust or power directing or authorising the purchase.'

Landa, an open field; a field cleared from wood.—*Old Records.*

Land-agende, Land-hlaford, or **Land-rica,** a proprietor of land; lord of the soil.—*Anc. Inst. Eng.*

Land-boc [Sax.] (*libellus de terrâ*, Lat.), the deed or charter by which lands were held.

Land-ceap, a fine paid in some places on the alienation of lands.

Landea, a ditch, in marshy lands, to carry water into the sea.—*Du Cange.*

Landefricus, a landlord; a lord of the soil.

Landegandman, an inferior tenant of a manor.

Land-gabel, a tax or rent issuing out of land. Spelman says, it was originally a penny for every house. This *land-gabel*, or *land-gavel*, in the register of Domesday, was a quit-rent for the site of a house, or the land whereon it stood; the same with what we now call ground-rent.

Landgrave [fr. *land*, Germ., earth, and *graff*, or *grave*, judge or count], a name formerly given to those who executed justice on behalf of the German emperors, with regard to the internal policy of the country. It was applied, by way of eminence, to those sovereign princes of the empire who possess by inheritance certain estates called *landgravates*, of which they received the investiture from the emperor.—*Encyc. Lond.*

Landholder, one who holds lands.

Landimers [*agrimensores*, Lat.], measures of land.

Landirecta, rights which charged the land, whoever possessed it. See TRINODA NECESSITAS.

Land-jobber, one who buys and sells land for other men.

Landlord, he of whom lands or tenements are holden; who has a right to distrain for rent in arrear, &c.—*Co. Litt.* 57.

Landlord and Tenant, one of the common relationships of social life, out of which arise sundry rights, duties, liabilities, and remedies. Consult *Woodf.*, *Coote*, or *Smith, on Landlord and Tenant.*

Land-man [fr. *terricola*, Lat.], a terretenant.

Land-mark, an object fixing the boundary of an estate or property.

Land-reeve, a person whose business it is to overlook certain parts of a farm or estate; to attend, not only to the woods and hedge-timber, but also to the state of the fences, gates, buildings, private roads, drift-ways, and water-courses; and likewise to the stocking of commons, and encroachments of every kind, as well as to prevent or detect waste and spoil in general, whether by the tenants or others; and to report the same to the manager or land-steward.—*Encyc. Lond.*

Land-revenues of the Crown. The greatest part of these have been from time to time

granted by successive sovereigns to lords of manors and others, who now, for the most part, hold the prerogative rights of estrays, waifs, and felons' goods, as their own absolute property. These grants having greatly impoverished the patrimony of the Crown, an act was passed in the reign of Queen Anne, whereby it was declared that all future grants or leases by the Crown for any longer term than thirty-one years, or three lives, should be void. 1 *Anne*, st. 1, c. 7, amended and continued by the 34 *Geo. III.* c. 75. At the commencement of the reign of Geo. III. the hereditary revenues of the Crown, arising from renewals, fines, unclaimed estrays, escheats from manors held *in capite*, and such like, being very uncertain, with all other hereditary revenues, were given up by His Majesty to the aggregate funds; and in lieu thereof His Majesty received 800,000*l.* a-year for the maintenance of his civil list.—1 *Geo. III.* c. 1. By subsequent acts, 34 Geo. III. c. 75, 48 Geo. III. c. 73, 52 Geo. III. c. 161, these hereditary revenues were put under the management of commissioners styled 'Commissioners of His Majesty's Woods, Forests, and Land-Revenues.' This arrangement was confirmed by 1 Geo. IV. c. 1. See 14 & 15 *Vict.* c. 42.

Lands Clauses Consolidation Act, 1845, 8 Vict. c. 18, amended by 23 & 24 Vict. c. 106.

Lands Clauses Consolidation Act, Scotland, 8 & 9 Vict. c. 19, amended by 23 & 24 Vict. c. 106.

Land Drainage Act, 1861, 24 & 25 Vict. c. 133.

Land Drainage Act (Ireland), 1863, 26 & 27 Vict. c. 26.

Land Drainage Supplemental Act, 26 & 27 Vict. c. 63.

Land-steward, a person who overlooks or has the management of a farm or estate.

Landsturm [Germ., fr. *land* and *sturm*, storm or alarm], a military force in Prussia, consisting of all males above the age of thirty-nine capable of bearing arms, liable to be called out only in case of invasion. See LANDWEHR.

Land-tax, a tax laid upon land and houses, which has superseded all the former methods of taxing either property or persons in respect of their property, whether by tenths or fifteenths, subsidies on land, hydages, scutages, or talliages. Although generally a charge upon a landlord, yet it is a tax neither on landlord nor tenant, but on the beneficial proprietor, as distinguished from the mere tenant at rack-rent; and if a tenant have to any extent a beneficial interest, he becomes liable to the tax, *pro tanto*, and can only charge the residue on his landlord. Houses and buildings appropriated to public purposes are not liable to land-tax. As to its origin and inequality, see 3 *Hall. Cons. Hist.* p. 135.

The sum fixed by 38 Geo. III. c. 5, to be paid for the land-tax in Great Britain, is 2,037,627*l.* 9*s.* 0¼*d.* which is now made perpetual. To this time the land-tax acts had been annual; but by 38 Geo. III. c. 60, after reciting that it may materially conduce to strengthen public credit, that the duty now payable for one year on land should be made perpetual, subject to redemption by purchase on conditions therein set forth; it was enacted, that the several sums charged by virtue of an act, 38 Geo. III. c. 5, granting an aid for the service of the year 1798, on the respective counties, &c. in respect of the manors, messuages, &c. to be raised and paid within one year from the 25th March, 1798, shall, after the expiration of the said term (allowing for certain specified exceptions), continue and be raised and paid after the 25th March in every year, for ever. And all powers and provisions contained in the said act shall be in full force and be duly executed, subject to the regulations and conditions of redemption or purchase mentioned in it. Provided always that none of the provisions in this act contained shall extend to any sums charged by the said act upon personal estates and perquisites of office; which sums shall, after the 25th of March, 1799, be ascertained, raised, collected, and paid, according to the directions of an act to be passed for that purpose (39 Geo. III. c. 3). It is also enacted, that the land-tax not purchased by proprietors shall be sold to other persons, in whose hands it is converted into a fee-farm rent, with all the remedies for rent reserved upon a lease, subject to redemption by the person in possession or having any beneficial or future interest in the lands; provided that, in such cases, all such lands whereon the land-tax so purchased shall be charged, shall, until such redemption take place, be subject to a new assessment of the land-tax from year to year by an equal rate, according to the value thereof in common with each other, without any power in such purchaser to exonerate the same from such land tax, or to fix the rate of land-tax to be charged thereon. Also, where the whole tax in any place shall not be sold, such lands as are not exonerated by this act from such land-tax, shall continue subject to a new assessment yearly and from year to year, by an equal rate, according to the value thereof, not exceeding in any year 4*s.* in the pound on such annual value. It is also enacted that, in case persons entering into any contract for the redemption or purchase of any land-tax shall neglect to complete their contract, such contract shall be void, and the tax be revived, and again assessed and collected; and the persons thus making default shall forfeit not exceeding one-sixteenth part of the consideration. Where land-tax, remaining un-

sold, shall exceed 4*s.* in the pound on the annual value, the same shall be subject to an abatement in the manner directed by the said act. By the 42 Geo. III. c. 116, the provisions of the several acts for the redemption of the land-tax are repealed from the 24th of June, 1802, from which date all contracts are to be entered into, and made according to that act, which was rendered more effectual by 43 Geo. III. c. 51.

The sum assessed upon every tenant for land-tax is to be paid by the tenant, who may make a proportional deduction out of all rents to which he is liable; and disputes concerning the adjustment of this proportion are to be settled by the commissioners; but all agreements on the subject are valid between the parties, and it has now become the general practice, both in leases and grants of rent, to stipulate that no such deduction shall be made.

The following statutes for the better regulation of land-tax, and its redemption, have been passed:—39 Geo. III. cc. 6, 108; 39 & 40 Geo. III. c. 30; 41 Geo. III. cc. 28, 72; 42 Geo. III. c. 116; 45 Geo. III. c. 77; 46 Geo. III. c. 133; 49 Geo. III. c. 67; 50 Geo. III. c. 58; 51 Geo. III. c. 99; 52 Geo. III. c. 80; 54 Geo. III. c. 173; 57 Geo. III. c. 100; 1 & 2 Geo. IV. c. 123; 5 Geo. IV. c. 14; 4 Geo. IV. c. 68; 7 & 8 Geo. IV. c. 75; 9 Geo. IV. c. 38; 2 & 3 Wm. IV. c. 127; 3 & 4 Wm. IV. c. 95; 3 & 4 Wm. IV. c. 121; 4 & 5 Wm. IV. c. 11; 4 & 5 Wm. IV. c. 60; 5 & 6 Wm. IV. c. 20; 6 & 7 Wm. IV. c. 80; 7 Wm. IV. & 1 Vict. c. 17; 1 & 2 Vict. cc. 57, 58; 5 & 6 Vict. c. 37; 7 & 8 Vict. c. 79; 11 & 12 Vict. c. 62; 16 & 17 Vict. cc. 74, 111, 117; 17 & 18 Vict. c. 85; 19 & 20 Vict. c. 80; 20 & 21 Vict. c. 46; and 26 & 27 Vict. c. 101.—*St. Leonard's V. and P.* p. 268.

Land-tenant, he that possesses land let, or has it in his manual occupation; in fact, a terre-tenant.

Land-waiter, an officer of the custom-house, whose duty is, upon landing any merchandise, to examine, taste, weigh, or measure it, and to take an account thereof. In some ports they also execute the office of a coast-waiter. They are likewise occasionally styled *searchers*, and are to attend and join with the patent searcher in the execution of all cockets for the shipping of goods to be exported to foreign parts; and, in cases where drawbacks on bounties are to be paid to the merchant on the exportation of any goods, they, as well as the patent-searchers, are to certify the shipping thereof on the debentures.—*Encyc. Lond.*

Landwehr [Germ.], a military force in Prussia somewhat like our militia.

Langeman, a lord of a manor.—1 *Inst.* 5.

Langeolum [fr. *lana*, Lat.], an under garment made of wool, formerly worn by the monks, which reached to their knees.—*Mon. Angl.* p. 419.

Languidus, sick, in ill health; a return made by a sheriff to a writ, when the removal of a person in his custody would endanger his life.

Lanis de crescentia Walliæ traducendis absque custuma, &c. an ancient writ that lay to the customer of a port to permit one to pass wool without paying custom, he having paid it before in Wales.—*Reg. Orig.* 279.

Lano niger, a sort of base coin, formerly current in this kingdom.—*Mem. in Scac.*

Lapidation, the act of stoning a person to death.

Lapis marmorius, a marble stone about twelve feet long and three feet broad, placed at the upper end of Westminster Hall, where was likewise a marble chair erected on the middle thereof, in which our sovereigns anciently sat at their coronation dinner, and at other times the Lord Chancellor; over this marble table are now erected the Courts of Chancery and Queen's Bench.

Lapis pacis. See OSCULUM PACIS.

Lapse [fr. *lapsus*, Lat.], error, failing in duty. A benefice is said to lapse when the patron does not exercise his right of presentation within six calendar months (182 days) after the avoidance of the benefice, exclusive of the day of the avoidance. Lapse, then, is a devolution of the rights of patronage from a neglectful patron to the bishop as ordinary, to the metropolitan as superior, and to the sovereign as patron-paramount of all the benefices in the realm.

The patron must generally take notice of the avoidance of a benefice at his peril. Should the avoidance of a benefice, however, arise in consequence of an act of the ordinary or incumbent (such as deprivation, resignation, or refusal of the presentee on account of simony, illiterature, &c.), the six calendar months are to be reckoned from the time of notice given personally to the patron by the bishop, and not from the time of avoidance.

Lapse is an intransferable trust for the patron, and he that is to present by lapse is, as it were, *negotiorum gestor*, or a kind of attorney made by law to do that for the patron which it is supposed he would do himself if there were not some hindrance; and, therefore, the collation by lapse is in right of the patron and for his turn.

The law of lapse, which is a spiritual forfeiture, has three gradations, *ab inferiore ad superiorem.*

(1) After the neglect of the patron, the bishop of the diocese in whose precincts the vacant benefice is situated, may collate, unless the sovereign is patron.

(2) After the expiration of the second half-

year, or at the end of one year from the time the patron is bound to take notice of the avoidance, the presentation irretrievably lapses or devolves from the ordinary to his immediate superior, or from the bishop of the diocese to the archbishop of the province, whose duty it is to see that the parishioners have divine service.

If the ordinary be patron of the benefice, it lapses to the metropolitan at the end of six calendar months, as the bishop cannot have a second six calendar months to satisfy his own neglect as patron.

If the bishop do not collate his own clerk immediately to the living, and the patron presents, though after the six calendar months are elapsed, yet his presentation is good, and the bishop is bound to institute the patron's clerk (2 *Inst.* 273). If the bishop suffer the presentation to lapse to the metropolitan, the patron also has the same advantage if he present before the archbishop has filled up the benefice.

(3) If the ordinary is remiss in providing an incumbent, and the metropolitan in like manner does not present within six calendar months, the Crown may present when it pleases. But if, during the delay of the Crown, the patron himself present and his clerk is instituted, the sovereign, indeed, by presenting another, may turn out the patron's clerk, or, after induction, may remove him by bringing a *quare impedit*; but if he do not, and the patron's clerk die incumbent, or is canonically deprived, the Crown loses the right, which was only to the next or first presentation.—7 *Rep.* 28. But see *Doctor and Student*, p. 219.

No lapse will take place in the following instances:—(1) Where the bishop refuses or neglects to examine and admit the patron's clerk, without good reason assigned or notice given; he is then styled a disturber by the law, and shall not have any title to present by lapse, for no man can take advantage of his own wrong. (2) If the right of presentation be litigious and contested, and an action be brought to try the title, making the bishop a defendant, no lapse can occur until the question of right be decided.

Lapsed Devise. Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail, or be void by reason of the devisee's death in the testator's lifetime, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.—1 *Vict.* c. 26, s. 25.

And a devise of the testator's land, or of his land in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, or leasehold estate of the testator, or his customary, copyhold, or leasehold estates, or any of them to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will (s. 26).

The following devises will not lapse:—

Where any person to whom any real estate shall be devised for an estate-tail, or an estate in *quasi* entail, shall die in the lifetime of the testator, leaving issue, who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the testator's death, unless a contrary intention shall appear by the will (s. 32).

And where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any of such issue of such person shall be living at the time of the testator's death, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the testator's death, unless a contrary intention shall appear by the will (s. 33). See *Jarman on Wills.*

Lapsed Legacy. If a legatee die before a testator, the legacy is generally a lost or lapsed legacy, and sinks into the *residuum*, but see the 33rd section of 1 Vict. c. 26. If a contingent legacy be left to a stranger, as when he attain, or if he attain, the age of twenty-one, and he die before that time, it is a lapsed legacy, even though he survive the testator.—2 *Wms. Ex.* 1084.

Larceny [fr. *larcin*, Fr.; *latrocinium*, Lat.], contracted for latrociny, the unlawful taking and carrying away of things personal, with intent to deprive the rightful owner of the same. The statute law of England and Ireland relating to larceny and other similar offences is consolidated by 24 & 25 Vict. c. 96. Larceny is either simple or accompanied with circumstances of aggravation.

(1) Simple larceny, at common law, or plain theft. To constitute the offence there must be an unlawful taking, which implies that the goods must pass from the possession of the true owner, and without his consent; where there is, then, no change of possession, or a change of it by consent, or a change from the possession of a person without title to that of the true owner, there cannot be a larceny. If a

delivery be obtained from the owner by a person having *animus furandi* at the time, and he afterwards unlawfully appropriates the goods in pursuance of that intent, it is larceny. By 24 & 25 Vict. c. 96, s. 74, whoever shall steal a chattel or fixture let to be used by him in or with any house or lodging, is liable to the penalties of simple larceny; and by s. 3, any bailee of any chattel, money, or valuable security who shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, shall be guilty of larceny, although he shall not break bulk or otherwise determine the bailment. There must not be only a taking, but a carrying away (*cepit et asportavit*). A bare removal from the place in which he found the goods, though the thief does not quite make off with them, is a sufficient asportation or carrying away. It must be of personal goods, and not of the realty or things adhering thereto, or savouring thereof. The taking and carrying away must be with intent to deprive the owner of the thing taken, or, as it is expressed, *animo furandi*. Larceny may be committed of a thing the owner of which is unknown, provided it appear that there is some person other than the taker in whom the ownership resides. Larceny was formerly divided into *petit*, where the value of the property was not more than twelve pence, and *grand*, where it exceeded that amount; but now this distinction has been abolished (24 & 25 Vict. c. 96, s. 2). The punishment for simple larceny is in ordinary cases penal servitude for the term of three years, or imprisonment for any term not exceeding two years, with or without hard labor, and with or without solitary confinement, and if the offender be a male under the age of sixteen years, with or without whipping (s. 4). If the offender has been previously convicted of felony, either on indictment or on summary conviction, the term of penal servitude may be increased to ten years (s. 7). If he has been previously convicted of an indictable misdemeanor under the act, or has been twice summarily convicted of certain specified offences, the term of penal servitude may be increased to seven years (ss. 8 & 9). Simple larceny is in certain cases punishable with greater severity, for whosoever shall steal any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep, or lamb, is liable to be kept in penal servitude for any term not exceeding fourteen or less than three years, or to be imprisoned not more than two years, with or without hard labor, and with or without solitary confinement (s. 10); and whosoever shall steal to the value of 10*s.* any woollen, linen, or cotton yarn, or any goods of silk, woollen, linen, cotton, alpaca, or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed during any stage, process, or progress of manufacture, in any building, field, or other place, is liable to the same punishment (s. 62).

(2) Larceny in a dwelling-house. Whosoever shall steal in any dwelling-house any chattel, money, or valuable security to the value of 5*l.* or more, shall be liable to be kept in penal servitude for any term not exceeding fourteen and not less than three years, or to be imprisoned for not more than two years, with or without hard labor, and with or without solitary confinement (24 & 25 Vict. c. 96, s. 60); and whosoever shall steal any chattel, money, or valuable security in a dwelling-house, and shall, by any menace or threat, put any one being therein in bodily fear, shall be liable to the same punishment (s. 61).

(3) Larceny from the person. It is either,

(α) Privately stealing, as picking a person's pocket without his knowledge.

(β) Open and violent larceny from the person, or robbery, called by the civilians rapine, which is the unlawful and forcible taking of goods or money from the person of another by violence, or putting him in fear.

The offence of robbing any person, or stealing any chattel, money, or valuable security from the person of another, is punishable by penal servitude for any term not exceeding fourteen and not less than three years, or imprisonment for not more than two years, with or without hard labor, and with or without solitary confinement (s. 40). On trial for robbery the jury may convict of an assault with intent to rob (s. 41), which is punishable by penal servitude for three years or imprisonment for not more than two years, &c. (s. 42). Whosoever shall, being armed with any offensive weapon or instrument, rob or assault with intent to rob any person, or shall, together with one or more other person or persons, rob or assault with intent to rob any person, or shall rob any person, and at the time, or immediately before or after such robbery, shall wound, beat, strike, or use any other personal violence to any person, shall be liable to penal servitude for life or any term not less than three years, or to be imprisoned for not more than two years, &c. (s. 43). (In addition to which punishment the offender, if a male, may, by 26 & 27 Vict. c. 44, be sentenced to be once, twice, or thrice privately whipped, subject to certain provisoes in the act contained.) Whosoever shall by any means attempt to choke, suffocate, or strangle any person, or by any means calculated to choke, suffocate, or strangle, attempt to render any person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or to assist any other

person in committing any indictable offence, is punishable in the same manner (24 & 25 Vict. c. 100, s. 21). By 26 & 27 Vict. c. 44, in connection with the offence of stealing from the person, the statute also provides for the punishment of the following offences:—Sending, &c. letters, &c. demanding money, &c. with menaces (s. 44); demanding money, &c. by menaces or force with intent to steal (s. 45); sending, &c. letters accusing or threatening to accuse of any crime punishable by death or penal servitude for not less than seven years, or of assault with intent to commit, or with an attempt to commit, a rape, or of any infamous crime, with intent to extort money, &c. (s. 46); accusing or threatening to accuse of any of the last-mentioned crimes with intent to extort, &c. (s. 47); inducing, by violence or threats, to execute deeds, &c. with intent to defraud (s. 48), as to which see THREATENING LETTERS.

(5) Larceny by clerks, servants, or agents. By 24 & 25 Vict. c. 96, s. 7, whosoever, being a clerk or servant, or being employed for the purpose, or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to, or in the possession or power of his master, shall be guilty of felony, and being convicted thereof, shall be liable to penal servitude for a term not exceeding fourteen years, nor less than three, or to be imprisoned (with or without hard labor or solitary confinement) for a term not exceeding two years, and if a male under the age of sixteen years, with or without whipping, once, twice, or thrice, if the court think fit, in addition to the imprisonment. Embezzlement is distinguished from this offence as being committed in respect of property which is not, at the time, in the actual or legal possession of the owner. See EMBEZZLEMENT.

(6) Larceny in relation to the post-office. By 7 Wm. IV. and 1 Vict. c. 36, s. 25, every person employed under the post-office, who shall, contrary to his duty, open or procure or suffer to be opened, or wilfully detain, or delay, or procure or suffer to be detained or delayed, a post-letter, shall be guilty of a misdemeanor, and punished by fine or imprisonment, or both, as to the court shall seem meet. By s. 26 (as modified as to the punishment by ss. 41 & 42; 9 & 10 Vict. c. 24; 20 & 21 Vict. c. 3), every person so employed who shall steal or for any purpose embezzle, secrete, or destroy a post-letter, shall be guilty of felony, punishable with penal servitude for not more than seven years, or less than three years, or imprisonment not exceeding two years; and if the letter contain any chattel, money, or valuable security, then with penal servitude for life, or any term not less than three years, or with imprisonment (with or without hard labor) for any term not exceeding four years. By s. 32, every person so employed, who shall steal, or for any purpose embezzle, secrete, or destroy, or wilfully detain or delay in the course of conveyance or delivery by post, any printed votes or proceedings in parliament, or any printed newspaper, or other printed paper sent by the post without covers, or in covers open at the sides, shall be guilty of a misdemeanor punishable by fine or imprisonment, or both. The above provisions apply only to offences committed by persons in the employ of the post-office; but by ss. 27 & 28 (as altered as to the punishment by the statute referred to), every person who shall steal out of a post-letter any chattel, or money, or valuable security, or shall steal a post-letter-bag, or a post-letter from a post-letter-bag, or from a post-office or officer of the post, or a mail, or shall stop a mail with intent to rob or search the same, shall be guilty of felony, and may be sentenced to penal servitude for life, or any term not less than three years, or imprisonment (with or without hard labor) not exceeding four years. By s. 29 (as altered &c.), every person who shall steal or unlawfully take away a post-letter-bag sent by a post-office-packet, or a letter out of any such bag, or shall unlawfully open any such bag, shall be guilty of felony, and may be sentenced to penal servitude for any term not exceeding fourteen years, or less than three years, or imprisonment (with or without hard labor) for three years. By s. 30 (as altered, &c.), every receiver of a post-letter, post-letter-bag, chattel, money, or valuable security, feloniously stolen under the post-office acts, knowing the same to have been so stolen, shall be guilty of felony, and may be sentenced to penal servitude for life, or not less than three years, or imprisonment (with or without hard labor and solitary confinement) for not more than four years. By s. 31, every person who shall fraudulently retain or wilfully secrete, or keep, or detain, or being required by an officer of the post-office, shall neglect or refuse to deliver up a post-letter which ought to have been delivered to any other person, or a post-letter-bag, or post-letter which shall have been sent, shall be guilty of a misdemeanor, punishable with fine and imprisonment. By 11 & 12 Vict. c. 88, s. 4, every officer of the post-office who shall grant or issue any money-order with a fraudulent intent, shall be guilty of felony; he is liable, at the discretion of the court, to penal servitude for not more than seven and not less than three years, or imprisonment for any term not exceeding three years.

(7) Larceny from ships, docks, wharves, or quays. Any person stealing any goods or merchandise in any vessel, barge, or boat in any haven, or in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to, or communicating with any such haven, port, river, or canal; or stealing

any goods or merchandise from any dock, wharf, or quay adjacent to any such haven, port, river, canal, or creek, is liable to penal servitude for not more than fourteen years or less than three years, or may be imprisoned for not more than two years, &c. (24 & 25 Vict. c. 96, s. 63). See as to larceny generally, 4 *Step. Com.* 196–222; *Roscoe's Crim. Evid.*. 560, *et seq.*

Lardarius regis, the king's larderer or clerk of the kitchen.—*Cowel.*

Larding money [fr. *lardarium*, Lat.] In the manor of Bradford, in Wilts, the tenants pay to their lord a small yearly rent by this name, which is said to be for liberty to feed their hogs with the masts of the lord's woods, the fat of a hog being called lard; or it may be a commutation for some customary service of carrying salt or meat to the lord's larder.—*Mon. Ang.* t. 1, p. 321.

Larons, thieves.

Lascar, a native Indian sailor.

Lashite, or **Lashlite,** a kind of forfeiture during the government of the Danes in England. *Encyc. Lond.*

Last [fr. *hlæstan*, Sax.; *lest*, Fr.], a burden; a weight or measure of fish, corn, wool, leather, pitch, &c.

Lastage, or **Lestage** [fr. *lastagium*, Lat.], a custom exacted in some fairs and markets to carry things bought whither one will, by the interpretation of Rastal. But it is more accurately taken for the ballast or lading of a ship. Also, custom paid for wares sold by the last, as herrings, pitch, &c.

Lastatinus, an assassin or murderer.

Last-court, a court held by the twenty-four jurats in the marshes of Kent, and summoned by the bailiffs, whereby orders are made to lay and levy taxes, impose penalties, &c. for the preservation of the said marshes.—*Encyc. Lond.*

Last-heir, he to whom lands come by escheat for want of lawful heirs; that is, in some cases the lord of whom the lands were held, but in others the sovereign.—*Bract.* l. 7, c. xvii.

Last resort, a court from which there is no appeal.

Lata culpa dolo æquiparatur (*gross negligence is tantamount to fraud*).

Latching, an underground survey.

Latent [fr. *latens*, Lat.], hidden; concealed; secret.

Latent ambiguity. See AMBIGUITY.

Latera, sidesmen, companions, assistants.

Laterare, to lie sideways, in opposition to lying endways, used in descriptions of lands.

Lath, or **Lathe,** a part of a county. In some counties there is an intermediate division between the shire and the hundred, as lathes in Kent, and rapes in Sussex; each of them containing three or four hundreds. In Ireland the arrangement was different. 'If all that tything failed, then all that lath was charged for that tything; and if the lath failed, then all that hundred was demanded for them; and if the hundred, then the shire, who would not rest until they found that undutiful fellow who was not amenable to law.'—*Spencer's Ireland.*

Lathreeve, Ledgreeve, or **Trithin-greve,** an officer under the Saxon government, who had authority over a lathe.

Latimer [fr. *latinier*, Fr. q. d. *latiner*], an interpreter, according to Coke (2 *Inst.* 575). It is suggested that it should be *latiner*, because he who understood Latin might be a good interpreter. Camden makes it signify a Frenchman or interpreter.—*Britan.* f. 598.

Latin, the language of the ancient Romans. There are three sorts of law Latin:—(1) Good Latin, allowed by grammarians and lawyers. (2) False or incongruous Latin, which in times past would abate original writs; though it would not make void any judicial writ, declaration, or plea, &c. (3) Words of art, known only to the sages of the law, and not to grammarians; called lawyers' Latin.—1 *Lit. Abr.* 146. But proceedings are now written in English.—4 *Geo. II.* c. 26.

Latinarius, an interpreter of Latin.

Latitat (*he lies hid*), a writ, whereby all personal actions were originally summoned to answer in the Queen's Bench; so called because it is supposed by the writ that the defendant lurks and lies hid, and cannot be found in the county of Middlesex (in which the court is holden) to be taken by bill, but has gone into some other county to the sheriff of which this writ was directed to apprehend him there.—*F. N. B.* 78; *Termes de la Ley*; 2 *Bl. Com.* 286. Abolished by the 2 *Wm. IV.* c. 39.

Lator [fr. *latus*, Lat.], a bearer, a messenger. *Cole.*

Latro, he who has the sole jurisdiction *de latrone* in a particular place (mentioned in *Leg. W. I.*) See INFANGENTHEF.

Latrocination [fr. *latro*, Lat., a robber], the act of robbing; a depredation.

Latrocinium, the prerogative of adjudging and executing thieves; also, larceny, theft.—*Old Charter.*

Latrociny, larceny.

Latter-math, a second mowing, the aftermath.

Laudare, to advise or persuade; to arbitrate.

Laudatio, testimony delivered in court concerning an accused person's good behaviour and integrity of life. It resembled the practice which prevails in our trials, of calling persons to speak to a prisoner's character. The least number of the *laudatores* among the Romans was ten.

Laudator, an arbitrator.

Laudaturque domus, longos qui prospicit agros.—9 *Co.* 58 *b.*—(The house is praised which looks over long fields.)

Laudibus (de) Legum Angliæ. Sir John Fortescue, who had been some time chief justice of the king's bench in the reign of Henry VI., is said to have written this work, while in exile with the Prince of Wales, and others of the Lancastrian party, in France. Sir John was then made chancellor; and in that character he supposes himself holding a conversation with the young prince on the nature and excellence of the laws of England compared with the civil law and the laws of other countries. He considers at length the mode of trying matters of fact by jury, and shows how it excels that by witnesses. He informs us, that some of our princes wished to introduce the civil law merely for the sake of governing in the arbitrary way allowed by that law, which declares, *quod principi placuit legis habet vigorem.* He then proceeds to examine some other points of difference between the civil and common law, always deciding in favor of our own. He concludes his book with a short account of the societies where the law of England was studied, the degrees and ranks in the profession, with the manner in which they were conferred; to these are subjoined some short remarks on the conduct and delay of suits.

This treatise seems to be intended as an introduction to some more particular work on the English law; the object of it being rather to take off the discredit which some civilians had endeavoured to throw on it, and to promote a more general acquaintance with it among persons who did not study it professionally. It is written in a tolerable Latin, and displays sentiments upon liberty and limited government, which one would hardly expect to find in a writer of this period. There runs through the whole an air of probity and piety, that conciliates the attention of the reader, in spite of the many scraps quoted from the Fathers, which are interspersed profusely, and often very much out of season. This is the principal work of our author, to whom we are indebted for some others of less note.—4 *Reeves*, p. 113.

Laudimium, the fiftieth part of the value of an estate, paid by a new proprietor to the tenant for investiture or leave of possession.—*Civil Law.*

Laudum, an arbitrament or award.

Laughe, frank-pledge.—2 *Reeves*, 17.

Launcegay, a kind of offensive weapon, now disused, and prohibited by 7 Ric. II. c. 13.

Laund, or **Lawnd,** an open field without wood.

Laureate, or **Laureat** [fr. *laurus*, Lat.], an officer of the household of the sovereign, whose business formerly consisted only in composing an ode annually, on the sovereign's birthday, and on the new year; sometimes also, though rarely, on occasion of any remarkable victory.—*Warton's Hist. of English Poetry.* The annual birthday ode has been discontinued for many years; the laureate, as such, chiefly confines himself to the celebration of important events in which the family of the sovereign is personally interested.

Laureation, a term in the Scottish universities, used for the act of taking up the degree of a master of arts, to which the students are admitted after four years' study. Dr. Johnson states that upon these occasions a flowery crown is used, in imitation of laurel among the ancients.

Laurels, pieces of gold, coined in 1619, with the king's head laureated; hence the name.

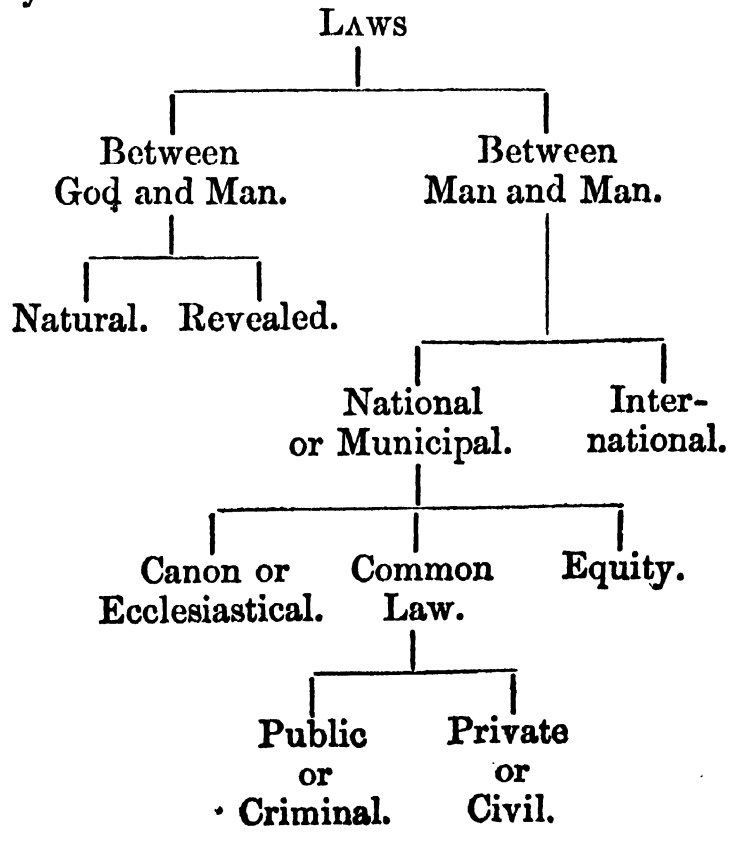
Lavatorium, a laundry or place to wash in; a place in the porch or entrance of cathedral churches, where the priest and other officiating ministers were obliged to wash their hands before they proceeded to Divine service.

Lavina. See LABINA.

Law [fr. *lage*, *lagea*, or *lah*, Sax.; *lawe*, Belg.; *loi*, Fr.; *legge*, Ital.; *leg*, Span. and Port.; *laugh*, Erse; *lex*, fr. *ligo*, Lat., to bind], a rule of action to which men are obliged to make their moral conduct conformable. It is an authoritatively inflexible rule, enforcing justice—a compulsive director of human duty. Law is a moral science, for its end is the accomplishment of justice, and justice is simply practical virtue.

The design and object of laws is to ascertain what is just, honorable, and expedient; and, when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin of law, which, for various reasons, all are under an obligation to obey; but, especially, because all law is the invention and gift of Heaven, the sentiment of wise men, the correction of every offence, and the general compact of the state; to live in conformity with which is the duty of every individual in society. *Demos. Orat.* 1 *contr. Aristogit.*

The several departments or branches of law may be thus shown:—



Consult *Hooker's Eccle. Polity; Tooke's Div. of Pur.* vol. ii. c. 2; 1 *Bl. Com.* s. 2, '*On the Nature of Laws in General*;' and *Cic. de Legibus.*

Law arbitrary, opposed to *immutable*, a law not founded in the nature of things, but imposed by the mere will of the legislature.

Law of arms [fr. *lex armorum*, Lat.], the ordinances regulating proclamations of war, leagues and treaties, &c.

Lawday, a court-leet, or view of frank-pledge.

Lawing of dogs, expeditation.

Lawless court [*quia dicta sine lege*, Lat.], a tribunal held on King's Hill, at Rochford, in Essex, on Wednesday morning next after Michaelmas-day, yearly, at cock-crowing, at which court they whisper, and have no candle, nor any pen or ink, but a coal; and he that owes suit or service there, and appears not, forfeits double his rent.—*Cam. Brit.*

Lawless man [*exlex*, Lat.], an outlaw.

Law of marque, where they that are driven to it take the shipping and goods of that people of whom they have received wrong, and cannot get ordinary justice, when they can take them within their own bounds and precincts.—27 *Edw. III.* st. 2, c. 17. See LETTERS OF MARQUE.

Law martial, the military law.

Law merchant [*lex mercatoria*, Lat.], that part of the law of England which governs mercantile transactions. It is founded upon the general custom of merchants of all nations, which, though different from the general rules of the common law, has been gradually engrafted into it and made to form part of it. See 1 *Bl. Com.* 67, 273; 1 *Step. Com.* 56; and *Introduction to Smith's Merc. Law.* See COMMERCE.

Law-monger, a pettifogger, or low dealer in law.

Law of the staple, the law merchant.

Law spiritual [*lex spiritualis*, Lat.], the ecclesiastical law, or law christian.—*Co. Litt.* 344.

Law-suit, an action or litigation.

Laws, expiring, Continuance Act, 1863, 26 & 27 Vict. c. 95.

Laws of Oleron, a maritime code said to have been drawn up by Richard I. at the Isle of Oleron, whence their name. They are constantly quoted in proceedings before the Admiralty Courts, as are also the Rhodian Laws.—*Co. Litt.* 11. See OLERON.

Lawyer, a person learned in the law, as an advocate, counsel, or attorney.

Lay [fr. λαός, Gk.], not clerical; regarding or belonging to the people, as distinct from the clergy.

Lay-Corporations, bodies-politic; they are either (1) Civil, erected for temporal purposes, or, (2) Eleemosynary, for charitable purposes.

Lay-days, running or consecutive days; a term used as to the time of loading and unloading ships, &c. See DEMURRAGE.

Lay-impropriators, lay persons to whose use ecclesiastical benefices have been annexed. At the dissolution of the monasteries by Stat. 27 Hen. VIII. c. 28, and 31 Hen. VIII. c. 13, the appropriations of the several parsonages which belonged to them were given to the king. The same had been done in former reigns when the alien priories were dissolved and given to the Crown. From these two roots have sprung all the lay impropriations or secular parsonages, they having been afterwards granted out from time to time by the Crown to laymen. See 1 *Bl. Com.* 386; 3 *Step. Com.* 22. See APPROPRIATION.

Lay-investiture of bishops, putting a bishop into possession of the temporalities belonging to his bishopric.

Lay-fee, lands held in fee of a lay-lord, as distinguished from those lands which belong to the church.

Laye [fr. *ley*, old Fr.], law.

Layman, one of the people, and not one of the clergy.

Lay-people, jurymen. Obsolete.

Laystall [Sax.], a place for dung or soil.

Lazaret, or **Lazaretto,** places where quarantine is to be performed by persons coming from infected countries; to escape from them is felony.—6 *Geo. IV.* c. 78, s. 21.

Lazzi, persons of a servile condition.—*Saxon term.*

Lea, or **Ley,** a pasture.—*Co. Litt.* 4 *b.*

Leading, that which is to be followed, as a leading counsel, leading case, or

Leading question, a question which suggests to a witness the answer which he is to make—a suggestive interrogation.

It is not easy to lay down any precise general rule as to what are leading questions: on the one hand it is clear that the mind of the witness must be brought into contact with the subject of inquiry; on the other, that he ought not to be prompted to give a particular answer, or to be asked any question, to which *yes* or *no* would be conclusive. But how far it may be necessary to particularise, in framing the question, must depend upon the circumstances of each particular case.

Objections can be taken to leading questions, but ought not to be wantonly or captiously made, since it is, to some extent, always necessary to lead the mind of the witness to the subject of inquiry. The court has discretion to regulate the mode in which a witness-in-chief shall be examined, in order best to answer the purposes of justice. There is no fixed rule which binds counsel to a particular mode of examining him; if a witness by his conduct show himself decidedly adverse, it is

in the discretion of the court to allow cross-examination. The situation of the witness, and the inducements under which he may labor to give an unfair account, are material considerations in this respect.

Leading questions are allowed on cross-examination.—1 *Stark Evid.* 169.

League [fr. *ligue*, Fr.; *ligo*, Lat.], a treaty of alliance between different states or parties. It may be offensive or defensive, or both. It is *offensive* when the contracting parties agree to unite in attacking a common enemy; *defensive* when the parties agree to act in concert in defending each other against an enemy. Also a measure equal to three English miles, or 300 geometrical paces.

Leakage, an allowance made to merchants for the leaking of casks or the waste of liquors.

Leal, *loyal*, belonging to law.

Leap-year. See BISSEXTILE.

Lease [either from *locatio*, Lat., the letting of property, or *laisser*, Fr., to let, or *leapum* or *leasum*, Sax., to enter lawfully], sometimes also called *Demise* (*demissio*), is a conveyance of property for life, or years, or at will, by one who has a greater interest in the property. The person conveying is called the lessor, who is possessed of the reversion (as to a reversion being essential to a lease, see *Platt on Leases*, 9, *et seq.*); he to whom the property is conveyed, the lessee. The consideration is usually the payment of a rent or other annual recompense, expressly covenanted in the deed to be paid by the lessee, but this is not indispensable. The proper operative words are 'demise, lease, and to farm let' (*ad firmam tradidi*), which strictly means to let upon payment of a certain rent in farm, i.e. in agricultural produce, the word 'farm,' or 'feorme,' being Saxon, meaning provisions. Farm now generally means land hired to cultivate, upon payment of a money-rent; but any other expressions evincing the intent of the parties will suffice.

If a lease be for life, livery of seisin must be given to the lessee, unless he take by way of use. And under a lease for years, the lessee must enter into the leased premises (unless, of course, he take by way of use) for before entry, he has only an *interesse termini* by virtue of his common law assurance, a right which can be assigned, but not surrendered, and which will never prevent the merger of two estates by its interposition, nor itself occasion a merger. The interest in a term *in futuro* is also called *interesse termini*.

All leases required by the Statute of Frauds, or any other law, to be in writing, must be by deed.—8 & 9 *Vict.* c. 106, s. 3. But all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two-third parts, at the least, of the full improved value of the thing demised, may be by parol or verbal contract.—29 *Car. II.* c. 3, s. 2. See *Platt on Leases*, or *Woodf. Land. and Tenant.* By 22 & 23 Vict. c. 35, s. 7, the person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relating to the building covenanted to be insured, effected by the lessee or mortgagor in respect of his interest under the lease or in the property, or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant. By 23 & 24 Vict. c. 38, s. 6, the waiver of the benefit of a covenant or condition in a lease by a lessor, his heirs, &c., is not to be deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver shall specially relate, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect shall appear.

Lease and release, a mode of conveyance which derived its effect from the Statute of Uses, and operated by transmutation of possession, compounded of a lease for a year, at common law, or a bargain and sale for a year under the Statute of Uses, and a common law release. This compound conveyance originated thus: The Statute of Enrolments (27 Hen. VIII. c. 16) seemed to be confined to cases where an estate of inheritance or freehold, or the use thereof, was to be made or take effect by reason only of a bargain and sale; it was therefore concluded that if a bargain and sale were first made for an estate less than freehold, as for one year, and then the inheritance or freehold were superadded by a separate deed of release, the transaction could not be affected by the statute; and that such release to the bargainee would be valid, without his entry upon the lands, as a consequence of the strong words in the Statute of Uses, which converts *all vested uses* at once into legal estates. The convenience and general applicability of the lease and release recommended and established it as a common assurance. For it was preferable to a bargain and sale, and to a covenant to stand seised to uses, because it affected a transfer of the legal estate under the rules of the common law, and therefore the declaration of uses upon it needed not to be confined to persons from whom a consideration moved. It was also preferable to a bargain and sale, and still more to a feoffment, because no additional ceremony was necessary to its operation; but the transfer of property in land might have been effected by it in any part of the world, as instantaneously as the payment of

money. And where the subject of conveyance was land in reversion or remainder, it was also preferable to a mere deed of grant, as it made it unnecessary for the grantee, if his title were called in question, to prove that there was a peculiar estate in existence at the time of the grant.

It was immaterial to the operation of the release whether the previous estate for a year were created by a bargain and sale under the Statute of Uses, or by a lease at common law, perfected by the entry of the lessee. In either case, the conveyance operated by transmutation of possession. It transferred a seisin to the releasee; and if the use had been declared to him, he took an estate, not by virtue of the Statute of Uses, but in the course of possession at the common law. But if the use had been declared to any other person or persons, then it was executed by the statute. When the release was founded upon a bargain and sale for a year, it was necessary that the person making the conveyance should be capable of standing seised to a use. But if the releasor were incapable of standing seised to a use, then the estate for a year should have been created by a lease at common law, accompanied by an actual entry on the part of the lessee.

If a lease and release had been made to D. and his heirs, to the use of K. and his heirs, to the use of, or in trust for M. and his heirs, D. would have taken the seisin, K. the use or legal estate, and M. the equitable or beneficial interest; K. would therefore have been a trustee for M. the *cestui que* trust, or beneficiary.

By 4 & 5 Vict. c. 21, every instrument purporting to be a release of a freehold estate, and expressed to be made in pursuance of that act, shall be as effectual for all purposes as if a bargain and sale, or lease for a year had been executed, although such bargain and sale or lease for a year shall not in fact have been executed. The stamp upon such bargain and sale or lease for a year was abolished by 13 & 14 Vict. c. 97, s. 6. The conveyance is, therefore now called a statutory release.—See 4 *Reeves*, 355; *Wat. Conv.* 343; 2 *Sand. Uses and Trusts*, 73; *Burton's Comp.* 50; 1 *Hayes's Conv.* 77.

Leasehold, a dependent tenure derived either from a freehold or a copyhold estate.

Leases, Ecclesiastical. As to leases by ecclesiastical corporations, see 3 *Step. Com.* 96–108; *Woodf. Land. and Ten.* 18–34.

Leases and sales of settled estates. The 19 & 20 Vict. c. 120, which came in force on Nov. 1st, 1856 (s. 46), for the purpose of facilitating leases and sales of settled estates, empowers the Court of Chancery to authorize leases of any settled estate, provided such lease take effect in possession at or within one year next after its making; and do not exceed for an agricultural or occupation lease twenty-one years, for a mining lease or a lease of an easement forty years, or for a building lease ninety-nine years, unless the court otherwise direct; and do reserve the best rent without fine; and provided that where the lease is of any earth, coals, stone, or mineral, there be set aside and invested, when and so long as the person for the time being entitled to such rent is entitled to work it for his own benefit one-fourth, and otherwise three-fourth parts thereof, the lease making provision ensuring such application; and provided such lease do not authorize the felling of any trees, except for clearing; and be by deed and counterpart, and contain a condition for re-entry on non-payment of the rent for a period not less than twenty-eight days after it becomes due.

The court may authorize leases either by approving of particular leases, or by ordering that powers of leasing should be vested in trustees (ss. 2–10).

The court may authorize a sale of the whole or any part of any settled estates, except inalienable entails under 34 & 35 Hen. VIII. c. 20, or where the reversion is vested in the Crown (s. 42), or of any timber (not being ornamental timber) growing on any such settled estates. When any land is sold for building purposes, the consideration may be a rent issuing out of such land. Rights of winning mineral or coal may be reserved, and portions of the land dedicated to roads and drains (ss. 11–15).

Application to the court to exercise these powers is to be by petition, with the concurrence of the persons beneficially and legally interested. The prayer of the petition may be granted, saving the rights of any non-consenting parties. Notice of the application must be given to all the trustees, and advertised in such newspapers as a judge at chambers may direct. No application is to be granted where a similar application has been rejected on its merits by parliament, or reported against by the judges. For preventing fraud or mistake, notice of the exercise of these powers is to be placed on the settlement or otherwise, as the court may think proper. Where any order relates to land in a register-district, a duplicate or memorial of it is to be registered in the local register (ss. 16–22; *Consol. Ord.* 1860, xli., part 3).

The court may appoint trustees to receive monies arising from sales or to be set aside out of the rents reserved on mining leases, and apply them to the redemption of land-tax, the discharge of incumbrances, the purchase of hereditaments, or the payment to any person becoming absolutely entitled. Until monies can be so applied, they are to be invested in Exchequer Bills or Three per Cent. Consols, and

the dividends paid to the parties interested. The powers under this act are not to be exercised if an express declaration or manifest intention that they shall not be exercised is contained in the settlement, or may reasonably be inferred therefrom or from extrinsic circumstances or evidence, and the court is not to authorize any act which the settlor could not have authorized. Costs may be a charge on the settled estate (ss. 23–29).

The act also empowers a tenant for life, or for years determinable with his life, or for any greater estate, either in his own right or that of his wife, of any settled estates, unless the settlement expressly declare otherwise, and also a tenant by the courtesy or in dower or in right of a wife seised in fee of any unsettled estates, without applying to the court, to lease any part thereof, except the principal mansion-house and its demesnes, for twenty-one years, to take effect in possession, by deed and counterpart, reserving the best rent (without fine), which shall be incident to the immediate reversion, *sans waste*, with usual and proper covenants, and a condition of re-entry on non-payment for a period not less than twenty-eight days of the rent reserved and on non-observance of any of the covenants or conditions.

Such lease will be valid against the lessor and expectants under the same settlement, and as to unsettled estates, against claimants through the wife or husband of the lessor.

The 32 Hen. VIII. c. 28, is repealed, except as to leases made in right of churches (ss. 33–35).

The provisions of this act shall extend to all settlements, whether made before or after it shall come in force, except those as to demises to be made without application to the court, which shall extend only to settlements made after this act shall come in force (s. 44).

The 21 & 22 Vict. c. 77, amends and extends 'The Settled Estates Act, 1856,' 19 & 20 Vict. c. 120, and enacts that 'for the purposes of the definitions of "settlement" and "settled estates" contained in s. 1 of the said act, all estates or interests in remainder or reversion not disposed of by the settlement and reverting to a settlor, or descending to the heir of a testator, shall be deemed to be estates coming to such settlor or heir under or by virtue of the settlement' (s. 1). 'The term "building lease" in the said act shall be deemed to include a repairing lease, so that no repairing lease shall be made for a term exceeding sixty years' (s. 2). 'All the powers to authorize and to grant leases contained in the said act and this act shall be deemed to include powers to the lords of settled manors to give licenses to their copyhold or customary tenants to grant leases of lands held by them of such manors to the same extent and for the same purposes as leases may be authorized or granted of freehold hereditaments under the said act and this act' (s. 3). The power given to the court by s. 2 of the said act 'to extend the term thereby prescribed for building leases, where it shall be satisfied that it is the usual custom of the district, and beneficial to the inheritance, to grant building leases for longer terms, shall be extended and may be exercised with respect to all the other leases in the same section mentioned, except agricultural leases, provided the court shall be satisfied that it is the usual custom of the district, and beneficial to the inheritance to grant such leases for longer terms' (s. 4). 'The power conferred by s. 5 of the said act to surrender leases granted under the provisions of the said act shall be deemed to extend to all leases whether granted in pursuance of the said act, or otherwise' (s. 4). 'Whenever a married woman is resident out of the jurisdiction of the Court of Chancery of England, or the Court of Chancery of Ireland respectively, as the case may be, her examination, under s. 38 of the said act, may be made by any person appointed for that purpose by the court, whether he is or is not a solicitor of the court; and the appointment of any such person, not being a solicitor, shall afford conclusive evidence that the married woman was at the time of such examination resident out of the jurisdiction of the court' (s. 6). (See *Turner* v. *Turner*, 2 *De Gex. and J.* 534.) Power to rescind general rules and orders is extended (s. 7), and the demises under s. 38 of the said act, in the case of unsettled estates, are to be valid, against the wife of any husband making such demise of estates to which he is entitled in right of such wife (s. 8). See *Woodf. Land. and Ten.* 35.

Leasing, or **Lesing,** gleaning.

Leasing-making, slanderous and untrue speeches to the disdain, reproach, and contempt of the sovereign, his council and proceedings, or to the dishonor, hurt, or prejudice of the sovereign or his ancestors.—*Scotch Acts*, 1584, 1585, 1703, c. 4.

Leccator, a debauched person.

Lecherwite, Lairwite, or **Legerwite** [fr. *legun*, Sax., to lie with; *wite*, penalty], a fine for adultery or fornication, anciently paid to the lords of certain manors.—4 *Inst.* 206. See LAIR-WITE.

Le congres, a species of proof on charges of impotency in France, *coitus coram testibus.* Abolished A. D. 1677.

Lecturer [fr. *prælector*, Lat.], an instructor, a reader of lectures; also a clergyman who assists rectors, &c. in preaching, &c. See 7 & 8 *Vict.* c. 59, and 18 & 19 *Vict.* c. 127, s. 12.

Lectureship, the office of a lecturer.

Ledger-book, a book in the prerogative courts, which is considered as their rolls.

Ledgreve, or **Ledgrave.** See LATHREEVE.

Ledo, the rising water; increase of the sea.

Leet, *Court*, the view of frank-pledge, which is a court of record, held once in the year, and not oftener, within a particular hundred, township or manor, before the steward of the leet; being the king's court, granted by charter to the lords of certain hundreds and manors. Its original intent was to view the frank-pledges, that is, the freemen within the liberty; besides this, the preservation of the peace, and the chastisement of divers minute offences against the public good, are the objects both of the court-leet and the sheriff's tourn, which have exactly the same jurisdiction, one being only a larger species of the other, extending over more territory, but not over more causes. All freeholders within the precinct are obliged to attend them, and all persons commorant, i. e. lying therein. But persons under twelve and above sixty years old, peers, clergymen, women, and the Crown's tenants in ancient demesne, are excused from attendance; all others being bound to attend upon the jury, if required, and make their due presentments. It was also anciently the custom to summon all the king's subjects, as they respectively grew to the years of discretion and strength, to come to the court-leet, and there take the oath of allegiance. The other general business of the leet and tourn was to present by jury all crimes whatsoever that happened within their jurisdiction. Both the tourn and leet have been for a long time in a declining way, and latterly have fallen into almost total desuetude, and their business has gradually devolved upon the quarter sessions and justices out of sessions.—4 *Step. Com.* 401. See COURT LEET.

Leets, or **Lects,** meetings appointed for the nomination or election of ecclesiastical officers. *Scotch term.*

Lega, or **Lacta,** the allay of money.—*Spelm.*

Legable [fr. *legabilis*, Lat.], capable of being bequeathed.

Legacy [fr. *legatum*, Lat.], a legacy is a gift of personalty by will, and, arising as it does from the mere bounty of the testator, it is postponed to the claims of creditors. There are four kinds of legacies:—(1) *General*, when it does not amount to a bequest of any particular thing or money, as distinguished from all others of the same kind; as if a testator give A. a diamond ring, not referring to any particular diamond ring as distinguished from others. (2) *Specific*, when it is a bequest of a particular thing, or sum of money, or debt, as distinguished from all others of the same kind, as if a testator give B. 'my diamond ring.' (3) *Demonstrative*, when it is in its nature a general legacy, but there is a particular fund pointed out to satisfy it, as if a testator bequeath 1,000*l.* out of his Reduced Bank Three per Cents. And (4) *Cumulative*, or *substitutional*, when a testator by the same testamentary instrument, or by different testamentary instruments, has bequeathed more than one legacy to the same person, and the question arises whether he intended the second legacy to be cumulative, i. e. in addition to the first, or substitutional for it. If by different instruments he has given legacies of equal, greater, or lesser sums to the same person, the court considering that he who has given more than once must, *primâ facie*, be intended to mean more than one gift, awards to the legatee all the legacies. If, however, they are not given *simpliciter*, but the motive of the gift is expressed, and in such instruments the *same motive* is expressed, and also the *same sum* is given, the court considers these two coincidences as raising a presumption that the testator did not by a subsequent instrument mean another gift, but a repetition only of the former gift. And where the same specific thing or *corpus* is given, either in the same instrument or in different instruments, it can only be a repetition. Where the legacies in the *same* instrument, whether a will or a codicil, are given *simpliciter* and are of equal amount, one only will be good, the repetition being considered to arise from forgetfulness; nor will small differences in the way in which the gifts are conferred afford internal evidence that the testator intended that they should be cumulative. Where, however, the legacies given by the same instrument are of unequal amount, they will be considered cumulative. When two legacies of equal amount are given by one instrument, parol evidence is admissible to show that the testator intended the legatee to take both, for that is in support of the apparent intention of the will; but where the court does not raise the presumption—for instance where legacies of equal amount are given *simpliciter* by different instruments — parol evidence is not admissible to show that the testator intended the legatee to take one only, for that is in opposition to the will. See Mr. Justice Aston's judgment in *Hooley* v. *Hatton*, 1 *Bro. C. C.* 390 n. (1772), and 2 *Tudor's Lead. Cases*, 246–261. See CUMULATIVE LEGACIES.

In deciding upon the validity and interpretation of purely personal legacies, courts of equity implicitly follow the rules of the civil law as recognised and acted on in the spiritual courts. But in legacies chargeable on land, they for the most part follow the rules of the common law as to the validity and interpretation thereof. A specific legacy assented to by

an executor may be recovered by an action at law. A legacy not exceeding 50*l.* can be recovered in the county court.—9 & 10 *Vict.* c. 95, s. 65, and 13 & 14 *Vict.* c. 61, s. 1.

If a legacy be bequeathed to a person to be paid or payable at the age of twenty-one, or any other age or certain determinate term, and the legatee die before that age, this is such an interest vested in the legatee immediately on the testator's death, that it goes to his executor or administrator, it being *debitum in præsenti*, though *solvendum in futuro*, the time being annexed to the payment and not to the gift itself; but if a legacy be bequeathed to a person at twenty-one, or if, or when, or in case, or provided he shall attain twenty-one, or at any future definite period, and he die before that age or period, the legacy lapses, these expressions being construed as annexing the time to the substance of the legacy, so that the right of the legatee is made to depend upon his being alive at the time fixed for its payment. The giving of interest on a legacy to a legatee, let the interest be ever so small, or a provision for his maintenance until the time for payment of the legacy, provided it be equal in amount to the interest, vests the legacy; but not, it seems, where the legacy is payable out of land, much less where anything appears on the will to show the legacy was not intended to vest.

While it is a general rule that if a legatee die in the lifetime of the testator the legacy is lapsed and falls into the residue, except he have been a child of the testator who has left children, it is also a general rule that a trust-legacy does not lapse by the death of the trustee in the testator's lifetime, but that it survives for the benefit of the *cestui que* trust.

A general legacy will not, if the personal assets are sufficient, be liable to ademption, except in the case of a legacy to a child where a subsequent portion is given by the parent or person *in loco parentis*. (See SATISFACTION.) In the case, however, of a specific legacy, if the thing specifically bequeathed be not in existence at the time of the testator's death, the legacy is adeemed. A specific legacy of goods at a particular place will generally be adeemed by their removal, unless such removal be temporary or accidental, fraudulent, or on account of fire. If a debt, specifically bequeathed, be received by the testator, it will be adeemed, since there would not then exist anything upon which the will could operate. A partial receipt of a debt will, however, only be an ademption, *pro tanto*.

Where a partner in trade makes a provision out of his share for his family, and afterwards renews the partnership, by which, perhaps, his interest is varied, yet it is not a revocation, since it would occasion great confusion. See 1 *Vict.* c. 26, ss. 23, 24; *Roper on Legacies*; and 2 *Wm. Exs.* 947.

In the Roman law a legacy was an injunction given to the heir to pay or give over a part of the inheritance to a third person. For its four kinds see *Sand. Just.* 318, *et seq.*, or *Cum. Civ. Law*, 160.

Legacy duty, a tax paid to government on legacies. The Legacy Duty Acts are 36 Geo. III. c. 52; 45 Geo. III. c. 28; 55 Geo. III. c. 184; 13 & 14 Vict. c. 97; and 16 & 17 Vict. c. 51.

Legal, lawful; according to law.

Legal assets. See ASSETS.

Legal debts, those that are recoverable in a court of common law, as debt on a bill of exchange, a bond, or a simple contract. See DEBTS.

Legal estates. See ESTATES.

Legal reversion, the period of seven years within which a proprietor is at liberty to redeem land adjudged from him for debt.—*Scotch Law.*

Legal tender. See TENDER.

Legalis homo, a person who stands *rectus in curiâ*, neither outlawed, excommunicated, nor infamous.

Legalis moneta Angliæ, lawful money of England.—1 *Inst.* 207.

Legality, or **Legalness,** lawfulness.

Legalize, to authorize; to make lawful.

Legally, lawfully; according to law.

Legamannus. See LAGEMAN.

Legantine, or **Legatine constitutions,** ecclesiastical laws enacted in national synods, held under the Cardinals Otho and Othobon, legates from Pope Gregory IX. and Pope Clement IV. in the reign of King Henry III. about the years 1220 and 1268.

Legatary [fr. *legatum*, Lat.], a legatee.

Legate [fr. *legare*, *deligare*, Lat., to send], a deputy; an ambassador, the Pope's nuncio.

There are three kinds:—(1) Legates *à latere*, being such as the Pope commissions to take his place in councils, and so called, because he never gives this office to any but his favourites and confidants, who are always *à latere* at his side. (2) Legates *de latere*, or *legati dati*, those entrusted with apostolical legation, and acting under a special commission. (3) Legates *by office*, or *legati nati*, those that were legates by virtue of their offices, as in England the Archbishop of Canterbury, in former times.—*Encyc. Lond.*

Legatee, one who has a legacy left to him.

Legation, an embassy or mission.

Legator, one who makes a will, and leaves legacies.

Legatos violare contra jus gentium est.—(It is contrary to the law of nations to injure ambassadors.)

Legatum, a legacy given to the church, or an accustomed mortuary.—*Cowel.*

Legatum morte testatoris tantum confirmatur,

sicut donatio inter vivos traditione solâ.—Dyer, 143.—(A legacy is confirmed by the death of a testator, in the same manner as a gift from a living person is by delivery alone.)

Legatus regis vice fungitur à quo destinatur, et honorandus est sicut ille cujus vicem gerit.— 12 *Co.* 17.—(An ambassador fills the place of the king by whom he is sent, and is to be honored as he is whose place he fills.)

Legem facere, to make law upon oath.

Legem ferre, or **rogare** [Lat.], to propose a law.—*Rom.*

Legem habere, to be capable of giving evidence upon oath.

Legem sciscere [Lat.], to give consent and authority to a proposed law, applied to the consent of the people.—*Rom.*

*Legem terræ amittentes perpetuam infamiæ notam inde meritò incurrunt.—*3 *Inst.* 221.—(Those who lose the law of the land, justly incur the perpetual note of infamy.)

Leger, Leiger, or **Ledger** [fr. *legger*, Dut., to lie], anything that lies in a place; as, a leger-book, a book that lies in a counting-house; leger-ambassador, a resident ambassador.

Legergild. See LAIRWITE.

Leges Angliæ sunt tripartitæ: jus commune, consuetudines, ac decreta comitiorum.—(The laws of England are threefold: Common Law, customs, and decrees of Parliament.)

*Leges figendi et refigendi consuetudo periculosissima est,—*4 *Co. ad Lect.*—(The custom of making and remaking laws is most dangerous.)

*Leges naturæ perfectissimæ et immutabiles: humani vero juris conditio semper in infinitum decurrit, et nihil est in eo quod perpetuo stare possit. Leges humanæ nascuntur, vivunt, et moriuntur.—*7 *Co.* 25.—(The laws of nature are most firm and immutable: but the condition of human law is always advancing, and there is nothing in it which can continue perpetually. Human laws are born, live, and die.)

Leges non verbis sed rebus sunt impositæ.— 10 *Co.* 101.—(Laws are imposed on things, not words.)

Leges posteriores priores contrarias abrogant. 2 *Rol. Rep.* 410.—(Later laws abrogate prior contrary laws.)

*Legibus sumptis desinentibus, lege naturæ utendum est.—*2 *Rol. Rep,* 98.—(Laws imposed by the state failing, we must act by the law of nature.)

Legiosus, litigious, subjected to a course of law.—*Cowel.*

Legis constructio non facit injuriam.—Co. Litt. 183.—(The construction of law does no injury.)

Legis interpretatio legis vim obtinet.—Elles. Post. 55.—(The interpretation of law obtains the force of law.)

Legislation, the act of giving laws.

Legislator, a law-giver; a proposer of laws.

*Legislatorum est viva vox, rebus et non verbis, legem imponere.—*10 *Co.* 101.—(The voice of legislators is a living voice, to impose law on things, and not on words.)

*Legis minister non tenetur, in executione officii sui, fugere aut retrocedere.—*6 *Co.* 68.—(The minister of the law is not bound, in the execution of his office, either to avoid or flinch.)

Legislatress, a female law-giver.

Legislature, the power that makes laws.

Legitim, the children's claim out of the free moveable estate of their father who has died intestate, amounting to one-half or one-third (according to circumstances) of his moveables, after payment of his debts.—*Scotch Law.*

Legitimacy, lawful birth.

Legitimacy Declaration Act, 1858, 21 & 22 Vict. c. 93, which provides that 'any natural-born subject of the Queen, or any person whose right to be deemed a natural-born subject depends wholly or in part on his legitimacy or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate situate in England, may apply by petition to the Court for Divorce and Matrimonial Causes, praying the court for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid; and any such subject or person, being so domiciled or claiming as aforesaid, may in like manner apply to such court for a decree declaring that his marriage was or is a valid marriage, and such court shall have jurisdiction to hear and determine such application and to make such decree declaratory of the legitimacy or illegitimacy of such person, or of the validity or invalidity of such marriage, as to the court may seem just; and such decree, except as hereinafter mentioned, shall be binding to all intents and purposes on her Majesty and on all persons whomsoever' (s. 1).

'Any person being so domiciled or claiming as aforesaid may apply by petition to the said court for a decree declaratory of his right to be deemed a natural-born subject of her Majesty, and the said court shall have jurisdiction to hear and determine such application, and to make such decree thereon as to the court may seem just, and where such application as last aforesaid is made by the person making such application as herein mentioned for a decree declaring his legitimacy or the validity of a marriage, both applications may be included in the same petition; and every decree made by the said court shall, except as hereinafter mentioned, be valid and binding to all intents and purposes upon her Majesty and all persons whomsoever' (s. 2).

The petition must be supported by an affidavit verifying it, and that there is not any collusion. The provisions of 20 & 21 Vict. c. 85, are to apply to the proceedings under this Act. Costs may be awarded and their payment enforced. The attorney-general is to be furnished with a copy of the petition and affidavit one month before filing, and he is to be made a respondent. The court may require persons to be cited, and may pronounce a decree saving the rights of persons not cited. A person domiciled in Scotland may insist on an action of declarator that he is a natural-born subject. No proceedings are to affect final judgments already pronounced (ss. 3–11).

The right of appeal to the Lords given by 20 & 21 Vict. c. 85, s. 56, extends to all sentences and final judgments on petitions under this Act. 22 & 23 *Vict.* c. 61, s. 7.

Legitimating, the act of making legal or of giving the right of lawful birth. As to legitimation in the Civil Law, see *Sand. Just.* 121.

Legitime, that portion of a parent's estate of which he cannot disinherit his children without a legal cause.—*Civ. Law.*

Legitimè imperanti parere necesse est.—*Jenk. Cent.* 120.—(It is necessary to obey one legitimately commanding.)

Legitimi hæredes, *agnate* because the inheritance was given to them by a law of the twelve tables.—*Sand. Just.* 379.

Legruita, a fine for criminal conversation with a woman.—*Old Records.*

Leidgrave [fr. *leid*, Lat.], an officer under the Saxon government who had jurisdiction over a lath.—*Encyc. Lond.*

Leigh, a meadow.

Leipa, one who escapes or departs from service.

Le ley de Dieu et le ley de terre sont tout un, et l'un et l'autre preferre et savour le common et publique bien del terre.—*Keil.* 191.—(The law of God, and the law of the land, are all one; and both preserve and favor the common and public good of the land.)

Le ley est le plus haut enheritance que le roy ad, car per le ley il mesme et touts ses sujets sont rules, et si le ley ne fuit, nul roy ne nul enheritance serra.—1 *J. H.* 6, 63.—(The law is the highest inheritance that the king possesses: for, by the law, both he and all his subjects are ruled; and if there were no law, there would be neither king nor inheritance.)

Le ley voit plus tost suffer un mischiefe que un inconvenience.—*Litt.* s. 231.—(The law would rather suffer a mischief than an inconvenience.)

Lender, he from whom anything is borrowed.

Lent [fr. *lenten*, Sax., spring], the quadragesimal feast; a time of abstinence; the time from Ash-Wednesday to Easter-day.

Leod, the people, nation, country, &c.—*Gibbon's Camd.*

Leodium, liege.

Leoht-gesceot [*symbolum luminis*, Lat.], a tax for supplying the church with lights.—*Anc. Inst. Eng.*

Lep and Lace, a custom in the manor of Writtle, in Essex, that every cart which goes over Greenbury within that manor (except it be the cart of a nobleman) shall pay 4*d.* to the lord.—*Blount.*

Leporium, a place where hares are kept.—*Mon. Ang.* t. 2, 1035.

Leproso amovendo, an ancient writ that lay to remove a leper or lazar, who thrust himself into the company of his neighbours in any parish, either in the church, or at other public meetings, to their annoyance.—*Reg. Orig.* 237.

Le Roy (or *la Reine*) *le veut.*—(The King (or the Queen) wills it). The form of the royal assent to public bills in Parliament.

Le Roy (or *la Reine*) *s'avisera.*—(The King (or the Queen) will advise upon it). The form of words used to express a denial of the royal assent.

The last occasion on which this power was exercised was in 1707, when Queen Anne refused her assent to a bill for settling the militia in Scotland.

Le Roy (or *la Reine*) *remercie ses loyal sujets, accepte leur bénévolence, et ainsi le veut.*—(The King (or Queen) thanks his (or her) loyal subjects, accepts their benevolence, and therefore wills it to be so.) The form of the royal assent to a bill of supply.

Leschewes, trees fallen by chance or windfalls.

Lesia, a leash of greyhounds, now restrained to the number of three, but formerly more.—*Spelm.*

Lesion. See LÆSIO.

Lespegend, an inferior office in forests to take care of the vert and venison therein, &c.

Les Prélats, Seigneurs, et Commons, en ce present Parliament assemblées, au nom de touts vous autres subjects remercient très humblement votre Majesté, et prient à Dieu vous donner en santé bone vie et longue.—(The prelates, lords, and commons, in this parliament assembled, in the name of all your other subjects, most humbly thank your Majesty, and pray to God to grant you in health a good and long life.) The form of words used by the clerk in an act of grace, which has the royal assent before it is agreed to by the two houses.

Lessa, a legacy.

Lessee, the person to whom a lease is made or given.

Lessor, one who lets anything to another by lease.

Lessor of the Plaintiff See EJECTMENT.

Lestagefry, lestage-free, or exempt from the duty of paying ballast-money.

Lestagium, lastage; a duty laid on the cargo of a ship.

Leswes, or **Lesues,** pastures.—*Domesday*; *Co. Litt.* 4 *b.*

Let, hindrance, obstruction.

Leta, a court-leet.

Letherwite. See LAIR-WITE.

Letter, an epistle; also one who grants or lets a thing to another for hire or compensation.

Letter of Absolution, the mode formerly resorted to by an abbot for the release of his brethren, in order to qualify them for entering into some other order of religion.

Letter of Administration. See ADMINISTRATOR.

Letter of Attorney, Power of Attorney, or **Procuration,** a writing authorizing another person, who, in such case, is called the attorney of the person appointing him, to do any lawful act in the stead of another: as to give seisin of lands, receive debts, or sue a third person, &c. It is either general or special. The nature of this instrument is to give the attorney the full power and authority of the maker to accomplish the act intended to be performed; and sometimes it is revocable, and sometimes not so; if it is an authority coupled with an interest, e. g. if the attorney is authorized to collect debts, and pay thereout a debt due to himself, it is irrevocable. But revocable letters of attorney may be dissolved either by acts of the parties or operation of law. See REVOCATION OF AGENCY.

No trustee, executor, or administrator, making any payment or doing any act *bonâ fide* under or in pursuance of any power of attorney shall be liable for the monies so paid or the act so done by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death, or of the doing of such act as last aforesaid, at the time of such payment or act *bonâ fide* done as aforesaid by such trustee, executor, or administrator, was not known to him: provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment should be made as he would have had against the trustee, executor, or administrator, if the money had not been paid away under such power of attorney.—22 & 23 *Vict.* c. 35, s. 26.

By 24 & 25 Vict. c. 96, s. 75, a banker, merchant, broker, attorney, or other agent intrusted with a power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom or of a foreign state, or in any stock or fund of any body corporate, company, or society, for safe custody, or for any special purpose, who, without any authority to sell, negotiate, transfer, or pledge, in violation of good faith, and contrary to the object for which such power of attorney was intrusted to him, sells, negotiates, transfers, pledges, or in any manner converts to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, the share or interest in the stock or fund to which such power of attorney relates, or any part thereof, is guilty of a misdemeanor punishable with penal servitude for any term not exceeding seven nor less than three years, or imprisonment for two years.

As to the forgery or alteration of a power of attorney for the transfers of any interest in the public funds, or in the capital stock of any body corporate established by charter or act of parliament, or the offering, uttering, disposing of, or putting off such power of attorney, knowing it to have been forged or altered, see 24 & 25 *Vict.* c. 98, s. 2.

Letter-carrier, a postman.

Letter-clause, close letter, so called in contradistinction to letters-patent, because the former is commonly sealed up with the royal signet, or privy seal; whereas letters-patent are left open and sealed with the broad seal.

Letter of Credit, a letter written by a merchant or correspondent to another, requesting him to credit the bearer with a certain sum of money.

Letter of Exchange, a bill of exchange, which see.

Letter of Horning. See HORNING.

Letter of Licence, an instrument in writing whereby the creditors of a man who has failed to meet his engagements give him time for the payment of his debts, and undertake that in the meantime he shall be free from arrest. The debtor is usually authorized to compound debts owing to him, &c., and the creditors sometimes severally covenant, that if the debtor shall receive any molestation or hindrance from any of them, he shall be acquitted and discharged of his debt against such creditors, &c.

Letters of Marque, commissions for extraordinary reprisals for reparation to merchants taken and despoiled by strangers at sea, grantable by the secretaries of state, with the approbation of the sovereign and council; and usually in time of war, &c.—*Lex. Merc.* 173. The words *marque* and *reprisal* are used as synonymous terms, although the latter is strictly, taking in return; the former, passing the frontiers in order to such taking.—*Dufresne,* tit. 'Marca.'

These letters are grantable by the law of nations, wherever the subjects of one state are

oppressed and injured by those of another, and justice is denied by that state to which the oppressor belongs. In this case, letters of marque and reprisal may be obtained, in order to seize the bodies or goods of the subjects of the offending state, until satisfaction be made, wherever they happen to be found; and, in fact, this custom seems dictated by nature. The necessity, however, is obvious of calling in the sovereign power to determine when reprisals may be made, else every private sufferer would be a judge in his own cause.—4 *Hen. V.* c. 7; *Muratori's Antichità Italiane*, tit. 'Rappresaglie;' *Malvezzi's Chron. of Brescia.*

But the term itself is now somewhat differently applied. If during war a subject should take an enemy's ship, without commission from the Crown, the prize would, by the effect of the prerogative, become a droit of admiralty, and would belong, not to the captor, but to the Crown. Therefore, to encourage merchants and others to fit out privateers or armed ships in time of war, the lords of the admiralty have been empowered, by various acts of parliament, and sometimes by proclamation of the sovereign in council, to grant commissions to the owners of such ships, and the prizes captured by them have been directed to be divided between such owners and the captains and crews. But the owners, before the commission is granted, give security to the admiralty to make compensation for any violation of treaties between those powers with whom the nation is at peace; and that such armed ship shall not be employed in smuggling. These commissions are ordinarily denominated letters of marque, in which sense alone the term is now accepted.—2 *Step. Com.* 514. See 29 *Geo. II.* c. 34; 19 *Geo. III.* c. 67; 24 *Geo. III.* c. 47. Our government did not issue any letters of marque to privateers during the late war with Russia, but by order in council, dated 29th of March, 1854, 'general reprisals' were granted against the ships, vessels and goods of the Emperor of Russia, and to give the benefit of all the prizes taken by her Majesty's ships to the captors. On the 16th of April, 1856, the plenipotentiaries of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, assembled in congress at Paris, signed a declaration, of which the first article was 'Privateering is and remains abolished.' They also engaged, on behalf of their respective governments, that the declaration should be brought to the knowledge of the states which had not taken part in the congress, and that they should be invited to accede to it. It was agreed that the declaration should not be binding except between those powers who had acceded or should accede to it.—*Phillimore, International Laws, Appendix.* The United States of America were invited to accede to this declaration, but declined.

Letter missive. If a peer be a defendant in the Court of Chancery, the Lord Chancellor sends a letter missive to him, to request his appearance, together with a copy of the bill, petition, and order; if he neglect to appear to this, he is then served with a copy of the bill and a citation to appear and answer; if he continue still in contempt, a sequestration *nisi*, which is made absolute in the usual way, issues immediately against his lands and goods, without any of the arresting processes of attachment, &c. which cannot affect a lord of Parliament.

Also, for electing a bishop, a letter missive from the sovereign is sent to the dean and chapter, containing the name of the person whom he would have them elect. See CONGÉ D'ESLIRE.

Letters-patent, or **Letters overt** [fr. *literæ patentes*, Lat.], writings of the Queen, sealed with the Great Seal of England, whereby a person or public company is enabled to do acts or enjoy privileges which he or it could not do or enjoy without such authority.—7 *Wm. IV.* and 1 *Vict.* c. 73. They are so called because they are open with the seal affixed and ready to be shown for confirmation of the authority thereby given. Peers are sometimes created by letters-patent, and letters-patent of precedence are granted to barristers. By letters-patent aliens are made denizens, and especially new inventions are protected; hence the incorporeal chattel of patent-right.

A 'patent-right' is a privilege granted by the Crown to the first inventor of any new contrivance in manufactures, that he alone shall be entitled, during a limited period, to make articles according to his own invention.—21 *Jac. I.* c. 3. A manufacture that is the subject of a patent-right must be new within this realm, and must be such as others, at the time of granting such letters-patent, do not use. The person applying for the patent must be the true and first inventor of it; yet where the secret is acquired abroad by one who afterwards introduces it into the realm, he is considered by the law as the true inventor. A patent-right granted as to England will not extend to Ireland.

The grant is entirely an act of royal favor, but yet obtained without difficulty, supposing there be no objection to it. Letters-patent are often taken out in the joint names of two or three persons—if one or two of these persons bore no part in the invention, the patents would be void. Every manufacture, within the meaning of the statute, must be—

(1) New.
(2) Not used before,
  (α) By others, nor
  (β) By the inventor.
(3) Vendible.
(4) Useful.

Though it may be learned abroad (*Edgebery*

v. *Stephens*, 2 *Salk.* 477), yet it must not be suggested by a friend at home (*Tennant's Patent*, *Dav. Pat. C.* 429). When the objects of two grants are substantially the same, they may both be valid, if the modes of attaining the desired effect are essentially different (*Russell* v. *Cowley* 1 *C. M. & R.* 864). It would be very difficult to say how much a substance or machine might be used by way of experiment before the patent is obtained, without running a great risk of invalidating the grant (*Severne* v. *Olive*, 3 *B. & B.* 72).

The mode of proceeding to obtain it is as follows:—An application is made by petition to the Crown, the allegations of which are to be supported by a declaration that the petitioner is the true and first inventor, and that the article has not been before made or used to his knowledge or belief. This petition and declaration are left at the office of the board of 'Commissioners of Patents for Inventions,' and with them an instrument called 'the provisional specification,' describing the nature of the invention. The applicant is then referred by the commissioners to one of the law officers of the Crown, who is at liberty to call in any scientific or other person to his aid; and if the law officer shall be satisfied that the provisional specification describes the nature of the invention, and certifies his allowance of the same, the invention may, during six months from the date of the application, be used and published without prejudice to any letters-patent to be afterwards granted; or the applicant may, if he think fit, file with the petition and declaration a 'complete,' in lieu of a 'provisional' specification, inserting in the declaration an additional statement, that the instrument particularly describes and ascertains the nature of the invention, and in what manner the same is to be performed; and in this case the applicant shall have, during the said term of six months, the like powers and privileges as might have been conferred upon him by letters-patent on the date of the application, and during the same term the invention may be used and published without any prejudice to any letters-patent to be granted.

The next step is for the applicant to give notice at the office of the commissioners of his intention to proceed with his application, which will then be advertised by the commissioners; and any person having an interest in opposing the grant of letters-patent will be at liberty, within a certain period, to lodge particulars in writing of his objections. The period for objection having expired, the specification and the objections (if any), are referred to the law officer, who after such hearing (if any), as he thinks fit, may cause a warrant to be made for the sealing of the letters-patent; which warrant having been sealed by the commissioners, the Lord Chancellor may thereupon cause letters-patent for such invention to be sealed with the great seal of the United Kingdom, granting to the applicant the exclusive right of using the invention within the United Kingdom, the Channel Islands, and the Isle of Man, and (if the warrant so direct) within the colonies, for the full term of fourteen years. But the letters-patent always contain a proviso to the effect, that, if the 'complete specification' already filed does not particularly describe the nature of the invention, and in what way the same is to be performed, or supposing none to have been yet filed, then if the applicant does not, within a limited period, file such a specification in the Court of Chancery, the grant in the letters-patent contained shall be void. See 5 & 6 *Wm. IV.* c. 83; 2 & 3 *Vict.* c. 67; 7 & 8 *Vict.* c. 69; 15 & 16 *Vict.* c. 83; and 16 & 17 *Vict.* cc. 5 & 115.

The object of the specification is to put the public in full possession of the inventor's secret, so that any person may be in a condition to avail himself of it, when the period of exclusive privilege has expired. It should be such a description as to enable persons of ordinary skill to make the patent article by simply following the directions given, without resorting to contrivances of their own. The specification is bad, when—

(1) Its terms are ambiguous.
(2) Necessary descriptions are omitted.
(3) Parts are claimed which are not original.
(4) Things are inserted to mislead.
(5) The drawings are incorrect.
(6) One of different ways or of different ingredients named, fails.
(7) One of several effects specified is not produced.
(8) The things described are not the best known to the patentee.

A patent right is assignable by deed. The patentee may also grant deeds of license to any one or more persons to manufacture the article, and this without an entire alienation of his interest.

Where it is discovered that an invention, for which a patent has been granted, is not new, although not generally known to the public, the patentee may, under the 5 & 6 Wm. IV. c. 83, s. 2, obtain from the Crown a confirmation of the original grant or a new grant, upon satisfying the Judicial Committee of the Privy Council that he is entitled to such relief. By the 7 & 8 Vict. c. 69, s. 4, a patentee may obtain a prolongation of the term of his patent for another term not exceeding fourteen years, upon satisfying the Judicial Committee of the Privy Council that he has not reaped, within the period to which his privilege is limited, any reward fairly adequate to the labor and

ingenuity employed. If there be a mistake or defect in the title or specification of the invention it may be amended under the 5 & 6 Wm. IV. c. 83, s. 1, 7 & 8 Vict. c. 3, and 15 & 16 Vict. c. 83, by filing a disclaimer or memorandum of alteration in Chancery, the consent of the Attorney or Solicitor-General having been first obtained.

An action for damages for the infringement of a patent is an action on the case. See 15 & 16 *Vict.* c. 76, sch. B. No. 33; 15 & 16 *Vict.* c. 83, ss. 41, 42; and 17 & 18 *Vict.* c. 125, ss. 79-82.

The 5 & 6 Wm. IV. c. 83, s. 7, gives a penalty of 50*l.* against a person using the name, &c. of a patent, to be recovered by action of debt, bill, plaint, process, or information, one-half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same.

If a person have been long in the exclusive use of a patent, a special injunction out of Chancery may be obtained against a person invading it, until the right is tried at law.

Letters-patent are void, if

(1) Contrary to law, or

(2) Mischievous to the state, by

(α) Raising the price of commodities at home;

(β) Or being hurtful to trade;

(γ) Or being generally inconvenient.

The *scire facias* for repealing letters-patent is an original writ, and founded on some matter of record; it issues out of the common law jurisdiction of the High Court of Chancery, 12 & 13 Vict. c. 109, s. 29; 2 *Step. Com.* 25; *Godson* or *Coryton on Patents.* As to the time when letters-patent take effect in the colonies, see 26 & 27 *Vict.* c. 76.

Letters of request, the mode of commencing an original suit in the Court of Arches, instead of proceeding in the first instance in the Consistory Court.

These letters dispense with the necessity of instituting a suit, in the first instance, in an inferior ecclesiastical jurisdiction, and authorize it to be instituted in the superior court, which could otherwise only exercise jurisdiction as a court of appeal. The judge of the inferior court, who signs the letters of request, by so doing waives or remits his own jurisdiction, and, generally speaking, at once the jurisdiction attaches to the appellate court, and this without any consent or even communication with the intended defendant.—1 *Hagg. Eccle. R.* 4, note (*a*).

Letters of safe-conduct. No subject of a nation at war with us, can, by the law of nations, come into the realm, nor can travel himself upon the high seas, or send his goods and merchandise from one place to another, without danger of being seized by our subjects, unless he has letters of safe-conduct, which, by divers old statutes, must be granted under the Great Seal, and enrolled in Chancery, or else are of no effect: the Sovereign being supposed the best judge of such emergencies as may deserve exemption from the general law of arms. But passports under the Sovereign's sign-manual, or licenses from our ambassadors abroad, are now more usually obtained, and are allowed to be of equal validity.—1 *Chit. Com. Law*, 60, and *Vattel by Chit.* 416.

Lettres de Cachet (sealed letters). See CACHET.

Levant et couchant [*levantes et cubantes*, Lat.], cattle that have been so long in the ground of another, that they have lain down and risen to feed, supposed to be a day and a night.—*Termes de la Ley.*

Levari facias (*that you cause to be levied*), a writ of execution at common law, commanding the sheriff to levy or make of the lands and chattels of the judgment-debtor the sum recovered by the judgment. The sheriff, however, is not authorized to sell or extend the lands, or deliver them to the creditor, but must collect the debt from the issues and profits of the land, and from the sale of the chattels. This writ, excepting in the case of outlawry, has been completely superseded by the writ of *elegit.*—1 *Chit. Arch. Prac. by Pren.* 681.

Also a writ to the bishop of the diocese commanding him to enter into the benefice of a judgment-debtor, and take and sequester the same into his possession, and hold the same until he shall have levied the amount of the judgment out of the rents, tithes, and profits thereof. See SEQUESTRARI FACIAS.

Leuca, a measure of land, the extent of which is not precisely known. Some say 1,500 paces. Ingulphus, p. 910, says 2,000 paces. In the *Monastic*, tom. i., p. 313, it is 480 perches. Spelman says a mile.

Leucata, a space of ground as much as a mile contains.—*Monastic*, tom. i., p. 768. And so it seems to be used in a charter of William the Conqueror to Battle Abbey.—*Cowel.*

Levee, the concourse of those who crowd round the sovereign or a man of power in the morning, upon his rising from his bed.

Leviable, that may be levied.—*Bacon's Henry VII.*

Levirate [fr. *levir*, Lat., husband's brother or brother-in-law], the name of an ancient law, existing prior to the time of Moses (Gen. xxviii. 8–12), by which, if a husband died without issue, leaving a widow, the brother of the deceased, or the nearest male relation was bound to marry the widow, to give to the first-born son the name of the deceased kinsman, to insert his name in the genealogical register, and to deliver into his possession the estate of the deceased. This peculiar law had its origin,

doubtless, in that strong desire of offspring, which was entertained by the Jewish nation. Moses was aware that the *levirate law* was in some respects pernicious, but when he recollected the feeling which was at the bottom of it, and the importance of that feeling being cherished, he did not think proper to abolish it. While, therefore, he did not withhold from it his sanction, and thought it proper to make it one of the prominent laws of the Jewish state, he reduced it within certain limits, and thereby lessened the injurious consequences as much as possible. He accordingly enacted, that whoever was unwilling to marry the wife of his deceased kinsman might decline to do so in the presence of judges, in case he would allow the woman the privilege of taking off his shoes, of spitting in his face, and of addressing him with the discreditable salutation of *unshod*, an appellation which, in effect, would be the same with stigmatising him as the *destroyer of his father's house*.—*Deut.* xxv. 5–10. The disgrace which would be the consequence of such treatment from the widow was not so great that a person who was determined not to marry would not dare to encounter it.—*Ruth* iv. 7, 8; *Matt.* xxii. 23–28; *Jahn's Bib. Antiq.* part. 1, chap. x., s. 157.

The same custom or law prevails in some parts of India.—*Elliot's Asiatic Researches*, vol. iii., p. 35.

Levitical degrees, degrees of kindred within which persons are prohibited to marry. They are set forth in the eighteenth chapter of Leviticus.

Levy [fr. *levo*, Lat.], the act of raising money or men.

Lewdness, lustful licentiousness; an offence against the public economy, when of an open and notorious character; as by frequenting houses of ill-fame, which is an indictable offence, or by some grossly scandalous and public indecency, for which the punishment at common law is fine and imprisonment.

Lex, law. In the Roman law it was a resolution adopted by the whole Roman *populus* (Patricians and Plebeians) in the *comitia*, on the motion of a magistrate of senatorial rank, as a consul, a prætor, or a dictator.

Lex æquitate gaudet; appetit perfectum; est norma recti.—*Jenk. Cent.* 36.—(Law rejoices in equity; it covets perfection; it is the rule of right.)

Lex aliquando sequitur æquitatem.—3 *Wils.* 119.—(Law sometimes follows equity.)

Lex amissa, one who is an infamous, perjured, or outlawed person.—*Bract.* l. 4, c. xix., p. 2.

Lex Angliæ est lex misericordiæ.—2 *Inst.* 315.—(The law of England is a law of mercy.)

Lex Angliæ non patitur absurdum.—9 *Co.* 22. (The law of England suffers not an absurdity.)

Lex Angliæ nunquam matris sed semper patris conditionem imitari partum judicat.—*Co. Litt.* 123.—(The law of England rules that the offspring shall always follow the condition of the father; never that of the mother.)

Lex Angliæ nunquam sine Parliamento mutari potest.—2 *Inst.* 218.—(The law of England cannot be changed but by Parliament.)

Lex apostata, a thing contrary to law.

Lex beneficialis rei consimili remedium præstat.—2 *Inst.* 689.—(A beneficial law affords a remedy for a similar case.)

Lex Brehonia, the Brehon or Irish law, overthrown by King John.

Lex Bretoise, the law of the ancient Britons, or Marches of Wales.

Lex citius tolerare vult privatum damnum quam publicum malum.—*Co. Litt.* 132.—(The law will more readily tolerate a private loss than a public evil.)

Lex deficere non potest in justitiâ exhibendâ.—*Co. Litt.* 197.—(The law cannot be defective in dispensing justice.)

Lex deraisnia, the proof of a thing which one denies to be done by him, where another affirms it; defeating the assertion of his adversary, and showing it to be against reason or probability; this was used among the old Romans, as well as the Normans.—*Cowel.*

Lex dilationes semper exhorret.—2 *Inst.* 240. (The law always abhors delays.)

Lex est ab Æterno.—*Jenk. Cent.* 34.—(Law is from the Eternal.)

Lex est anima regis, et rex est anima legis.—(The law is the soul of the King; and the King is the soul of the law.)

Lex est dictamen rationis.—*Jenk. Cent.* 117. (Law is the dictate of reason.)

Lex est exercitûs judicum tutissimus ductor.—2 *Inst.* 526.—(The law is the safest leader of the army of judges.)

Lex est ratio summa, quæ jubet quæ sunt utilia et necessaria, et contraria prohibet.—*Co. Litt.* 319 *b*.—(Law is the highest reason, which commands those things which are useful and necessary, and forbids what is contrary thereto.)

Lex est sanctio sancta, jubens honesta, et prohibens contraria.—2 *Inst.* 587.—(Law is a sacred sanction, commanding what is honorable, and forbidding the contrary.)

Lex est tutissima cassis; sub clypeo legis nemo decipitur.—2 *Inst.* 56.—(Law is the safest helmet; under the shield of the law none is deceived.)

Lex et consuetudo Parliamenti: ista lex est ab omnibus quærenda, à multis ignorata, à paucis cognita.—*Co. Litt.* 11 *b*.—(The law and custom of Parliament: this law is sought by all, unknown to many, known to few.)

Lex fingit ubi subsistit æquitas.—11 *Co.* 90.

(The law makes use of a fiction where equity subsists.)

Lex fori, the law of the place of action.

It is universally admitted and established, that the forms of remedies, and the modes of proceeding, and the execution of judgments, are to be regulated solely and exclusively by the laws of the place where the action is instituted; or, as the civilians uniformly express it, according to the *lex fori*.

Lord Brougham, in *Don* v. *Lippmann*, 5 Clark and Fin. 1, remarked thus on this subject:—'The law on this point is well settled in this country, where this distinction is properly taken, that whatever relates to the remedy to be enforced must be determined by the *lex fori*, the law of the country to the tribunals of which the appeal is made. This rule is clearly laid down in the *British Linen Company* v. *Drummond*, 10 Barn. and C. 903; *De la Vega* v. *Vianna*, 1 Barn. and A. 284; and in *Huber* v. *Steiner*, 2 Scott, 304; 1 Hodges, 206; 2 Bing. N. C. 202; 2 Dowl. P. C. 784; and 4 Moore and Scott, 328; though the reverse had previously been recognised in *Williams* v. *Jones*, 13 East, 439. Then, assuming that to be the settled rule, the only question in the case would be, whether the law now to be enforced is the law which relates to the contract itself, or to the remedy. When both the parties reside in the country where the act is done, they look of course to the law of the country in which they reside. The contract being silent as to the law by which it is to be governed, nothing is more likely than that the *lex loci contractûs* should be considered at the time the rule; for the parties would not suppose that the contract might afterwards come before the tribunals of a foreign country. But it is otherwise when the remedy actually comes to be enforced. The parties do not necessarily look to the remedy when they make the contract. They bind themselves to do what the law they live under requires; but as they bind themselves generally, it may be taken as if they had contemplated the possibility of enforcing it in another country. That is the lowest ground upon which to place the case. The inconveniences of pursuing a different course are manifest. Not only the principles of the law, but the known course of the courts, render it necessary that the rules of precedent should be adopted, and that the parties should take the law as they find it when they come to enforce their contract. It is true, that there may be no difficulty in knowing the law of the place of the contract, while there may be a great difficulty in knowing that of the place of the remedy. But that is no answer to the rule. The distinction which exists as to the principle of applying the remedy exists with even greater force as to the practice of the courts where the remedy is to be enforced. No one can say that, because the contract has been made abroad, the form of action known in the foreign court must be pursued in the courts where the contract is to be enforced, or the other preliminary proceedings of those courts must be adopted, or that the rules of pleading, or the curial practice of the foreign country, must necessarily be followed. No one will assert, that before the jury-court in Scotland, the English creditor of a domiciled Scotchman would have the right to call for a trial of the case by jury; or, take the converse, that a Scotchman might refuse the intervention of a jury here, and insist on having the case tried, as in Scotland, by the judge only. No one will contend in terms, that the foreign rules of evidence should guide us in such cases; and yet it is not so easy to avoid that principle in practice, if you once admit, that though the remedy is to be enforced in one country, it is to be enforced according to the laws which govern another country.'

The doctrine of the common law is so fully established on this point, that it would be useless to do more than to state the universal principle which it has promulgated; that is to say, that, in regard to the merits and rights involved in actions, the law of the place where they originated is to govern. But the forms of remedies and the order of judicial proceedings are to be according to the law of the place where the action is instituted, without any regard to the domicile of the parties, the origin of the right, or the country of the act.—*Story's Confl. of Laws*, 808.

Lex hostilia de furtis, a Roman law, which provided that a prosecution for theft might be carried on without the owner's intervention.—4 *Step. Com.* 201.

Lex intendit vicinum vicini facta scire.—*Co. Litt.* 78.—(The law presumes one neighbor to know the actions of another.)

Lex judicat de rebus necessariò faciendis quasi re-ipsâ factis.—(The law judges of things which must necessarily be done, as if actually done.)

Lex judicialis, an ordeal.

Lex Julia majestatis, a law promulgated by Augustus Cæsar among the Romans, comprehending all the ancient laws that had before been enacted to punish transgressors against the state.—4 *Step. Com.* 234.

Lex loci contractus (*the law of the place of the contract*). Generally speaking, the validity of a contract is decided by the law of the place where it is made. If valid there, it is, by the general law of nations (*jure gentium*), held valid everywhere, by the tacit or implied consent of the parties. The rule is founded, not merely in the convenience, but in the necessities of nations; for otherwise it would be imprac-

ticable for them to carry on an extensive intercourse and commerce with each other. The whole system of agencies, of purchases and sales, of mutual credits, and of transfers of negotiable instruments, rests on this foundation; and the nation which should refuse to acknowledge the common principles, would soon find its whole commercial intercourse reduced to a state like that in which it now exists among savage tribes, among the barbarous nations of Sumatra, and among other portions of Asia washed by the Pacific.

The same rule applies to the invalidity of contracts; if void or illegal by the law of the place of the contract, they are generally held void and illegal everywhere. This would seem to be a principle derived from the very elements of natural justice. The code has expounded it in strong terms: *Nullum enim pactum, nullam conventionem, nullum contractum, inter eos videri volumus subsecutum, qui contrahunt lege contrahere prohibente* (l. i. tit. 14, l. 5). If void in its origin, it seems difficult to find any principle upon which any subsequent validity can be given to it in any other country. But there is an exception to the rule as to the universal validity of contracts, which is, that no nation is bound to recognise or enforce any contracts which are injurious to its own interests, or to those of its own subjects.

A few cases may serve to illustrate the exceptions under each of the foregoing heads:—

First, contracts which are in evasion or fraud of the laws of a particular country.

The second class of excepted contracts comprehends those against good morals, or religion, or public rights.

The next class of excepted contracts comprehends those which are opposed to the national policy and institutions.

Another rule, naturally flowing from or rather illustrative of that already stated respecting the validity of contracts is, that all the formalities, proofs, or authentications of them, which are required by the *lex loci*, are indispensable to their validity everywhere else.

Another rule, illustrative of the same general principle, is that the law of the place of the contract is to govern, as to the nature, the obligation, and the interpretation of the contract—

First, as to the nature of the contract, by which is meant those qualities which properly belong to it, and by law or custom always accompany it, or inhere in it. Foreign jurists are accustomed to call such qualities *naturalia contractûs*.

Secondly, the obligation of the contract, which, though often confounded with, is distinguishable from its nature. The obligation of a contract is the duty to perform it, whatever may be its nature. It may be a moral obligation, or a legal obligation, or both. But when we speak of obligation generally, we mean legal obligation; that is, the right to performance which the law confers on one party, and the corresponding duty of performance to which it binds the other. This is what the French jurists call *le lien du contrat* (the legal tie of the contract) *onus conventionis*, and what the civilians generally call *vinculum juris* or *vinculum obligationis*. The Institutes of Justinian have thus defined it: *Obligatio est juris vinculum, quo necessitate adstringimur alicujus rei solvendæ secundum nostræ civitatis jura* (l. 3, t. 14). A contract may, in its nature, be purely voluntary, and possess no legal obligation. It may be a mere naked agreement (*nudum pactum*). It may possess a legal obligation; but the laws may limit the extent and force of that obligation *in personam*, or *in rem*. It may bind the party personally, but not bind his estate; or it may bind his estate, and not bind his person. The obligation may be limited in its operation or duration; or it may be revocable or dissoluble in certain future events, or under peculiar circumstances.

Thirdly, the interpretation of contracts. Upon this subject there would scarcely seem to be any room for doubt or disputation. There are certain general rules of interpretation, recognised by all nations, which form the basis of all reasoning on the subject of contracts. The object is, to ascertain the real intention of the parties in their stipulations; and when the latter are silent or ambiguous, to ascertain what is the true sense of the words used, and what ought to be implied, in order to give them their true and full effect. The primary rule in all expositions of this sort, is that of common sense, so well expressed in the Digest—*In conventionibus contrahentium voluntas potius quam verba spectari placuit* (l. 50, tit. 16, l. 219). But in many cases the words used in contracts have different meanings attached to them in different places, by law or by custom; and where the words are in themselves obscure or ambiguous, custom and usage in a particular place may give them an exact and appropriate meaning. Hence, the rule has found admission into almost all, if not into all, systems of jurisprudence, that if the full and entire intention of the parties do not appear from the words of the contract, and if it can be interpreted by any custom or usage of the place where it is made, that course is to be adopted.

The general rule is, that a defence or discharge good by the law of the place where the contract is made or is to be performed is to be held of equal validity in every other place where the question may come to be litigated.

The converse doctrine is equally well established, viz. that the discharge of a contract by

the law of a place where the contract was not made or not to be performed will not be a discharge of it in any other country.—*Story's Confl. of Laws*, c. viii.

Lex loci rei sitæ (*the law of the place where the thing is situate*). It is sometimes also called *lex situs*. As to real or immoveable property, the general rule of the common law is, that the laws of the place where such property is situate exclusively govern in respect to the rights of the parties, the modes of transfer, and the solemnities which should accompany them. The title, therefore, to real property can be acquired, passed, and lost only according to the *lex loci rei sitæ*.—*Story's Confl. of Laws*, s. 424. See also *Westlake on Private International Law*.

Lex mercatoria, the mercantile law, or general body of European usages in commercial matters.

Lex necessitatis est lex temporis, i. e. *instantis*. *Hob.* 159.—(The law of necessity is the law of the time, that is, of the moment.)

Lex neminem cogit ad vana seu inutilia peragenda.—5 *Co.* 21.—(The law forces no one to do vain or useless things.)

Lex nemini operatur iniquum; nemini facit injuriam.—*Jenk. Cent.* 22.—(The law works harm to no one; does injury to no one.)

Lex nil facit frustra; nil jubet frustra.—3 *Buls.* 279; *Jenk. Cent.* 17.—(The law does nothing vainly; commands nothing vainly.)

Lex non scripta, the unwritten or common law, which includes general and particular customs, and particular local laws.

Lex non à rege est violanda.—*Jenk. Cent.* 7. (The law is not to be violated by the king.)

Lex non cogit ad impossibilia.—*Hob.* 96.—(The law forces not to impossibilities.)

Lex non curat de minimis.—*Hob.* 88.—(The law cares not about trifles.)

Lex non deficit in justitiâ exhibendâ.—*Jenk. Cent.* 31.—(The law is not defective in administering justice.)

Lex non favet delicatorum votis.—9 *Co.* 58. (The law favors not the wishes of the dainty.)

Lex non intendit aliquid impossibile.—12 *Co.* 89.—(The law intends not anything impossible.)

Lex non patitur fractiones et divisiones statutorum.—1 *Co.* 87.—(The law suffers no fractions and divisions of statutes.)

Lex non præcipit inutilia, quia inutilis labor stultus.—*Co. Litt.* 197.—(The law commands not useless things, because useless labor is foolish.)

Lex non requirit verificari quod apparet curiæ.—9 *Co.* 54.—(The law does not require that that which is apparent to the court should be proved.)

Lex plus laudatur quando ratione probatur. Litt. Epil.—(The law is more praised, when it is approved by reason.)

For Lord Coke declares, 'that the law is unknown to him that knoweth not the reason thereof; and that the known certainty of the law is the safety of all.'—1 *Inst. Epil.*

Lex prospicit non respicit.—*Jenk. Cent.* 284. (The law looks forward, not backward.)

Lex punit mendacium.—*Jenk. Cent.* 15.—(The law punishes a lie.)

Lex rejicit superflua, pugnantia, incongrua. Jenk. Cent. 133.—(The law rejects superfluous, contradictory, and incongruous things.)

Lex reprobat moram.—*Jenk. Cent.* 35.—(The law dislikes delay.)

Lex sacramentalis, purgation by oath.

Lex scripta, the written or statute law.

Lex scripta si cesset, id custodiri oportet quod moribus et consuetudine inductum est; et si qua in re hoc defecerit, tunc id quod proximum et consequens ei est; et si id non appareat, tunc jus quo urbs Romana utitur servari oportet.—7 *Co.* 19.—(If the written law be silent, that which is drawn from manners and custom ought to be observed; and if that is in any matter defective, then that which is next and analogous to it; and if that does not appear, then the law which Rome used should be followed.)

Lex semper dabit remedium.—(The law will always give a remedy.)

Lex semper intendit quod convenit rationi.—*Co. Litt.* 78.—(The law always intends what is agreeable to reason.)

Lex spectat naturæ ordinem.—*Co. Litt.* 197. (The law regards the order of nature.)

Lex succurrit ignoranti.—*Jenk.* 15.—(The law assists the ignorant.)

Lex uno ore omnes alloquitur.—2 *Inst.* 184. (The law speaks to all with the same mouth.)

Lex talionis, the law of retaliation. The law of retaliation was common among all ancient nations, and was, in truth, the most efficacious means of protecting a person from injuries; but, in progress of time, when feelings and manners had assumed a milder tone, causes which originated from one person's receiving bodily injuries from another were brought into the common civil courts on the footing of other causes, and the punishment to be inflicted upon the aggressor, or the satisfaction in any other way to be rendered to the injured party, was left entirely to the person who sat as judge.

The arguments which have been used against the expediency and propriety of the *jus talionis* are of no great weight. For instance, it has been said that this system of retaliation increased the number of injured and mutilated persons in the community, when, on the contrary, it probably diminished it, as a person would naturally be cautious how he inflicted wounds on the body of another, when he was fully aware of what might be the consequences to himself. Another objection is, that it would be very

difficult, or altogether impossible, to requite upon the original aggressor just as much and no more than had been suffered by the injured party. But the answer is, if from any circumstances he should suffer more, all he has to do is to attribute it to himself, and to consider it as what he might naturally have expected.—*Jahn's Bib. Antiq.* p. 2, c. iii., s. 256.

Lex terræ, the law and custom of the land.

Lex Wallensica, the Welsh law.

Ley, or **Loi,** law; the oath with compurgators; also, a meadow.

Ley gager, a wager of law; one who commences a lawsuit.

Leyerwite, a fine formerly paid for adultery or fornication.

Leze-majesty, an offence against sovereign power; treason; rebellion.

Liard, a farthing.

Libel [fr. *libellus*, Lat; *libelle*, Fr.], a satire; defamatory writing; a lampoon. All contumelious matter that tends to degrade a man in the opinion of his neighbors, or to make him ridiculous, will amount, when conveyed in writing, or by picture, effigy, or the like, to libel. The term also legally includes such writings as are of a blasphemous, treasonable, seditious, or immoral kind.—3 *Hall. Const. Hist.* p. 167.

The author as well as the publisher of a written calumny is liable to an action, and is also punishable, although it do not impute any indictable offence, but merely tends to disgrace, ridicule, or bring into contempt the person caluminated, e. g. by imputing hypocrisy or want of proper feeling, or rudeness to females, and still more if it impute fornication, swindling, or any other deviation from moral rectitude or principle; unless indeed it was written and published on a lawful occasion, as in *bonâ fide* giving a fair character to a servant, or in making a confidential communication, which is *primâ facie* legal, though proof of express malice will defeat that defence; or was a correct report of a trial or proceeding, where both plaintiff and defendant may be supposed to have been before the court. Such a report, as a general rule, is justifiable, but of a report of an *ex parte* proceeding, or matter relating to a third person not before the court, is not.—2 *Russ. Chan. Rep.* 607; 3 *Barn. and Ald.* 702. The 1 Wm. IV. c. 73, by requiring proprietors of newspapers to find sureties, affords some protection against libels therein. Sending a libel privately to the person libelled, as tending to excite him to a breach of the peace, is indictable; but without some publication to a third person, no action could be sustained. But the printing of a libel is of itself evidence of a publication, because the compositor and persons employed in printing must be presumed to have read it; and the sending a letter by post to a third person, and proof that the seal has been broken, and proof of defendant's handwriting, is presumptive evidence of publication to the third person. Justification of a libel imputing felony must be established by similar proof of the offence as upon an indictment, and may be proved under the plea of *not guilty*, but it is advisable to plead a justification.—1 *Chit. Gen. Prac.* p. 43 *a.*

By 6 & 7 Vict. c. 96, for amending the law respecting defamatory words and libels, it is provided that in pleading to any indictment or information for a defamatory libel, the defendant may, by way of defence, allege the truth of the matters charged, and further, that it was for the public benefit that the matters charged should be published, showing the particular fact or facts by reason whereof it was for the public benefit, and that if after such plea the defendant shall be convicted, it shall be competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the plea and the evidence thereon. The same act also contains provisions intended to relieve editors and proprietors of newspapers, or other periodical publications, from the hardship to which they were subject under the former law, in being held liable absolutely, and without qualification, for all libels therein inserted, though inserted without their knowledge. These enactments are, first, that in an action for a libel of this description, it shall be competent to the defendant to plead that it was inserted without actual malice, and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the same publication a full apology (or if the publication should be ordinarily published at intervals exceeding a week, had offered to publish the apology in any newspaper or periodical publication, to be selected by the plaintiff), and the defendant shall, upon such plea, be at liberty to pay into court a sum of money, by way of amends for the injury sustained. And as regards an indictment or information for such a libel, that it shall be competent to defendant to prove that the publication was without his authority, consent, or knowledge, and did not arise from want of due care and caution on his part. The statute further enacts, that in all indictments or informations for libel by a private prosecutor, if judgment be given for the defendant, he shall be entitled to recover from the prosecutor his costs; and if it be given against him, upon a special plea, he shall be liable to pay the prosecutor the costs occasioned by such plea; and, moreover, that every person convicted of maliciously publishing a defamatory libel, knowing the same to be false, shall be liable to imprisonment for a term not exceeding two years in the common gaol or house of correction, and to pay such fine as the court shall award, and to the like punishment, even

where the aggravation of wilful falsehood shall not exist, but with reduction of the limit of imprisonment, in that case, to one year. The act also contains a provision which applies to every action for defamation, whether oral or written, viz. that it shall be lawful for the defendant (after notice in writing of his intention so to do, duly given to the plaintiff at the time of pleading) to give in evidence, in mitigation of damages, that he made or offered an apology to the plaintiff before the commencement of the action, or as soon afterwards as he had an opportunity, in case the action had been commenced before an opportunity could be found.

By 8 & 9 Vict. c. 85, it is enacted, that if any person shall publish, or shall threaten to publish any libel, or directly or indirectly propose to abstain from printing or publishing, or offer to prevent the printing or publishing of any matter touching any person, with intent to extort any money, security for money, or valuable thing, from such person, or any other; or with intent to induce any person to confer or procure any appointment or office of profit or trust, he shall be liable to imprisonment, with or without hard labor, for a term not exceeding three years. See 2 *Selw. Nisi Prius*, 1049.

A law of the Twelve Tables inflicted very severe punishment on those who composed defamatory writings against any person.—*Cic. de Re Pub.* iv. 10; *Arnob.* iv. 151. During the later times of the republic the law appears to have been suspended, for Tacitus (*Ann.* i. 72) says, that previous to the time of Augustus libels had never been legally punished, and that Augustus, provoked by the audacity with which Cassius Severus brought into disrepute the most illustrious persons of the age, ordained, by a *lex majestatis*, that the authors of *libelli famosi* should be brought to trial. On this occasion, Augustus, who was informed of the existence of several such works, had a search made at Rome by the Ædiles, and in other places by the local magistrates, and ordered the libels to be burned; some of the authors were subjected to punishment.—*Dion. Cass.* lvi. 27. A law quoted by Ulpian (*Dig.* 47, tit. 10, s. 5), ordained that the author of a *libellus famosus* should be *intestabilis*; and during the later period of the empire we find that capital punishment was not only inflicted upon the author, but upon those persons in whose possession a *libellus famosus* was found, or who did not destroy it so soon as it came into their hands.—*Cod.* ix. tit. 36; *Smith's Dict. of Antiq.*

In the *spiritual* court a libel is the declaration or written charges on the plaintiff's behalf, in the civil litigation. It consists of three parts:—(1) The major proposition, which shows a just cause of the petition. (2) The narration, or minor proposition. (3) The conclusion or conclusive petition, which conjoins both propositions.

In the Scotch law it is the source of complaint or ground of the charge, on which either a civil action or criminal prosecution takes place.

Libellant, the suitor plaintiff who files a libel in an ecclesiastical or admiralty case.

Libellee, the suitor defendant against whom a libel has been filed.

Libelli famosi, scurrilous pamphlets or libels.

Libellus conventionis, the statement of a plaintiff's claim in a petition presented to the magistrate, who directed an officer to deliver it to the defendant.—*Civ. Law.*

Liber assisarum, the book of assizes or pleas of the Crown, being the fifth part of the year-books.

Liber feudorum, a code of the feudal law, compiled by direction of the Emperor Frederick Barbarossa, and published at Milan, A D. 1170.

Liber homo, a freeman.

Liber judicialis of Alfred, Alfred's dome-book, which see.

Liber niger domûs regis (*the black book of the King's household*), the title of a book in which there is an account of the household establishment of King Edward IV. and of the several musicians retained in his service, as well for his private amusement as for the service in his chapel.—*Encyc. Lond.*

Liber taurus, a free bull.—*Norf.* 16 *Edw. I.*

Libera, a livery or delivery of so much corn or grass to a customary tenant, who cut down or prepared the said grass or corn, and received some part or small portion of it as a reward or gratuity.—*Cowel.*

Libera batella, a free boat, a right of fishing.

Libera chasea habenda, a judicial writ granted to a person for a free chase belonging to his manor, after proof made by inquiry of a jury that the same of right belongs to him.

Libera piscaria, a free fishery.

Libera wara, a free measure of ground.

Liberam legem [illegible]ittere, *to lose one's free law* (called the villainous judgment), to become discredited or disabled as juror and witness, to forfeit goods and chattels and lands for life, to have those lands wasted, houses razed, trees rooted up, and one's body committed to prison. It was anciently pronounced against conspirators, but is now disused, the punishment substituted being fine and imprisonment.—*Hawk. P. C.* 61, c. lxxii., s. 9; 3 *Instit.* 221.

Liberata pecunia non liberat offerentem.—*Co. Litt.* 207.—(Money being restored, does not set free the party offering.)

Liberate, a writ that lay for the payment

of a yearly pension or other sum of money, granted under the Great Seal, and addressed to the treasurer and chamberlain of the Exchequer. Also a writ to the sheriff for the delivery of possession of lands and goods extended or taken upon the forfeiture of a recognizance. Also a writ issuing out of Chancery, directed to a gaoler, for delivery of a prisoner that has put in bail for his appearance.—*F. N. B.* 432.

Liberatio, money, meat, drink, clothes, &c. yearly given and delivered by the lord to his domestic servants.—*Blount.*

Liberation, payment.—*Civ. Law.*

Libertas ecclesiastica, church liberty, or ecclesiastical immunity.

Libertas est naturalis facultas ejus quod cuique facere libet, nisi quod de jure aut vi prohibetur.—*Co. Litt.* 116.—(Liberty is that natural faculty which permits everyone to do anything he pleases except that which is restrained by law or force.)

Libertas est res inestimabilis.—*Jenk. Cent.* 52.—(Liberty is an inestimable thing.)

Libertate probanda, an ancient writ which lay for such as being demanded for villeins, offered to prove themselves free; addressed to the sheriff that he should take security from them for the proof of their freedom before the justices of assize, and that in the meantime they should be unmolested.—*F. N. B.* 77.

Libertates regales ad coronam spectantes ex concessione regum à coronâ exierunt.—2 *Inst.* 496.—(Royal franchises relating to the Crown, have emanated from the Crown by grant of kings.)

Libertatibus allocandis, a writ lying for a citizen or burgess, impleaded contrary to his liberty, to have his privilege allowed.—*Reg. Orig.* 262.

Libertatibus exigendis in itinere, an ancient writ whereby the king commanded the justices in eyre to admit of an attorney for the defence of another's liberty.—*Reg. Orig.* 19.

Liberticide, a destroyer of liberty.

Liberties, privileged districts exempt from the sheriff's jurisdiction. See 13 & 14 *Vict.* c. 105, and NON OMITTAS.

Libertinum ingratum leges civiles in pristinum servitutem redigant; sed leges Angliæ semel manumissum semper liberum judicant.—*Co. Litt.* 137.—(The civil laws reduce an ungrateful freedman to his original slavery, but the laws of England regard a man once manumitted as ever after free.)

Liberty, a franchise, being a royal privilege, or a branch of the Crown's prerogative, subsisting in the hands of a subject, as a liberty to hold pleas in a court of one's own.

Also, generally, a state of freedom, as contradistinguished from slavery, the power to act, no law restraining it, or a right over one's actions, subject, however, to the will of God, i. e. piety and to one's duty towards mankind. It is of various kinds.

(1) Natural liberty—a state of exemption from the control of others, and from positive laws and institutions of social life.

(2) Civil liberty—the security from the arbitrary will of others, which is afforded by the laws.

(3) Political liberty—a more extended civil liberty, being the freedom of a nation or a state from all unjust abridgment of its rights and independence by another nation.

(4) Religious liberty, or liberty of conscience—the free right of adopting and enjoying opinions on religious subjects, and of being allowed to worship the Supreme Being according to the dictates of conscience, unfettered by external control.

(5) Liberty of the press—the free power of publishing everything, subject, however, to punishment for publishing what is mischievous to the public morals, or injurious to individuals.

(6) Liberty of speech—the right of speaking facts and expressing opinions.

Liberty of the rules, a privilege to go out of the Fleet and Marshalea prisons within certain limits and there reside. Abolished by 5 & 6 Vict. c. 22.

Liberum tenementum, a frank tenement or freehold.

Liblac [*veneficium*, Lat.], witchcraft, particularly that kind which consisted in the compounding and administering of drugs and philtres.—*Leg. Athel.* 6. Wieland, in *Oberon*, says:—

'*Der Ritter steigt herab, und ungesäumt erscheint,*
'*Ganz* in verlupptem Stahl, *sein trotzig sicher Freund.*'—*Anc. Inst. Eng.*

Libracum, bewitching any person; also a barbarous sacrifice.—*Leg. Athel.* 6.

Libra pensa, a pound of money by weight.

It was usual in former days, not only to sell the money, but to weigh it; because many cities, lords, and bishops, having their mints, coined money, and often very bad too, for which reason, though the pound consisted of 20 shillings, they weighed it.—*Encyc. Lond.*

Librata terræ, a portion of ground containing four oxgangs, and every oxgang fourteen acres.

This is the same with what in Scotland is called *pound-land* of old extent.

Libripens, a scalesman.—*Civ. Law.*

License, or **Licence** [fr. *licentia*, Lat.], a grant of permission, a power or authority given to another to do some lawful act. It may be either written or verbal; when written, the paper containing the authority is called a license.

A license is necessary before doing many acts, as to found a church, to erect a park, to marry without publication of banns, to a corporation to alien, &c., also to carry on various trades, and to practise any profession.

Licensee, a person to whom a license has been granted.

Licentiate, one who has license to practise any art or faculty.

Licentia concordandi, leave to agree the suit. See FINE.

Licentia loquendi, an imparlance.

Licentia surgendi, license to arise, which was a liberty or space of time anciently given by the court to a tenant to arise out of his bed, who was essoined *de malo lecti* in a real action; and it was also the writ thereupon.—*Fleta*, l. 6, c. x.

Licentia transfretandi, a writ or warrant directed to the keeper of the port of Dover, or other seaport, commanding him to let such persons pass over sea who have obtained the royal license thereunto.—*Reg. Orig.* 193.

Licet [Lat.], it is lawfu'.

Licet dispositio de interesse futuro sit inutilis, tamen potest fieri declaratio præcedens quæ sortiatur effectum, interveniente novo actu. Bacon.—(Although a disposition of a future interest is void, yet a precedent declaration can be made, which, a new act intervening, may have an effect.)

Licet sæpius requisitus [Lat.] (*although often requested*).

Licita bene miscentur, formula nisi juris obstet.—Bacon.—(Things permitted are properly joined, unless the form of law oppose.)

Licitation [fr. *liceo*, Lat., to set a price for sale]. The act of exposing to sale to the highest bidder.—*Encyc. Lond.*

Licking of thumbs, a form by which bargains were completed. Obsolete.

Lidford law, a sort of Lynch law, whereby a person was first punished and then tried.

Liege [fr. *lige*, Fr.; *ligio*, Ital.], bound by some feudal tenure; subject.

Liege homage, an acknowledgment which included fealty and the services consequent upon it.—2 *Step. Com.* 414.

Liege-lord, sovereign; superior lord.

Liegeman, a subject.

Liege poustie, a state of health which gives a person lawful power of disposition by will.

Lieger, or **Leger,** a resident ambassador.

Lieges, or **Liege people.** See LIEGE.

Lien [answering to the *tacita hypotheca* of the Civil Law], a right in one man to retain that which is in his possession belonging to another, until certain demands of the person in possession are satisfied. It is neither a *jus in re*, nor a *jus ad rem*, i. e. it is not a right of property in the thing itself, or a right of action to the thing itself.

It is either *particular*, as a right to retain a thing for some charge or claim growing out of, or connected with, the identical thing, or *general*, as a right to retain a thing not only for such charges and claims; but also for a general balance of accounts between the parties, in respect to other dealings of the like nature.

Particular liens may arise in various ways: (1), by an express contract; (2), by an implied contract, resulting from the usage of trade, or the manner of dealing between parties; (3), by mere operation of law, from the relation and acts of the parties, independently of any contract. General liens, not being favored in law, must be maintained upon one of the two first grounds.

The civil law derived its own liens, whether they were pledges or hypothecations, or simple privileges, from similar sources.

The following is an analysis of the mode in which the law on this subject has been treated.

(1) As to the manner and circumstances under which a lien may be acquired.

To create a valid lien, it is essential that the person through whom or by whom it is acquired should himself either have the absolute ownership of the property, or at least a right to vest it; for *nemo plus juris ad alium transferre potest, quam ipse haberet.* There must also be an actual or constructive possession by the party asserting it, with the express or implied assent of the party against whom it is asserted. It must not be inconsistent with the express terms, or the clear intent, of the contract.

(2) The proper debts or claims to which a lien properly attaches.

It attaches only to certain and liquidated demands, and not to those which sound only in damages, and can be ascertained only through the intervention of a jury, unless, indeed, a special contract exists. The debt or demand for which the lien is asserted, must be due to the person claiming it in his own right, and not merely as the agent of a third person. It must also, in the absence of a special agreement, be a debt or demand due from the person for whose benefit the party is acting, and not from a third person, although the goods may be claimed through him.

(3) How a lien may be waived or lost.

It may be waived by any act or agreement between the parties, by which it is surrendered, or becomes inapplicable. A voluntary parting with the possession of the goods, will amount to a waiver or a surrender of a lien; for as it is a right founded upon possession, it must ordinarily determine when the possession ceases. There are exceptions in favor of trade, as that of a factor.—*Cowp. R.* 251. But the lien may revive and re-attach, upon the property coming again into the possession of the person

entitled to the lien, if it so come as the property of the same owner against whom his right exists, and no new intermediate equities have affected that right.

(4) In what manner a lien may be enforced.

There is, it seems, but a mere right of retainer, which may be used as a defence to an action for the recovery of the property, or as a matter of title or special property, to reclaim the property by action, if he have been unlawfully dispossessed of it. Sometimes a court of equity decrees a sale as a part of its own system of remedial justice; and courts of admiralty are constantly in the habit of decreeing a sale to satisfy maritime liens, such as bottomry-bonds, seamen's wages, repairs of foreign ships, salvage, and other claims of a kindred nature. The owner has a perfect right to dispose of the property, subject to the lien, and the person to whom he conveys it will have a perfect title to it, upon discharging the lien. Consult *Paley on Agency*; 2 *Selw. Nisi Prius*, 1361; and *Smith's Merc. Law.*

Equity follows the law, when a claim depending on the right of lien incidentally presents itself for decision. There are, however, liens which, existing only in the contemplation of a court of equity, are therefore exclusively within its cognizance. Thus if an estate be mortgaged, and the mortgagor has sold successively various portions of the estate to different purchasers, one of whom has paid the mortgage-debt, he will have a right to compel the other purchasers to contribute. So a joint purchaser has a lien upon the estate purchased for repairs which he may have done. Where one of two joint tenants of a lease renews for the benefit of both, he will have a lien on the moiety of the other joint tenant for a half of the fines and expenses. Again, if a person, entitled to an estate, stand by without interference, whilst another innocently builds or makes improvements on the land, thinking that he has a title to it, the person making such improvements will be entitled to a compensation. A trustee is entitled to a lien upon the trust estate for his expenses so long as it remains trust estate, but an agent or other person employed by him has not.—See 2 *Sp. Eq. Juris.* 766–804, and the cases there cited.

The doctrine of a vendor's equitable lien for unpaid purchase-money is thus stated by Lord Eldon (*Mackreth* v. *Symmons*, 15 *Ves.* 329 (1808), and 1 *White and Tudor's Lead. Cas.* 194—222 and the notes):—Where the vendor conveys, without more, though the consideration is upon the face of the instrument expressed to be paid, and by a receipt endorsed upon the back, if it is the simple case of a conveyance, the money, or part of it, not being paid as between the vendor and the vendee, and persons claiming as volunteers upon the doctrine of this court, which, when it is settled, has the effect of a contract, though perhaps no actual contract has taken place, a lien shall prevail; in the one case, for the whole consideration; in the other, for that part of the money which was not paid. And this lien attaches if possession of the estate have been delivered to the purchaser, although there has been no conveyance of it to him. Should the vendor take from the purchaser a security for the unpaid purchase-money, the question arises whether the lien was intended to be reserved, or whether credit was exclusively given to the person from whom the security was taken. A mere personal security for the purchase-money, as a bond, a bill of exchange, or a promissory note, will not, without more, be sufficient evidence of the intention of the vendor to give credit exclusively to the purchaser, or to his security, so as to take away the lien.

Where an estate is conveyed, in consideration of an annuity, the vendor will have a lien upon the land for the annuity, although a bond or covenant is given to secure the payment of the annuity. An actual agreement, though by parol, to accept a security, and rely upon it alone, will, it seems, discharge the vendor's lien for unpaid purchase-money. And if a vendor take a totally distinct and independent security for the unpaid purchase-money, it will then become a case of substitution for the lien, instead of a credit given.

If the purchase-money, or part of it, have been paid, prematurely, before a conveyance, the vendee will have a lien upon the estate in the hands of the vendor, even, it seems, although he may have taken a security for his money.

In the Scottish law, the doctrine of lien is known by the name of *retention*, and that of set-off by the name of *compensation*.

Lien of a Covenant. The commencement of a covenant stating the names of the covenantors and covenantees, and the character of the covenant, whether joint or several.

Lieu [Fr.], place, room; it is only used with *in*; *in lieu*, instead of.—*Encyc. Lond.*

Lieu conus, a castle, manor, or other notorious place, well known, and generally taken notice of by those who dwell about it.—2 *Lil. Abr.* 641.

Lieutenancy, commission of. See COMMISSION OF ARRAY.

Lieutenant [fr. *lieu*, Fr., a place, and *tenant*, holding], a deputy; *locum tenens*; one who acts by vicarious authority.

Life [fr. *lifian*, Sax., to live], the animated state of living creatures, or the space of time that passes between their birth and their death.

Life-annuity, an annual payment during the continuance of any given life or lives. See ANNUITY.

Life-assurance, a transaction whereby a sum of money is secured to be paid upon the death of the person whose life is assured, or upon the failure of one out of two or more joint-lives. See INSURANCE.

Life-estate, a freehold not of inheritance. It is either—

(1) *Conventional*, or expressly created by the act of the parties, which is either—
  (α) For one's own life, or
  (β) The life of another, *pur auter vie*, or

(2) *Legal*, which is either—
  (α) Tenancy-in-tail after possibility of issue extinct.
  (β) Courtesy of England.
  (γ) Dower.—2 *Bl. Com.* c. viii.

Life-land, or **Life-hold,** land held on a lease for lives.

Life-peerage. Letters patent, conferring the dignity of baron for life only, do not enable the grantee to sit and vote in the House of Lords, not even with the usual writ of summons to the house.—*Resolution of the Committee for Privileges*, 22nd February, 1856.

Life-rent, a rent paid for a term of life.

Ligan [fr. *lier*, Fr., to tie], a wreck consisting of goods sunk in the sea, but tied to a cork or buoy, in order that they may be found again.—5 *Rep.* 106.

Ligeance, the true and faithful obedience of a subject to his sovereign; also the dominion and territory of a liege lord.

Ligeantia est quasi legis essentia; est vinculum fidei.—Co. Litt. 129.—(Allegiance is, as it were, the essence of law; it is the chain of faith.)

Ligeantia naturalis nullis claustris coercetur, nullis metis refrænatur, nullis finibus premitur. 7 *Co.* 10.—(Natural allegiance is restrained by no barriers, reined by no bounds, compressed by no limits.)

Ligeas, a liege.—*Old Records.*

Light, a right to have the access of the sun's rays to one's windows free from any obstruction. An uninterrupted enjoyment of light for twenty years constitutes, in every case, an absolute and indefeasible right to it, unless it shall appear that the enjoyment took place under some deed or written consent or agreement.—2 *Wm. IV.* c. 71. See *Gale on Easements by Willes.*

Light-house, a high building, at the top of which lights are hung to guide ships at sea. The power of erecting and maintaining them is a branch of the royal prerogative. The management of light-houses is now regulated by 17 & 18 Vict. c. 104, Part VI. ss. 339-416, and subject to the rights of persons having authority over local light-houses, is vested in the following bodies:—

(1) As to light-houses in England, Wales, Jersey, Guernsey, Sark and Alderney, and the adjacent seas and islands, and in Heligoland and Gibraltar, in the Trinity House.

(2) In Scotland and the adjacent seas and islands, and in the Isle of Man, in the Commissioners of Northern Light-houses.

(3) In Ireland and the adjacent seas and islands, in the Dublin Corporation.

The Statute also provides for the levy of light dues; the construction and dues of new light-houses, the surrender of local light-houses, damage to lights, &c., and the prevention of false lights. See also 25 & 26 *Vict.* c. 63, s. 43, *et seq.* By 17 & 18 Vict. c. 120, several statutes relating to light-houses are repealed. As to colonial light-houses, see 18 & 19 *Vict.* c. 91.

Lighting and Watching Acts, 3 & 4 Wm. IV. c. 90; 5 & 6 Wm. IV. c. 76; 7 Wm. IV. and 1 Vict. cc. 78 & 81; 18 & 19 Vict. c. 121; 19 & 20 Vict. c. 69; 2 *Step. Com.* 679.

Ligius, a person bound to another by a solemn tie or engagement; now used to express the relation of a subject to his sovereign.

Lignagium, a right of cutting fuel in woods; also a tribute or payment due for the same.

Lignamina, timber fit for building.

Ligula, a copy or transcript of a court-roll or deed.

Liguritor, a flatterer; perhaps a glutton.—*Somner.*

Limitation, restriction or circumspection; settling an estate or property; a certain time allowed by a statute for litigation.

It is essential, before commencing litigation, to be satisfied whether the remedy about to be taken has or has not become barred by any Statute of Limitation or by legal presumption.

Statutes of Limitation have been correctly denominated *Statutes of repose*, and being all *in pari materiâ*, and passed with the same object, they should be liberally and beneficially expounded in furtherance of that object.—*White* v. *Parnther*, *Knapp's Rep.* 226.

The principal reasons for the introduction of these statutes have been: *first*, as regards *real property*, after upwards of forty years adverse possession, or even a shorter time, a person should, upon every principle of justice, *except in the case of fraud*, be quieted and rendered secure in his possession; for, although his right, if tried within a reasonable time after his obtaining possession, might have been proved by documents and evidence, such evidence, after so great a lapse of time, may have become altogether lost; besides, a new succession of persons may have become the occupiers, by descent, or devise, or by alienation, and it would be unjust to require them to prove their title, impeached by a claimant who has slept so long on his legal rights, and who would sustain no just disappointment by being deprived of the means of pursuing so stale a demand; *second*, as regards

claims of a *personal* nature, as for supposed *debts* or *damages*, the lapse of six years induces a presumption (upon which 21 Jac. I. c. 16, was founded) that the claim has been satisfied, and that the receipt or evidence, showing its satisfaction, has been lost; or that the claim has been too weak to prosecute, or perhaps not worth it; *third*, as to *assaults* and *batteries*, and *verbal slander*, proof of which usually depends upon doubtful and conflicting parol evidence, injured parties slumbering upon such wrongs for years, cannot be favored objects of the courts, since length of time tends to obliterate the injurious effects arising from such evanescent causes; and *fourth*, as to *justices*, *public officers*, and *individuals* acting under particular powers, inasmuch as their duties are arduous and sometimes perilous, and the construction of the statutes under which they act is frequently exceedingly nice and difficult, they should be especially protected from actions frequently arising from errors in judgment being long kept hanging over their heads, until, perhaps, all evidence in support of their defence may have been lost. The 5 & 6 Vict. c. 97, s. 5, enacts, that in all actions brought for anything done in pursuance of any local or personal act, the period for bringing such action shall be limited to two years, or in case of continuing damage, to one year after such damage shall have ceased. It repeals all enactments to the contrary. And the 4th section provides that in all cases where a notice of action is required, it shall be given one calendar month before action.

If the statute once begin to run, it continues; and, if the cause of action were complete in a testator's lifetime, then the statute begins and continues from that time, and not from his death or the time of obtaining the probate.—*Hickman* v. *Walker*, *Willes*, 27.

It seems that the day on which the cause of action accrued ought in general to be *excluded* in calculating the times of limitation under these statutes (*Higgins* v. *McAdam*, 3 *Young and J.* 1 & 16: 1 *Mon. and R.* 300, note *b*). And as *to the expiration* (the statutes requiring the action to be brought within the limited time), the writ, or process, at least should be issued upon the *last day* of the time limited, exclusive of the day on which the cause of action accrued.

There is no *cause of action* till the claimant can *legally sue*, and till there be *some person* in existence who can assert it, and also a person to be *sued*; and therefore, where the payee of a bill, at the time it fell due, was dead, it was held that the statute did not begin to run until letters of administration to his estate had been obtained (*Douglas* v. *Forrest*, 4 *Bing.* 686); but as regards chattels *real*, process for their recovery must be commenced within the limited time, without regard to the date of the letters of administration; and in cases of the reversal of judgment or outlawry in any *personal action*, the plaintiff, or his heirs, executors, or administrators, may commence *de novo within a year afterwards*, but not after; and also as to actions *against* persons beyond sea, they may be brought at any time within six years after their return.

No *verbal* acknowledgment of a debt (excepting it has been so substantial an admission as a *part payment*) is sufficient to prevent the operation of the statutes (*Benest* v. *Pipon*, *Knapp's Rep.* 60). By 9 Geo. IV. c. 14, s. 1, in actions of debt, or on the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of 21 Jac. I. c. 16, unless such acknowledgment or promise be contained in some writing, to be signed by the party to be chargeable thereby; or by his agent duly authorized (19 & 20 Vict. c. 97, s. 13); and where there are two or more joint-contractors, no such joint-contractor shall be chargeable, in respect only of the written acknowledgment of the other. By 19 & 20 Vict. c. 97, s. 14, where there are two or more co-contractors, or co-debtors, none of them shall lose the benefit of the limitation, by reason only of payment of any principal or interest by any of the others.

Persons, who at the time their right first accrues, are under the disability of infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond seas, are allowed ten years from the termination of their disability, and their representatives the same time from their death.—3 & 4 *Wm. IV.* c. 27, s. 16, relating to *real* property.

Formerly, in certain cases when a person, or one or more of several persons, at the time a cause of action or suit accrued to him or them, was or were absent beyond seas, or imprisoned, the period of limitation did not begin to run until the imprisonment or absence beyond seas had determined; but 19 & 20 Vict. c. 97, s. 10, enacts that in cases in which the limitation is fixed by 21 Jac. I. c. 16, s. 3; 4 Anne, c. 16, s. 17; 53 Geo, III. c, 127, s. 5; 3 & 4 Wm. IV. c. 27, ss. 40, 41, 42, and c. 42, s. 3; and 16 & 17 Vict. c. 113, s. 20, no person shall be entitled to any time within which to commence such action or suit beyond the period fixed by reason of such person, or one or more of such persons, being at the time such cause of action or suit accrued beyond the seas or imprisoned.

As to the determination of infancy. A person becomes of age on the 1st instant of the last day of the 21st year, *next before* the anniversary of his birth; thus if a person be born at any hour of the 1st of January, 1801, he

would be of full age at the 1st instant of the 31st December, 1821.

No part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney, and Sark, nor any islands adjacent to any of them, being part of the dominions of her Majesty, shall be deemed to be beyond seas, within the meaning of 4 & 5 Anne, c. 16, or of 19 & 20 Vict. c. 97, s. 12.

As to real property, there are four general rules when the possession is not *adverse*, viz. :— 1st, when both parties claim under the *same* title; 2ndly, when the *possession* of the one is *consistent* with the *title* of the other; 3rdly, when the claimant or his successor has never, in contemplation of law, been out of possession; and, 4thly, when the occupier has acknowledged the plaintiff's title.

An action of trover must be brought within six years after a *secret conversion*, although unknown to the owner of the goods.—*Granger* v. *George*, 5 *Bar. and Cres.* 149; 7 *Dowl. and Ry.* 729, S. C.

It would not excuse an attorney for not suing within six years, to show that he had not delivered his bill till within that time, although he is prohibited from suing until a calendar month after such delivery; and his cause of action, with respect to his bill, begins from the *completion* of the business.—*Harris* v. *Osbourn*, 2 *Cr. and M.* 629; 4 *Tyr.* 445.

The statute must in general be pleaded; but under circumstances, the jury may, after twenty years, presume payment under the general issue.

In courts of equity, the general rule is, that, although the statute 21 Jac. I. c. 16, s. 3, and other acts, do not mention bills or suits in equity, yet, that courts of equity, in giving effect to equitable claims, and affording equitable relief, will observe the principles of these enactments, in all cases where the legal and equitable titles to demands, noticed in the acts, correspond and differ only in the court where the right happens to be enforced (*Stackhouse* v. *Burnston*, 10 *Ves.* 66, 67). But the 3 & 4 Wm. IV. c. 37, expressly enacts, that no suit in equity shall be brought after the time in which the plaintiff, if entitled at law, might have brought an action (s. 24). Section 25 provides, that where land or rent shall be vested in a trustee, upon an express trust, the right of the *cestui que trust*, or person claiming through him, shall not be deemed to have accrued, until after a conveyance to a purchaser for a valuable consideration. Section 26 provides, that, in cases of concealed fraud, no time shall run until the fraud shall have been, or with reasonable diligence might have been, first discovered; provided that no owner shall sue in equity on account of fraud, or set aside a *bonâ fide* conveyance to a purchaser for valuable consideration. Section 29 continues the jurisdiction of equity, in refusing relief on the ground of acquiescence, or otherwise.

If there be a general devise for the payment of debts, it will be no recognition or revival of debts, already barred by the statute, *before* the death of the testator, although it was formerly held otherwise (*Stratford* v. *Blakesley*, 6 *Bro. P. C.* 630); but such a devise stops the operation of the statute, as to all debts *not so previously barred*.—*Rendell* v. *Carpenter*, 2 *Young and P.* 484.

No advantage can be taken of the statutes of limitation in equity, unless they be *pleaded* or insisted upon by a plea or answer.

The following is an alphabetical arrangement of the periods fixed by the principal Statutes of Limitation :—

PROCEEDING	PERIOD	STATUTE
Account, action of	6 years . . .	21 Jac. I. c. 16, s. 3; 19 & 20 Vict. c. 97, s. 9.
Administrators. See EXECUTORS.		
Admiralty, suits for seamen's wages .	6 years . . .	4 Anne, c. 16, s. 17.
Advowson, recovery of . . .	Not after 3 incumbencies, occupying a period of 60 years' adverse possession; incumbencies, after lapse, but not after promotion to bishoprics, are reckoned; and 100 years' adverse possession is a complete bar, although 3 incumbencies have not elapsed.	3 & 4 Wm. IV. c. 27, ss. 30, 31, 33.

PROCEEDING	PERIOD	STATUTE
Annuity, action of	20 years	3 & 4 Wm. IV. c. 27, s. 40.
Appeal to the Lords against a sentence of the Court of Probate . . .	Against a final decree no time is limited; against an interlocutory order, application for leave to appeal must be made within a month of the delivery of the decree or order, or within such extended time as the judge may direct.	20 & 21 Vict. c. 77, s. 39; C. B. Ord. 87; and 21 & 22 Vict. c. 95, s. 22.
— to the Lords on dissolution of marriage or nullity of marriage by Divorce Court, or sentence and final judgment on a petition under the Legitimacy Declaration Act.	Within 3 months, if parliament be then sitting; and if not, within 14 days next after its meeting.	20 & 21 Vict. c. 85, s. 56; 21 & 22 Vict. c. 108, s. 17; and 22 & 23 Vict. c. 61, s. 7.
— to the full Court from a decree or order of the judge ordinary.	Within 3 calendar months of the pronouncing thereof.	20 & 21 Vict. c. 85, s. 55.
— to the full Court from a decision of the judge ordinary, granting or refusing an application for a new trial.	Within 14 days after the pronouncing thereof.	23 & 24 Vict. c. 144, s. 2.
— from a court of equity to the lord chancellor or lords justices.	Within 5 years, but the lord chancellor or lords justices may enlarge the time.	Consol. Ord. 1860, xxi. r. 1.
— from a court of equity to House of Lords.	Within 2 years, and the end of 14 days after first sitting of parliament next ensuing such 2 years.	Order, 24th March, 1725; amended, 22nd June, 1829.
Army, navy, marines, customs or excise officers, actions against, for anything done in execution of office.	6 months, and 1 calendar month's notice of action.	8 & 9 Vict. c. 87, ss. 117, 121.
Assault, battery, wounding, or false imprisonment.	4 years . . .	21 Jac. I. c. 16, s. 3.
Assumpsit or promises, action of . .	6 years . . .	*Ibid.*
Award, motion to set aside . . .	Before the last day of the term next after publication, provided the submission is by rule of court or judge's order, or the reference is made at *Nisi Prius* of the cause and other matters in difference. But where a verdict is taken at *Nisi Prius*, and the cause only is referred, then within first four days of the term next after publication of award.	9 & 10 Wm. III. c. 15, s. 2.
	If award made on a compulsory reference, then within the first seven days of the term next following the publication.	17 & 18 Vict. c. 125, s. 9.

PROCEEDING	PERIOD	STATUTE
Award, action of debt upon, where the submission was not by specialty.	6 years . . .	3 & 4 Wm. IV. c. 42, ss. 3–7.
—, but if on specialty	20 years . . .	*Ibid.*
— on a compulsory reference, enforcing .	After 7 days from publication, although time for moving to set it aside has not elapsed.	17 & 18 Vict. c. 125, s. 10.
Bankrupt to show cause against adjudication.	Within 7 days, or such time not exceeding 14 days as the court shall direct, after service of copy, giving 2 clear days' notice of his intention.	12 & 13 Vict. c. 106, s. 104, and General Ord.
— to contest the validity of the adjudication by an action, &c.	If within the United Kingdom at the date of adjudication, within 2 calendar months; if in any other part of Europe, within 3 calendar months; or if elsewhere, within 12 calendar months after advertisement in Gazette.	12 & 13 Vict. c. 106, s. 233; and 17 & 18 Vict. c. 119, s. 24.
Bankruptcy, any persons in bankruptcy, actions against, *for acts done in pursuance of* Bankruptcy Act.	3 calendar months . .	12 & 13 Vict. c. 106, s. 159. See s. 107, and *Edge* v. *Parker*, 8 B. & C. 697, as to this not applying to assignees.
Bond or specialty	20 years . . .	3 & 4 Wm. IV. c. 42, s. 3.
Case (except for words actionable in themselves).	6 years . . .	21 Jac. I. c. 16, s. 3, and 3 & 4 Anne, c. 9, s. 2.
Common and other profits *à prendre*, claims to.	They cannot be defeated after 30 years' enjoyment, by showing their *first* enjoyment at any prior period. 60 years' enjoyment an absolute and indefeasible right, unless under express agreement.	2 & 3 Wm. IV. c. 71, s. 1.
Constables and others acting in obedience to a warrant, demand in writing of the perusal and copy of such warrant.	6 clear days before action.	24 Geo. II. c. 6; 7 & 8 Geo. IV. cc. 29, 30.
—, action against	6 calendar months . .	*Ibid.*
Copyhold fine	6 years . . .	3 & 4 Wm. IV. c. 42, s. 3.
Copyright, action for infringement of .	12 calendar months after accruing of cause of action.	5 & 6 Vict. c. 45, s. 26.
Corporate offices and franchises, informations for usurping.	6 years . . .	32 Geo. III. c. 58.
Covenant, action of	20 years . . .	3 & 4 Wm. IV. c. 42, s. 3.
Crown, the, suits by, relating to land .	60 years next before suit or claim.	9 Geo. III. c. 16; 24 & 25 Vict. c. 62.
Debauching daughter, &c. . . .	6 years . . .	21 Jac. c. 16, s. 3.
Debt (if not on specialty) . . .	6 years . . .	*Ibid.*
— on specialty. See 'BOND' . .	20 years . . .	3 & 4 Wm. IV. c. 42, s. 3.

PROCEEDING	PERIOD	STATUTE
Debt, *qui tam.* See 'PENAL STATUTES.'		
Deed. See 'BOND'	20 years	3 & 4 Wm. IV. c. 42, s. 3.
Detinue	6 years . . .	21 Jac. I. c. 16, s. 3.
Distress for rents existing as an inheritance, distinct from the land, and for which an assize might formerly have been had.	20 years . . .	3 & 4 Wm. IV. c. 27, s. 2.
— for all other rents	6 years . . .	*Ibid.* s. 42.
Dower	No arrears or damages on account thereof can be recovered for more than six years, but 60 years to bring the action.	*Ibid.* s. 41.
Ecclesiastical Courts:—		
For incontinence, or brawling, by a clerk in holy orders, or striking in church, fornication, &c.	8 calendar months . .	27 Geo. III. c. 44.
Ecclesiastical or eleemosynary corporation sole recovering land or rent.	Within 2 incumbencies and 6 years after a third incumbent appointed, if these periods together amount to 60 years; if not, then such further time in addition as will make up 60 years.	3 & 4 Wm. IV. c. 27, s. 29.
Ejectment	20 years. 10 years allowed from ceasing of disabilities, but never to exceed 40 years in all.	*Ibid.* ss. 2, 16, 17.
Error, on judgment	6 years . . .	15 & 16 Vict. c. 76, s. 146.
Escape, action for	6 years . . .	3 & 4 Wm. IV. c. 42, s. 3.
Executors or administrators . . .	If time have not expired before testator's or intestate's death, then within a year after his death.	*Ibid.* s. 2.
False imprisonment. See 'ASSAULT.'		
Fi. Fa., money levied on any writ of, action for.	6 years . . .	*Ibid.* ss. 3 to 7.
Franchises, claims to	They shall not be defeated after 30 years' uninterrupted enjoyment, by showing benefits first enjoyed previous to such period; 60 years' enjoyment an absolute and indefeasible right, unless under express agreement by deed or writing.	2 & 3 Wm. IV. c. 71, s. 1.
Fraud, discovery of	No length of time will prevent, unless there have been laches for 6 years after discovery, or 20 years in case of realty.	No statute.

PROCEEDING	PERIOD	STATUTE
Hundred, action against, for damages done by rioters.	3 calendar months . .	7 & 8 Geo. IV. c. 31, s. 3.
— giving information to magistrate as to damages being above 30*l.*	7 days	*Ibid.*
Injuries to testator or intestate's real estate.	If injury committed 6 months before his death, then within a year after his death.	3 & 4 Wm. IV. c. 42, s. 2.
Actions of tort against executor or administrator, for wrong done by testator or intestate, to real or personal property of others.	If done within 6 months of his death, then within 6 calendar months after entering upon office, provided the damages rank as simple contract debts.	*Ibid.*
Judgment, revival of	Every 6 years . .	15 & 16 Vict. c. 76, s. 128.
Justices of the peace, actions against .	6 calendar months .	11 & 12 Vict. c. 44, s. 8, and see s. 2.
Land, right of entry for the recovery of .	20 years. No descent cast or discontinuance *after* 31st Dec. 1833, shall defeat it.	3 & 4 Wm. IV. c. 27, ss. 2 & 39.
Legacies	20 years . . .	*Ibid.* s. 40.
Libels	6 years . . .	21 Jac. I. c. 16, s. 3.
Light, right to	After 20 years' uninterrupted enjoyment; no disability prevents the running of this time.	2 & 3 Wm. IV. c. 71, s. 3.
Mandamus	Not after *many* years delay.	No statute. *Rex* v. *The Commissioners of Cockermouth*; Inclosure Act; 1 Bar. & Adol. 378.
Members of Parliament, petitions against return of (Great Britain) . . .	'Within 14 days next, and so within 14 days next after any new return should be brought in.'	Journals, 23rd November, 1832, Feb. 5, 1839.
— (Ireland)	*Ut supra*, or within the same time, lodging petition in the office of the clerk of the Crown in Ireland.	*Ibid.* N.B. If time expire during recess, petitions will be received on the first day of its next sitting. 1 Peck. 28, introd. Words. 289.
Mistake, equitable relief from . .	6 years after its discovery	In analogy to 21 Jac. I. c. 16.
Modus decimandi	Its payment for 30 years next before must be proved.	2 & 3 Wm. IV. c. 100.
Mortgage, money secured by, recovery of	20 years . . .	3 & 4 Wm. IV. c. 27, s. 40.
— redeeming a	20 years from mortgagee taking possession, or from the last written acknowledgment, or part payment of principal or interest.	*Ibid.* s. 28, interpreted by 7 Wm. IV. and 1 Vict. c. 28.

PROCEEDING	PERIOD	STATUTE
Mortgaged lands, action to recover .	Within 20 years *next after* the *last* payment of any part of the principal money or interest.	3 & 4 Wm. IV. c. 27, s. 1, interpreted by 7 Wm. IV. and 1 Vict. c. 28.
Murder	The person must die within a year and a day after the act.	4 Bl. Com. 306.
Penal actions	2 years when forfeiture goes to Crown; 1 year when it goes to Crown and prosecutor; and, in default then, 2 years by Crown, 2 years by party grieved.	31 Eliz. c. 5, s. 5, and 3 & 4 Wm. IV. c. 42, s. 3.
Personal estate of intestate, suit to recover from legal personal representative.	20 years after accruing of right to a person capable of giving a discharge; or if, in meantime, some part or interest in such estate has been accounted for or paid, or an acknowledgment in writing, signed by the person accountable or his agent, has been given to the person entitled or his agent, within 20 years after the last accounting, payment or acknowledgment.	23 & 24 Vict. c. 38, s. 13.
Persons killed by accidents caused by wrongful acts, neglect, or default, which would have entitled them to have brought actions if death had not ensued; one action may be brought for the benefit of the wife, husband, parent, or child, by the executor or administrator of the deceased.	12 calendar months after their death.	9 & 10 Vict. c. 93. See interpretation clause.
Prescription	30 years, &c. &c. . .	2 & 3 Wm. IV. c. 71.
Public, local, and personal, or local and personal acts, or of a local and personal nature, action for anything done in pursuance of any.	2 years, or in case of continuing damage, then within 1 year after such damage shall have ceased.	5 & 6 Vict. c. 97, s. 5.
Quare impedit, or other action or suit to recover any advowson.	Within three incumbencies, or 60 years, but indefeasible after 100 years from time of adverse possession, or that of the person through whom he claims.	3 & 4 Wm. IV. c. 27, s. 30.
Qui tam. See PENAL ACTIONS, *supra*.		
Quit rent, action of debt for . . .	6 years . . .	21 Jac. I. c. 16, s. 3.
Quo warranto	1 year	7 Wm. IV. and 1 Vict. c. 78, and 6 & 7 Vict. c. 89.
Real property, actions and suits relating to.	20 years after right accrued.	3 & 4 Wm. IV. c. 27.

PROCEEDING	PERIOD	STATUTE
Recognizances, proceedings upon . .	20 years . . .	3 & 4 Wm. IV. c. 42, s. 3.
Rent, by lease	20 years . . .	*Ibid.*
— by parol	6 years . . .	3 & 4 Wm. IV. c. 27, s. 42.
— charge, proceeding for, though secured by deed.	20 years . . .	3 & 4 Wm. IV. c. 42, s. 3.
Replevin	6 years . . .	21 Jac. I. c. 16, s. 3.
Scire facias on a recognizance . .	20 years . . .	3 & 4 Wm. IV. c. 42, ss. 3 to 7.
Servant, debauching	6 years . . .	21 Jac. I. c. 16, s. 3.
Slander, verbal (unless special damage) .	2 years . . .	*Ibid.*
Suits in equity	Not after time when plaintiff, if entitled at law, might have brought an action.	3 & 4 Wm. IV. c. 27, ss. 24, 25, 26, 27.
Tithes, exemption or discharge of, by composition, real or otherwise.	Showing the enjoyment of the land for 30 years next before demand, without payment of tithes, except as therein mentioned.	2 & 3 Wm. IV. c. 100, ss. 1 & 2.
—, not setting out, suits for . . .	6 years . . .	53 Geo. III. c. 127, s. 5.
Treason, prosecution for, *unless* against the Queen's life.	3 years . . .	7 Wm. III. c. 3, ss. 5 & 6.
Trespass (*except* assault, battery, wounding, or false imprisonment).	6 years . . .	21 Jac. I. c. 16, s. 3.
Trespass for mesne profits . . .	6 years' arrears . .	*Ibid.* Bul. N. P. 88.
Trover	6 years . . .	*Ibid.*
Way, or watercourse, right of . .	It shall not be defeated after 20 years' uninterrupted enjoyment, by showing its *first* enjoyment, prior to such period. 40 years' enjoyment an absolute and indefeasible right, unless under an express agreement, by deed or writing.	2 & 3 Wm. IV. c. 71, s. 2.
Words. See SLANDER	2 years . . .	21 Jac. I. c. 16, s. 3.
Wounding. See ASSAULT . . .	4 years . . .	*Ibid.*

By the 11th sect. of the C. L. P. Act, 1852, writs of summons are to remain in force for six calendar months, but may be renewed in the mode pointed out by that act. And a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

Limitation of Estate, a modification or settlement of an estate determining how long it shall continue, or a qualification of a preceding estate.—1 *Inst.* 271.

Limitation, Words of, those which operate by reference to, or in connexion with, other words, and extend or modify an estate given by such other words, as 'heirs,' 'heirs of the body.'

Limited Administration, a special and temporary administration of certain specific effects of a testator or intestate granted under varying circumstances. See 1 *Wms. Exs.* 419, 447.

Limited Executor, an executor whose appointment is qualified by limitations as to the time or place wherein, or the subject matter whereon, the office is to be exercised; as distinguished from one whose appointment is absolute, i. e., certain and immediate, without any restriction in regard to the testator's effects or limitation in point of time.—1 *Wms. Exs.* 217.

Limited Liability. Seven or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of 'The Companies' Act, 1862,' 25 & 26 Vict. c. 89, in respect of registration, &c., form themselves into an incorporated company, with or without limited liability. Joint-stock companies with limited liability are of two kinds: (1) *Limited by shares*, where the company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares (s. 8). (2) *Limited by guarantee*, where it is formed on the principle of having the liability of its members limited to such amount as they shall respectively undertake to contribute to the assets of the company in the event of it being wound up (s. 9). Every limited banking or insurance company and deposit, provident, or benefit society, before it commences business, and on the first Monday in February and in August, in every year during which it carries on business, is required to state in a certain form the capital of the company and the number of the shares into which it is divided, and the number issued, the calls made and received, and the liabilities of the company on the preceding 1st of January and July, and the assets of the company on such day. A copy of this statement is to be put up in a conspicuous place in the registered office of the company and in every branch office, &c. (s. 44). No banking company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall be subject to unlimited liability in respect thereof (s. 182). For remarks on this principle see 2 *Mill's Polit. Econ.* 485, *et seq.*, and see COMMANDITE and JOINT-STOCK COMPANIES.

Lindesfern, or **Lindesfarne,** Holy Island, in Northumberland, which was formerly a bishop's see.—4 *Inst.* 288.

Line, succession of relations; boundary; the twelfth part of an inch.

Linea recta semper præfertur transversali.—*Co. Litt.* 10.—(The right line is always preferred to the collateral.)

It is a rule of descent that the lineal ancestors, *in infinitum*, of any person deceased, shall represent their ancestor, that is, shall stand in the same place as the person himself would have done had he been living. See CANONS OF INHERITANCE.

Linea recta est index sui et obliqui; lex est linea recti.—*Co. Litt.* 158.—(A right line is an index of itself, and of an oblique; law is a line of right.)

Lineage [fr. *lignage*, Fr.], race, progeny, family, ascending or descending.

Lineal Consanguinity, that relationship which subsists between persons descended in a right line, as grandfather, father, son, grandson.

Lineal Descent, the descent of an estate from ancestor to heir in a right line.

Lineal Warranty, where the heir derived, or might by possibility have derived, his title to the land warranted, either from or through the ancestor who made the warranty; as where a father or an elder son in the life of the father released to the disseisor of themselves or of the grandfather, with warranty, this was lineal to the younger son.—*Litt.* s. 703. Abolished by 3 & 4 *Wm. IV.* c. 74, s. 14.

Liquidated Damages, a certain, fixed, and ascertained sum, in contradistinction to a penalty, which is both uncertain and unascertained.

It must be remarked, that calling a sum liquidated damages will not change its character as a penalty, if upon the true construction of the instrument it must be deemed to be a penalty. Indeed, wherever the payment of a small sum is secured by the payment of a much larger sum, it must be considered as a penalty, and this especially where the sum referred to is penal in its nature. But where it is agreed that if a person do, or neglect to do, a particular thing in respect to which the damages are uncertain, a certain sum shall be paid by him, there the sum stated may be treated as liquidated damages, if the terms of the contract do not evince a different intention. See 2 *Step. Com.* 110.

Lis [Lat.], a suit, action, controversy, or dispute.

Lis mota (*the dispute having arisen*). It is a rule of evidence that declarations of deceased members of a family, in matters of pedigree, are inadmissible, if made after a controversy has arisen as to the facts on which the claim is founded (or as it is called *post litem motam*), which for that purpose is to be deemed the commencement of the *lis mota*.—6 *C. & P.* 560; *Taylor on Evidence* 520; *Shedden* v. *the Attorney-General*, 30 *L. J.* (*P. M. & A.*) 232.

Lis pendens (*a pending suit*).

The actual pendency of a suit in equity was regarded as notice of the suit to all the world, though after a complete decision the public attention may be supposed to be drawn off to other matters, and therefore a person was allowed to be ignorant of a final decree of the court made in a cause in which he was not concerned.

But now, by 2 Vict. c. 11, s. 7, it is enacted, that no *lis pendens* shall bind a purchaser or mortgagee without express notice thereof, unless and until a memorandum or minute, containing the name of the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the Court of Equity, and the title of the cause or information, and the

day when the bill or information was filed, shall be left with the senior master of the Court of Common Pleas, who shall forthwith enter the same particulars in a book, in alphabetical order, by the name of the person whose estate is intended to be affected by such *lis pendens*; and such officer shall be entitled for any such entry to the sum of 2*s.* 6*d.*, and the provisions contained in the act in regard to the re-entering of judgments every five years, and the fee payable to the officer thereon, shall extend to every case of *lis pendens* which shall be registered under the provisions of the act. See 18 *Vict.* c. 15. A special case in Chancery is a *lis pendens*, 13 & 14 Vict. c. 35, s. 17.

List [fr. *liste*, Fr.], a roll; a catalogue. See CIVIL LIST.

Lit de Justice. See BED OF JUSTICE.

Literæ patentes regis non erunt vacuæ.—1 *Buls.* 6.—(The King's letters-patent shall not be void.)

Literal Contract, a written agreement subscribed by the contracting parties.—*Civ. Law.*

Literal Proof, written evidence.—*Ibid.*

Literary Property. See COPYRIGHT.

Literary and Scientific Institutions Act, (1854), 17 & 18 Vict. c. 112, which affords greater facilities for procuring and settling sites and buildings in trust for institutions established for the promotion of literature, science, or the fine arts, or for the diffusion of useful knowledge, and makes provisions for improving the legal conditions of such institutions. As to their exemption from poor-rates, see 6 & 7 *Vict.* c. 36.

Literatura, putting children to school.

This liberty was anciently denied to those parents who were servile tenants, without the lord's consent; the prohibition against the education of sons arose from the fear that the son, being bred to letters, might enter into holy orders, and so stop or divert the services which he might otherwise do as heir to his father.

Litigant, one engaged in a law-suit.

Litigation, judicial contest; law-suit.

Litigiosity, the pendency of a suit.—*Scotch term.*

Litigious Church, where two presentations to a church are offered to the bishop upon the same avoidance.

Litis æstimatio, the measure of damages.

Litis contestatio, the issue of an action; also a submission to the decision of a *judex*.—*Civ. Law.*

Litis nomen omnem actionem significat, sive in rem, sive in personam sit.—Co. Litt. 292.—(A law-suit signifies every action, whether it be for the thing, or against the person.)

Litispendence [fr. *lis*, Lat., strife, and *pendeo*, to hang], the time during which a law-suit is going on. Obsolete.

Little Goes, a species of lottery, declared unlawful.—42 *Geo. III.* c. 119.

Littleton. A judge of the Common Pleas in the reign of Edward IV., who composed a book of tenures for the use of his son, to whom it is addressed. It contains three books; the first upon estates, the second upon tenures and services, which two were designed to explain more at large the principal subject of the old book of tenures; the third discourses of several incidents and consequences of tenures and estates. This little treatise has acquired more notice than any other book in the law, which is to be attributed, partly to the nature of the subject, partly to the manner in which it is treated, and partly to the great character of the writer when a judge.

If we inquire what is the excellence which has entitled the writer to so high a character, it will be found to be of a particular kind. It is not an accurate arrangement of his subject, not a remarkably apt division of his matter, not a strict adherence even to his own plan, by preserving a close connection between the matter and title of a chapter, in all which he is sometimes more defective than writers of inferior note. The excellence of Littleton seems to consist in the great depth of his learning, and simplicity of his manner, in a comprehensive way of thinking, and a happy method of explaining, with a certain plainness yet significance of style that is always clear and expressive.

The undiminished reputation which this author still possesses is owing principally to the choice of his subject. The law of tenures and estates, as understood in the time of Littleton, is at this day the best introduction to the knowledge of real property; and though great part of this volume is not now law, yet so intimately was the whole of that system connected, that what remains of tenures cannot be understood without a knowledge of what is abolished, and, therefore, the parts of Littleton which are now obsolete are studied both with profit and pleasure. Perhaps no book, in any science so confined as the municipal laws of any country must be, has more employed the labors of the learned and industrious. A writer, who was himself one of the greatest ornaments of the law, and whose name never appears greater than when accompanied with that of our author (Sir Edward Coke), furnished the world with a very copious and minute commentary on this book, in which he has carried his attention to the import of every word so far as to make interesting remarks on his very *et cæteras*. The fame of Littleton has not been confined to this island. As the Norman lawyers made Glanville a model upon which to form their *coustumier*, and give system to their jurisprudence, a writer of that country (M. Howard) has composed a comment on

Littleton, as the best help towards illustrating the customs and laws of that duchy.—4 *Reeves*, c. xxv., p. 113.

Liturgy [fr. λειτουργία, Gk., a public service], the Book of Common Prayer used in the Established Church, as confirmed by 13 & 14 Car. II. c. 4.

It would be disingenuous not to acknowledge that the chief part of this Liturgy was in use in the Roman Catholic Church, from which the Church of England is reformed; but it would betray a want of acquaintance with ecclesiastical antiquity to suppose that these prayers and services originated in that church, as several of them were in use in the first ages of Christianity, and before the Roman Catholic Church was known.—*Clarke's Bible*, p. xxv.; *Cookson's Com. Prayer*.

Livelode, maintenance, support.

Livery [fr. *livrer*, Fr.], the act of giving or taking possession; release from wardship; also the writ by which possession was obtained. A particular dress. Anciently provisions. In London, the collective body of liverymen. Also, the privilege of a particular company or society. See SEISIN and OUSTERLEMAIN.

Livery-man, an inferior servant; also a member of some company in the City of London, also called a freeman.

Livey-office, an office appointed for the delivery of lands.

Livings in commendam. See COMMENDA.

Loadmanage, the pay to loadsmen who tow ships and vessels.—*Mar. Law.*

Loan [*hlæn*, Sax.], anything lent or given to another on condition of return or repayment. A sum of money confided to another, generally on the security of a promissory note or bond, the guarantee of a third party, or the possession or assignment of property.

If it be effected by the Government, it is a *public loan*. The practice of borrowing money to defray extraordinary expenses in time of war has given rise to our national debt.

Loan, *gratuitous*, or **Commodate,** a class of bailment which is called *commodatum* in the Roman law, and is denominated by Sir William Jones a *loan for use* (*prêt à usage*), to distinguish it from *mutuum*, a loan for consumption. It is the gratuitous lending of an article to the borrower for his own use.

Several things are essential to constitute this contract. (1) There must be a loan of either goods or chattels, in contradistinction to a sale or a deposit of a thing with another for the sole benefit or purposes of the owner. (2) It must be lent gratuitously. (3) It must be lent for the use of the borrower, which must be the principal object, and not merely accessorial. (4) The property must be lent to be specifically returned by the lender at the determination of the bailment; and in this respect it differs from a *mutuum*, or loan for consumption, where the thing borrowed, such as corn, wine, oil, or money, is to be returned in kind.

The borrower has the right to use the thing during the time and for the purpose agreed upon by the parties. The loan is to be considered as strictly personal, unless from other circumstances a different intention may fairly be presumed. The borrower must take proper care of the thing borrowed, use it according to the lender's intention, restore it at the proper time, and in a proper condition.

The lender must suffer the borrower to use and enjoy the thing loaned during the time of the loan, according to the original intention, without any molestation or impediment, under the peril of damages. He must reimburse the borrower the extraordinary expenses to which he has been put for the preservation of the thing lent. He is bound to give notice to the borrower of the defects of the thing lent; and if he do not, but conceal them, and an injury occurs to the borrower thereby, the lender is responsible. Where the thing has been lost by the borrower, and, after he has paid the value thereof, is restored to the lender, the latter must return either the price paid or the thing; for, by such payment of the loss, the property is effectively transferred to the borrower.

Mr. Justice Story thus concludes his observations on gratuitous loans—a subject of daily occurrence in the actual business of human life:—'It has, however,' says he, 'furnished very little occasion for the interposition of judicial tribunals, for reasons equally honorable to the parties and to the liberal spirit of polished society. The generous confidence thus bestowed is rarely abused; and if a loss or injury unintentionally occurs, an indemnity is either promptly offered by the borrower, or compensation is promptly waived by the lender.'—*Story's Bailments*, c. iv.

Loan Societies, institutions established for the purpose of advancing money on loan to the industrious classes, and receiving back payment for the same by instalments, with interest.

By 3 & 4 Vict. c. 110 (continued by 21 & 22 Vict. c. 19, and made perpetual by 26 & 27 Vict. c. 56), forms of proceeding of a similar nature to those prescribed in the acts regulating savings banks and friendly societies are requisite to enable loan societies to avail themselves of this act. Three copies of the rules must be transmitted to the certifying barrister, one of which he is directed to keep, another to return to the society, and the third to forward to the clerk of the peace for the county, city, or borough in which the society is formed, in order that it may be laid by him before the general quarter sessions for the confirmation and allowance of that court. The legislature also directs the rules of the society

to be inserted in a book, which is to be open at seasonable times for the inspection of the members; and it enacts that they shall be binding on all persons obtaining loans, or their representatives. The property of the society is vested in one or more trustees for its use, who are empowered to maintain or defend actions and other proceedings in their own names, on account of the body at large; and the treasurer and other persons entrusted with the pecuniary affairs of the society must give to the trustees security for the faithful discharge of their duties.

These societies are entitled to issue debentures for money deposited with them (otherwise than by way of gift), and these, as well as all other notes and instruments given in pursuance of the act, are exempted from stamp duty. They are also placed on the same footing with savings banks, in the event of the death of a claimant intestate, who is entitled to less than 50*l.*, the production of a will or letters of administration not being requisite.

The amount of loan which it is lawful for these societies to advance is limited to 15*l.*; and no second loan can be granted until the first is repaid. The society is permitted to receive, by way of discount, at the time of the loan, such interest as shall be specified by its enrolled rules, not exceeding 12*l.* per cent. per annum, and to receive the principal by instalments, at such times and in such proportions as its rules specify, but so that the first repayment shall not be sooner than the eleventh day from the time of the advance.

With respect to the recovery of loans, the act has provided a form of note to be signed by the borrower and two sureties; and upon failure in payment, the person liable may be summoned before any one of Her Majesty's justices of the peace, who is empowered to levy what is due by distress and sale of the goods of the defaulter. The society (in the person of its treasurer) may also proceed against the person liable, in any county court or court of requests having jurisdiction, and where the sum due happens to exceed the amount for which the court has jurisdiction may, nevertheless, recover such part of the debt as that court can give judgment for, if willing to accept it in lieu of the whole.

An abstract of the accounts of the society is to be made out yearly up to the 31st December, and sent during the month of January to the certifying barrister, and by him laid before both Houses of Parliament.

Local [fr. *locus*, Lat.], having the properties of place. Something fixed to the freehold.

Local actions, those referring to some particular locality, as actions for trespasses on land, in which the venue must be laid in the county where the cause of action arose.

Real actions and the mixed action of ejectment are local; but personal actions are for the most part transitory, i. e. their cause of action may be supposed to take place anywhere, but when they are brought for anything in relation to realty, they are then local. See 3 *Step. Com.* 479; *Mostyn* v. *Fabrigas*, 1 *Smith, L. C.*; and 2 *Chit. Arch. Prac. by Pren.* 1339.

Local allegiance, such as is due from an alien or stranger born, so long as he continues within the sovereign's dominions and protection; it ceases the instant such stranger transfers himself from this kingdom to another. But, if an alien, seeking the protection of the Crown, and having a family and effects here, should, during a war with his native country, go thither, and there adhere to our enemies for purposes of hostility, he may be dealt with as a traitor.—*Fost.* 185.

Local Courts, tribunals of a limited and special jurisdiction, as the several county courts throughout the country.

Local Government of Towns Acts, 21 & 22 Vict. c. 98, and 26 & 27 Vict. c. 64. See 22 *Vict.* c. 31; 22 & 23 *Vict.* c. 11; 23 & 24 *Vict.* cc. 44, 64, and 118; 25 *Vict.* c. 25; and 26 & 27 *Vict.* cc. 17 & 70.

Local Improvements. For effecting those which tend to the wealth and comfort of the people, see 23 & 24 *Vict.* s. 30.

Local Taxes, those assessments which are limited to certain districts, as poor-rates, parochial-taxes, county-rates, &c.—7 & 8 *Vict.* c. 33.

Locatarius, a depositee.—*Civ. Law.*

Locatio, hire, a letting-out.

Locatio-conductio, or **Hiring,** a bailment for a reward or compensation. See HIRING.

Locatio custodiæ, the receiving of goods on deposit for reward.—*Civ. Law.*

Locatio mercium vehendarum, a contract for the carriage of goods for hire.—*Ibid.*

Locatio operis, the hiring of labor and services.—*Ibid.*

Locatio operis faciendi, the hiring of labor and services.—*Ibid.*

Locatio rei, the hiring of a thing.—*Ibid.*

Location, a contract for the temporary use of a subject, or the service of a person, for an ascertained hire.—*Scotch term.*

Locator, a letter of a thing, or services, for hire.—*Civ. Law.*

Lock-up Houses, places for the temporary confinement of prisoners.—5 & 6 *Vict.* c. 109; 11 & 12 *Vict.* c. 101; and 13 & 14 *Vict.* c. 20.

Locker-up, a gaoler, an under-turnkey.

Lockman, an officer in the Isle of Man, to execute the orders of the governor, much like our under-sheriff.

Lococession, the act of giving place.

Locomotives. 'Act for regulating the use of locomotives on turnpike and other roads, and

the tolls to be levied on them, and on waggons and carriages drawn by them.'—24 & 25 *Vict.* c. 70.

Loculus, a coffin.—*Old Records.*

Locum tenens [Lat.], a deputy.

Locus in quo (the place in which).—1 *Salk.* 24.

Locus partitus, a division made between two towns or counties, to make trial where the land or place in question lies.—*Fleta,* l. 4, c. xv.

Locus pœnitentiæ (a place of repentance), a power of drawing back from a bargain before any act has been done to confirm it in law.

Locus pro solutione reditûs aut pecuniæ secundum conditionem dimissionis aut obligationis est strictè observandus.—4 *Co.* 73.—(The place for the payment of rent or money, according to the condition of a lease or bond, is to be strictly observed.)

Locus sigilli [Lat.], abbrev. L. S., the place of the seal.

Lode-manage, or **Lode-merege,** the hire of a pilot for conducting a vessel from one place to another.—*Cowel.* See LOADMANAGE.

Lodgings, part of a house taken on lease.

Lodgings may be let in the same manner as lands and tenements; in general, however, they are let either by agreement in writing between the landlord and tenant, or by parol agreement. In all cases, there should certainly be a written agreement, in order to avoid all possibility of dispute as to the terms of the demise. The agreement should particularly specify the amount of rent, the time of entry, the length of notice to quit required, and such other particulars as the special circumstances of the case may require. If the lodgings be furnished, it will be proper to have a schedule of the goods they contain affixed to the agreement, in the same manner as in the case of a lease of a furnished house.

In taking lodgings, particularly those which are unfurnished, especial care should be taken that the rent of the house has been paid up and will probably continue to be paid; for, if not, the furniture and goods of the lodger will be liable to a distress for such rent. Previously to taking the lodgings, inquiries should therefore be made on the subject of the housekeeper's landlord, and also of the tax-gatherer and collector of the parochial rates; for if distresses be levied for them also, it may cause considerable inconvenience and annoyance to the lodger. Where fixtures are taken from an outgoing tenant, it should also be ascertained that the tenant does not pay for what in fact belongs to the premises, and which the tenant leaving has no right to sell.

Lodgings constitute such an interest according to the duration of the term, that for many purposes lodgers are considered in law in the light of householders, and enjoy the same protection and greater immunities. The law does not make any distinction between lodgers and other tenants as to the payment of their rent, or turning them out of possession, for they are, generally, subject to the same regulations as other tenants. A notice to quit has in all cases a reference to the letting, and, therefore, in the case of lodgings let by the month, a month's notice is sufficient. If a tenant quit without giving notice, the landlord may recover the rent, though he has put up a bill in the window for the purpose of letting the apartments, or has lighted fires in the rooms; but if the landlord let the apartments to another tenant, he rescinds the contract, and cannot recover rent for any subsequent portion of the period included in the original tenancy, during which they remain unoccupied and unproductive.

By 2 & 3 Vict. c. 71, s. 38, compensation may be awarded to the extent of 15*l.* by a police magistrate, for wilful damage done by tenants of houses or lodgings, within the metropolitan police district, to the premises or furniture.

A weekly tenant is not liable for double value for holding over.—4 *Geo. II.* c. 28.

As to stealing by lodgers of chattels or fixtures let, to be used by them, see 24 & 25 *Vict.* c. 96, s. 70.

As to common lodging-houses, see 14 & 15 *Vict.* c. 28; 16 & 17 *Vict.* c. 41; and 18 & 19 *Vict.* c. 121, s. 43. See *Woodfall's Landlord and Tenant.*

Logic [fr. λόγος, Gk., reason], the science of the operations of the understanding which are subservient to the estimation of evidence; both the process itself of proceeding from known truths to unknown, and all other intellectual operations, in so far as auxiliary to this. It includes therefore the operation of naming: for language is an instrument of thought, as well as a means of communicating our thoughts. It includes also definition and classification. For, the use of these operations (putting all other minds than one's own out of consideration) is to serve not only for keeping our evidence and the conclusions from them permanent and readily accessible in the memory, but for so marshalling the facts which we may at any time be engaged in investigating, as to enable us to perceive more clearly what evidence there is, and to judge with fewer chances of error, whether it be sufficient. These, therefore, are operations specially instrumental to the estimation of evidence, and, as such, are within the province of logic.—1 *Mill's Log.; Art. Log. Comp.; Woolley's Introd.; Whately's Logic.*

Logist, an expert accountant.

Logium, a lodge, hovel, or out-house.—*Old Records.*

Lollardy [fr. *lullen, lollen,* or *lallen,* old

Germ., to sing with a low voice; and *hard*, from their singing funeral dirges, *Mosh.*], a vulgar term of reproach brought from Belgium and given to the Protestants at the time of the Reformation. Lollardy swelled into the Protestant Church of England. The Lollards closely resembled the Puritans of Elizabeth's reign.

London, the metropolis of England.

The name of this metropolis has exercised the skill and imagination of numerous antiquaries, from the earliest ages of Christianity to the present time. Some assert that it originated, as most probably it did, from the Celtic language, supposed to have been spoken by part of Gallia and the whole of Great Britain, and now preserved among the Welsh and the inhabitants of Low Brittany in France. *Lhongdin*, in that tongue, signifies 'a town of ships;' and the correspondence of sounds, united to the situation of this city, makes considerably in favor of this derivation. Camden brings, in its support, the words *Llhong*, and *Dinas*, which he translates 'the city of ships.' Others propose *Lhawn*, full; and *Dyn*, man, 'a city full of men:' but as this last denomination bears no characteristic analogy to the place in question, it does not deserve much credit, although it may be respected on account of the ingenuity of its author. The word *Lud*, which signified a lord or prince, may have furnished the first syllable; and, indeed, it seems that, independently of being the name of an ancient king of the Britons, preserved in the denomination of some places still existing, as *Ludgate*, &c., the title of the chieftain of the Franks was *Lud*. *Clovis* was *Clodovæus*; and it is well known that the C or K was not pronounced in this word, since that of *Ludovicus*, or *Ludoix*, arose from it. The testimony of ancient writers proves that London was the chief town of the Trinobantes, and most likely peculiarly favored or inhabited by the king or lord of the nation. This ingenious etymon seems to carry with it a great deal of probability, and may satisfy the antiquarian, since no other throws more light on the subject. *Luddown* might have easily been softened into *London*, 'the city of *Lud*;' that is, the place mostly resorted to by the chief of the Trinobantes. The ancient Britons called it, and Welsh still call it, *Lundayn*; the ancient Saxons, *London ceaster*, or *Castrum Londini*. Tacitus, Ptolemy, and Antoninus called it *Londinium*; Ammianus, *Lundinum*; Stephanus, *Lindonion*; Bede, *Lundonia*, and *Civitas Lundonia*. The name of *Augusta* was also conferred on it, according to Ammianus Marcellinus, very probably on account of the traditional report that it was surrounded with walls by Constantine the Great, whose mother was styled *Helena Augusta*. The French have unaccountably added *res* to the first syllable, and call it *Londres*; the Spaniards, *Londra*; the Portuguese, *Londre*; and the Dutch, *Lunden*.—*Encyc. Lond.* For a short account of early London, see 3 *Hall. M. A.*, p. 219.

It is a county of itself, a market overt every day, except Sundays, and a corporation by prescription, and is exempted from the Municipal Corporation Act, 5 & 6 Wm. IV. c. 76. It is divided into twenty-six wards, over each of which there is an alderman, and is governed by a lord mayor, who is chosen yearly, and presented to the Queen, or, in her absence, to her justices, or the barons of the Exchequer at Westminster. He is the chief justice of gaol delivery, escheator within the liberties, and bailiff of the river Thames, &c. He has also jurisdiction over the local courts, viz. the Court of Hustings, Sheriffs' Court, Mayor's Court, Court of Common Council, &c. See 20 & 21 *Vict.* c. 157, s. 48.

The customs of London are many and various; they are against the common law, but made good by special usage, and confirmed by Act of Parliament.—4 *Inst.* 249; 8 *Rep.* 126.

They differ from all others in the mode of their trial; for, if the existence of the custom be brought in question, it shall not be tried by a jury, but by certificate from the Lord Mayor and aldermen by the mouth of their Recorder; unless it be such a custom as the corporation is itself interested in, as a right of taking toll, &c., for then the law permits them not to certify on their own behalf.

An action upon the custom of London can only be brought in the Lord Mayor's Court; but the custom may be pleaded in bar in a superior court. It may be used in a superior court by way of defence, and in such cases the superior court will take notice of the custom. *Lavie* v. *Phillips*, 3 *Burr.* 1784. As to the mode of certifying the customs of the city, see *Plummer* v. *Bentham*, 1 *Burr.* 249. When a custom has once been certified, the superior courts must take notice of it; and cannot require to have it certified again.—*Blacquiere* v. *Hawkins*, 1 *Doug.* 380. The customs of London as to the distribution of intestates' effects are abolished by 19 & 20 Vict. c. 94. Admission to the freedom of the city of London by redemption is exempted from stamp duty by 19 & 20 Vict. c. 81, s. 4. See CENTRAL CRIMINAL COURT.

London and Westminster Sittings. Courts of *Nisi Prius* which are held in these places in and after every term, before the chief or other judge of the superior courts. Two judges may sit at the same time for trial of causes pending in the same court.—17 & 18 *Vict.* c. 125. ss. 2 & 95; 1 *Chit. Arch. Prac. by Pren.* 177.

London Commissioners to administer Oaths. In pursuance of 16 & 17 Vict. c. 78, s. 2, per-

sons practising as solicitors within ten miles from Lincoln's Inn Hall, at their respective places of business, may be appointed by the Lord Chancellor to administer oaths, and take declarations, affirmations, and attestations of honor in Chancery, and are to possess all such other powers, and discharge all other such duties as formerly appertained to the office of Master Extraordinary in Chancery, and such persons are styled 'London Commissioners to administer Oaths in Chancery,' and are entitled to charge and take a fee of one shilling and sixpence for every oath administered by them, and for every declaration, affirmation, or attestation of honor taken by them, subject to an order of the Lord Chancellor, varying or annulling the same.

London Gazette. See GAZETTE.

London Police Act, 2 & 3 Vict. c. 94.

London Sessions. They are held eight times during the year: four as quarter sessions, and the remaining four as original general sessions. The usual times are fixed by the Court of Aldermen. The recorder is the judge, sitting as the assessor of the lord mayor and aldermen. Only misdemeanors are tried here. By 5 & 6 Vict. c. 38, county and borough sessions are prohibited from trying any treason, murder, or capital felony, any offence punishable with transportation for life, and also misprision of treason, political offences, offences against religion, perjury or subornation of perjury, bribery, forgery, bigamy, abduction, setting fire to growing crops, woods, heath, &c., endeavouring to conceal the birth of a child, offences against the bankrupt and insolvent laws, administering unlawful oaths, blasphemous and seditious libels, conspiracies and combinations, stealing, injuring, or destroying legal records and documents, testamentary papers, and wills. See CENTRAL CRIMINAL COURT.

Longa possessio est pacis jus.—Co. Litt. 6. (Long possession is the law of peace.)

Longa possessio parit jus possidendi et tollit actionem vero domino.—Co. Litt. 110.—(Long possession produces the right of possession, and takes away an action from the true owner.)

Longum tempus et longus usus, qui excedit memoriam hominum, sufficit pro jure.—Co. Litt. 115.—(Long time and long use, which exceeds the memory of man, suffices in law.)

Long Vacation, the recess from the 10th of August to the 24th of October at Common Law, and to the 28th October in Chancery, in every year.

Loquela, an imparlance; a declaration.

Loquela sine die, a respite to an indefinite time.

Loquendum ut vulgus, sentiendum ut docti.—7 Co. 11.—(Speak as the ordinary people, think as the learned.)

Lord [fr. *hlaford, laford, lord,* Sax., of *hlaf,* a loaf of bread, and *ford,* to give, because such great men kept extraordinary houses, and fed all the poor; for which reason they were called *givers of bread*], monarch, governor, master.—*Encyc. Lond.*

Lord in Gross, he who is lord, not by reason of any manor, as the king in respect of his crown, &c. *Very lord,* is he who is immediate lord to his tenant; and *very tenant,* he who holds immediately of that lord. So that, where there is lord paramount, lord mesne, and tenant, the lord paramount is not very lord to the tenant.

Lord Chamberlain. See CHAMBERLAIN.

Lord Chancellor. See CHANCELLOR.

Lord High Admiral. See ADMIRALTY.

Lord High Steward. See HIGH STEWARD.

Lord Lieutenant, the chief governor or viceroy of Ireland.

Lords Lieutenant of Counties, officers of great distinction, appointed by the Crown for the managing of the standing militia of the county, and all military matters therein. Lords Lieutenant are supposed to have been introduced about the reign of Henry VIII., for they are mentioned as known officers in the 4 & 5 Ph. & M. c. 3, though they had not been long in use; for Camden speaks of them in the time of Queen Elizabeth, as extraordinary magistrates constituted only in times of difficulty and danger. They are generally of the principal nobility, and of the best interest in the county; they are to form the militia in case of a rebellion, &c., and march at the head of them, as the Crown shall direct. They have the power of commissioning colonels, majors, captains, and subaltern officers in the Militia and Volunteer force; also of presenting to the sovereign the names of deputy-lieutenants, who are to be selected from the best gentry in the county, and act in the absence of the Lord Lieutenant. Subservient to the Lord Lieutenant and the deputy lieutenants are the justices of the peace, who, according to the orders they receive from them, are to issue warrants to the high and petty constables, &c.—*Encyc. Lond.*

Lord of a Manor, one who possesses a copyhold. See COPYHOLD.

Lord Mayor's Court in London. A Court of the Queen, held before the Lord Mayor and aldermen. Its practice and procedure are amended and its powers enlarged by 20 & 21 Vict. c. 157. In this court the recorder, or, in his absence, the common serjeant, presides as judge (s. 46); and from its judgments error may be brought in the Exchequer Chamber (s. 4).

Lord Privy Seal, before the 30 Hen. VIII., was generally an ecclesiastic; the office has since been usually conferred on temporal peers, above the degree of barons. He is appointed by letters patent. The Lord Privy Seal,

receiving a warrant from the signet office, issues the Privy Seal, which is an authority to the Lord Chancellor to pass the Great Seal, where the nature of the grant requires it. But the privy seals for money begin in the Treasury, whence the first warrant issues, countersigned by the Lord Treasurer. On the Lord Privy Seal are two attendant clerks who have two deputies to act for them. He is a member of the Cabinet Council.—*Encyc. Lond.*

Lord and Vassal, grantor and grantee in the feudal system.

Lords' Act, 32 Geo. II. c. 28, amended by 33 Geo. III. c. 5, and made perpetual by 39 Geo. III. c. 50. It was passed for the relief of Insolvent Debtors, but was repealed by 1 & 2 Vict. c. 110, s. 119.

Lords of Erection, favorites to whom the Crown gave those benefices which were formerly held by abbots and priors.

Lords, House of. See HOUSE OF LORDS.

Lords Justices of Appeal. See CHANCERY.

Lords Marchers, those noblemen who lived on the marches of Wales or Scotland; who in times past had their laws and power of life and death, like petty kings. Abolished by 27 Hen. VIII. c. 26; and 6 Edw. VI. c. 10. See MARCHES.

Lords of Parliament, those who have seats in the House of Lords.

Lords of Regality, persons to whom rights of civil and criminal jurisdiction were given by the Crown.—*Scotch phrase.*

Lords spiritual, the archbishops and bishops who have seats in the House of Lords.

Lords temporal, those lay peers who have seats in the House of Lords. See HOUSE OF LORDS.

Lordship, dominion, manor, seigniory, domain; also title of honor used to a nobleman not a duke. It is also the titulary appellation of the judges and some other persons in authority and office.

Lord Warden of Cinque Ports. See CINQUE PORTS.

Lost Bill of Exchange Act, 9 & 10 Wm. III. c. 17, s. 3, which enacts that if an inland bill of exchange for 5*l.* or upwards be lost before it is due, another similar bill must be given, if the loser will give an indemnity against liability on the lost instrument.

Against the person finding the bill the real owner may maintain an action of trover.

Equity will, however, decree payment of lost and mutilated securities, requiring, of course, an affidavit of the loss, and a proper indemnity. By 17 & 18 Vict. c. 125, s. 87, the court or a judge may order in an action on a bill of exchange or other negotiable instrument, that the loss of it shall not be set up at the trial, provided an indemnity is given to the satisfaction of the court, or judge, or a master, against the claims of any other person.

Lot, a contribution or duty. See SCOT.

Lot, or **Loth,** the thirteenth disk of lead in the mines of Derbyshire, which belongs to the Crown.

Lotherwite, or **Leyerwit,** a liberty or privilege to make amends for lying with a bondwoman without license. See LAIR-WITE.

Lottery, a game of chance; a distribution of prizes by chance. By 10 & 11 Wm. III. c. 17, all lotteries were declared to be public nuisances, and all grants, patents, or licenses for the same to be contrary to law. But as lotteries were found a ready mode for raising money for the service of the State, they were from time to time sanctioned by Acts of Parliament passed expressly for this purpose; but by 6 Geo. IV. c. 60, they were abolished. In the case of Art Unions the Legislature has legalized the distribution by lottery of works of art. See 4 *Bl. Com.* 168; 4 *Step. Com.* 355. See ART UNIONS, FOREIGN LOTTERIES.

Lourcurdus, a ram, or bell-wether.—*Cowel.*

Lou le ley done chose, la ceo done remedie a vener a ceo.—2 *Rol. R.* 17.—(Where the law gives a right, it gives a remedy to recover.)

Love-day, the day on which any dispute was amicably settled between neighbors; or a day in which one neighbor helps another without hire.

Lowbote, a recompense for the death of a man killed in a tumult.

Low-water-mark, that part of the sea-shore to which the waters recede when the tide is lowest.

Lubricum linguæ non facilè trahendum est in pœnam.—*Cro. Car.* 117.—(A slip of the tongue ought not lightly to be subjected to punishment.)

Lucid interval. 'By a perfect interval,' said Lord Thurlow (*Attorney-General* v. *Parnther*, 3 *Bro. C. C.* 234), 'I do not mean a cooler moment, an abatement of pain and violence, or of a higher state of torture—a mind relieved from excessive pressure; but an interval in which the mind, having thrown off the disease, had recovered its general habit.' And see D'Aguesseau's description in his pleading in the case of the Abbé d'Orleans, quoted under the head 'IDIOTS AND LUNATICS.'

'While the doctrine of lucid intervals,' observes Dr. Ray, 'as explained by the language above quoted, is upheld by scarcely a single eminent name in the medical profession, we find that their existence is either denied altogether, or they are regarded as being only a remission, instead of an intermission, of the disease; an abatement of the severity of the symptoms, not a temporary cure.' Mr. Haslam, who is no mean authority on any question connected with insanity, emphatically declares

that 'as a constant observer of this disease for more than twenty-five years, I cannot affirm that the lunatics with whom I have had daily intercourse have manifested alternations of insanity and reason. They may at intervals become more tranquil and less disposed to obtrude their distempered fancies into notice. For a time their minds may be less active, and the succession of their thoughts consequently more deliberate; they may endeavour to effect some desirable purpose and artfully conceal their real opinions, but they have not abandoned or renounced their distempered notions. It is as unnecessary to repeat that a few coherent sentences do not constitute the sanity of the intellect, as that the sounding of one or two notes of a keyed instrument could ascertain it to be in tune.'—*Med. Juris. of Insanity*, 224.

'The mania,' says Foderè, 'which is accompanied by fury is very often periodical, that is, as if granting an occasional truce to the patient, it appears only at certain epochs, between which he enjoys all his reason, and seems to conduct and judge in all respects like other men, if we except in regard to certain ideas, the thought of which may at any time occasion a fresh paroxysm.'—*De Médecine Légale*, t. i., p. 205, s. 140.

Georget, while he speaks of lucid intervals 'as returns to reason,' is careful to add that, 'in this state, patients frequently experience some degree of *malaise*, of some disturbance of their ideas, and weakness of mind, which prevents them from fixing their attention for any length of time on a particular subject, from engaging in reading, writing, or attending to their affairs.'—*Des Maladies Mentales*, 46.

'There are few cases of mania or melancholy,' says Dr. Read, 'where the light of reason does not now and then shine out between the clouds. In fevers of the mind, as well as those of the body, there occur frequent intermissions. But the mere interruption of a disorder is not to be mistaken for its cure or its ultimate conclusion. Little stress ought to be laid upon those occasional and uncertain disentanglements of intellect, in which the patient is for a time only extricated from the labyrinth of his morbid hallucinations. Madmen may show at starts more sense than ordinary men.'—21*st Essay on Hypochond. Affec.*

'But however calm and rational,' observes Dr. Combe, 'the patient may appear to be during the lucid intervals, as they are called, and while enjoying the quietude of domestic society, or the limited range of a well-regulated asylum, it must never be supposed that he is in as perfect possession of his senses as if he had never been ill. In ordinary circumstances, and under ordinary excitement, his perceptions may be accurate, and his judgment perfectly sound; but a degree of irritability of brain remains behind, which renders him unable to withstand any unusual emotion, any sudden provocation, or any unexpected and pressing emergency. Were not this the case, it is manifest that he would not be more liable to a fresh paroxysm than if he had never been attacked. And the opposite is notoriously the fact; for relapses are always to be dreaded, not only after a lucid interval, but even after perfect recovery. And it is but just as well as proper to keep this in mind, as it has too often happened that the lunatic has been visited with the heaviest responsibility for acts committed during such an interval, from which, previous to the first attack of the disease, he would have shrunk with horror.'—*Observ. on Ment. Derang.* 241.

The principle of law, which holds the civil responsibilities of the insane to be unimpaired during the lucid interval, is generally correct. It should be the duty of courts, however, to view their acts done at such times with the most watchful jealousy, because their minds, though left free from all delusion, are nevertheless weak and irritable, and they are easily induced, by the arts of unprincipled men, to enter into transactions the folly of which would have been obvious enough to them before they began to be insane.

'The evidence in support of the allegation of a lucid interval,' said Lord Thurlow, 'after derangement at any period has been established, should be as strong and demonstrative of such fact, as where the object of the proof is to establish derangement. The evidence in such a case, applying to stated intervals, ought to go to the state and habit of the person, and not to the accidental interview of any individual, or to the degree of self-possession in any particular act.'

It appears from a note in *Beck's Med. Juris.* 463, that Lord Eldon dissented from this proposition, and thus stated his objections to it to Lord Thurlow himself:—'I have seen you exercising the duties of Lord Chancellor with ample sufficiency of mind and understanding, and with the greatest ability. Now, if Providence should affect you with a fever, which should have the effect of taking away that sanity of mind for a considerable time (for it does not signify whether it is the disease insanity or a fever that makes you insane), would any one say that it required such very strong evidence to show that your mind was restored to the power of performing such an act as making a will—an act, to the performance of which a person of ordinary intelligence is competent?' 'We are not informed,' says Dr. Ray, 'how this objection struck Lord Thurlow. It does, however, signify everything, whether it is the disease insanity or a fever that

makes one insane—for the delirium of fever is but a casual symptom of that disease—and, together with the pathological condition that gave rise to it, is presumed to disappear with the main disorder on which it depends. This is the ordinary course of nature. On the contrary, mental alienation is the essential, the pathognomonic, and oftentimes the only clearly discernible symptom of mania, and its disappearance furnishes the only intimation, perhaps, that we have of the cure of this disease. Thus our means of deciding this point being so small, we are necessarily led to require stronger evidence of their certainty than of the restoration of the mind in fever, because the latter is confirmed by a multitude of symptoms. Recovery from an attack of fever is a phenomenon that anyone can see, but not such is recovery from an attack of mania; because, though the insane delusions, or conduct by which it was manifested, may disappear, it remains to be determined in every case, whether they are not purposely concealed from observation, or proper opportunity has been offered to the patient to bring them forward. Just as the existence of mania requires stronger proof than that of the delirium of fever, so does recovery from the former require stronger proof than recovery from the latter.'

In another place Dr. Ray says, 'we would have the ground on which the validity of a will is established, distinctly understood to be the character of the act, not the condition of the testator's mind.'

'It is important that, on subjects like medical jurisprudence, language should be used with strict adherence to its original and proper signification; and therefore, when a lucid interval is defined by competent authority to be a "temporary cure" of the disease, a recovery of the mind's general habit, the occurrence of which must be proved by the "state and habit" of the person, observed during a sufficient length of time, we have to complain that the term is applied to a mere remission in the violence of the symptoms, which lasts but a few minutes, and is proved by a single coherent act.'

Not a single case has occurred, so far as can be ascertained, where a person has been convicted of crime during a lucid interval.—*Ray's Med. Jurisp. of Insanity*, tit. 'Lucid Intervals;' *Beck's Med. Jurisp.* 460; *Tay. Med. Jur.* c. lviii.

Lucrative succession, that succession which the heir receives by law without paying any value, and which renders him liable to the debts of his ancestor.—*Scotch term.*

Lucri causa [Lat.] (*for the purpose of gain*).

Lucrum, a small slip or parcel of land.

Lucrum cessans (*profit prevented*).

Luminare, a lamp or candle set burning on the altar of any church or chapel, for the maintenance whereof lands and rent-charges were frequently given to parish churches, &c.—*Ken. Glos.*

Lunacy. See IDIOTS AND LUNATICS.

Lunacy Acts, 8 & 9 Vict. c. 100; 16 & 17 Vict. cc. 96 & 97.

Lunacy Acts Amendment Acts, 1862 & 1863; 25 & 26 Vict. c. 111; 26 & 27 Vict. c. 110.

Lunacy, Commissioners in, established by 8 & 9 Vict. c. 100.

Lunacy, Masters in, established by—

Lunacy Regulation Act (1853), 16 & 17 Vict. c. 70; amended by 18 & 19 Vict. c. 13; 25 & 26 Vict. c. 86.

Lunatic Asylums, houses established for the reception of insane persons. They are of various descriptions: some being established by law for the public benefit, under the denomination of County or Borough Lunatic Asylums; others instituted for the public benefit by the endowments of charitable donors; and others being private houses kept by individuals for their own profit.

County and Borough Lunatic Asylums for insane paupers or criminals of the county are regulated by 16 & 17 Vict. c. 97, amended by 18 & 19 Vict. c. 105, 19 & 20 Vict. c. 87, and 26 & 27 Vict. c. 110; other asylums are regulated by 8 & 9 Vict. c. 100, amended by 16 & 17 Vict. c. 96, 18 & 19 Vict. c. 105, and 25 & 26 Vict. cc. 54 & 111.

Lundress, a sterling silver penny, which was only coined in London.—*Lownd's Essay on Coins*, 17.

Lupanatrix, a bawd or strumpet.—3 *Inst.* 206.

Lupinum caput gerere, to be outlawed, and have one's head exposed, like a wolf's, with a reward to him who should take it.

Lurgulary, casting any corrupt or poisonous thing into the water.

Luxury, excess and extravagance, which was formerly an offence against the public economy, but is not now punishable.—1 *Jac. I.* c. 25. See 19 & 20 *Vict.* c. 64, which repealed the Statute of Nottingham, 10 Edw. III. stat. 3, *de cibariis utendis.*

Lyef-yeld, or **Lef-silver,** a small fine paid by a customary tenant to his lord, for leave to plough or sow.

Lying in franchise, waifs, wrecks, estrays, and the like, which may be seized without suit or action.—3 *Step. Com.* 368.

Lying in grant, or **in livery.** See GRANT.

Lying-in-hospitals, charities which cannot be established without a previous license from the quarter sessions; and illegitimate children born in them are not to be chargeable to the parish of their births.—13 *Geo. III.* c. 82.

Lynch-law. See LIDFORD LAW.
Lyon King of Arms, the Scotch herald.

M.

M, the brand or stigma of a person convicted of manslaughter, and admitted to the benefit of clergy. It was burned on the brawn of the left thumb. Abolished.

Maal, Mahl, Mehal, places, districts, departments; places or sources of revenue, particularly of a territorial nature; lands.—*Indian.*

Mac, a prefix to Irish and Scotch names, signifying a son.

Mace, a large staff, made of the precious metals, and highly ornamented. It is used as an emblem of authority, and carried before certain public functionaries by a mace-bearer.

Macedonian decree, a decree of the Roman senate, which derived its name from that of a certain usurer who was the cause of its being made, in consequence of his exactions. It was intended to protect sons who lived under the paternal jurisdiction from the unconscionable contracts which they sometimes made on their expectations after their fathers' deaths; another, and perhaps the principal object, was to cast odium on the rapacious creditors. It declared such contracts void.—*Civ. Law.*

Mace-greff [fr. *machecarius*, Lat.], one who buys stolen goods, particularly food, knowing it to be stolen.—*Brit.* c. xxix.

Mace-proof, secure against arrest.

Macer, a mace-bearer; an officer attending the Court of Sessions.

Machecollare, or **Machecoulare,** to make a warlike device over a gate or other passage like to a grate, through which scalding water or ponderous or offensive things may be cast upon the assailants.—*Co. Litt.* 5 *a.*

Machinery. As to the riotous destruction of machinery, see 24 & 25 *Vict.* c. 97, s. 11. As to the fencing of machinery in factories for the protection of children and young persons, see 7 & 8 *Vict.* c. 15, s. 21; 19 & 20 *Vict.* c. 38, s. 4; and 24 & 25 *Vict.* c. 117, s. 6.

Mactator, a murderer.

Madhouse. See LUNATIC ASYLUMS.

Madman. See MENTAL ALIENATION.

Madras, *bishopric of,* established by 3 & 4 Wm. IV. c. 85.

Mæc-burgh, kindred, family.

Mæg-bot, compensation for homicide paid by the perpetrator to the kinsmen or family of the slain.—*Anc. Inst. Eng.*

Mære [fr. *mer*, Sax.], famous, great, noted; as *Ælmere,* all famous.—*Gibs. Camd.*

Magic, witchcraft and sorcery.—9 *Geo. II.* c. 5; and 5 *Geo. IV.* c. 83.

Magister, a master or ruler; a person who has attained to some eminent degree in science.

Magister ad facultates, an ecclesiastical officer who grants dispensations.

Magister navis (*the master of a ship*):

Magister rerum usus; magistra rerum experientia.—*Co. Litt.* 69, 229.—(Use is the master of things; experience is the mistress of things.)

Magister societatis (*the manager of a partnership*).

Magistracy, the body of officers who administer the laws; the office of a magistrate.

Magistrate, a man publicly vested with authority; a governor; an executor of the laws.

Of magistrates some are supreme, in whom the sovereign power of the state resides; others are subordinate, deriving all their authority from the supreme magistrate, accountable to him for their conduct, and acting in an inferior, secondary sphere.

The word *magistratus* contains the same element as *mag* (*ister*) and *mag* (*nus*); and it signifies both the person and the office, as we see in the phrase *se magistratu abdicare.*—*Liv.* xxiii. 23. According to Festus, a *magistratus* was one who had *judicium auspiciumque.*—*Smith's Dict. of Antiq.* See JUSTICES.

Magna assisa eligenda, *Writ de.* The first species of extraordinary trial is that of the grand assize, which was instituted by Henry II. in Parliament, by way of alternative offered to the choice of a tenant or defendant in a writ of right instead of the duel. The writ issued to the sheriff to return four knights, who were to elect and choose twelve others to be joined with them, and these formed the grand assize or great jury, which was to try the matter of right. Abolished by 3 & 4 Wm. IV. c. 27.

Magna centum, the great hundred, or six score.

Magna Charta. This Great Charter commences the Statute-book of the Realm, and is the Genesis of British Liberty, the fundamental assurance of our political freedom. It is based substantially upon the Saxon Common Law, which flourished in this kingdom until the Norman invasion consolidated the tyrant system of feudality, still the great characteristic of the principles of real property. It is mainly the solemn restitution of the ancient liberties of the realm exacted by our old warrior-barons from a profligate sovereign, in consequence of his abominable licentiousness, and the unendurable oppressions of his creature, the Chief Justiciary, Peter, Bishop of Winchester, an adventurous foreigner, who pandered to his master's villanies, and plundered the people for his own aggrandizement. Goaded by these provocations, the barons assembled at St. Edmund's Bury, in Suffolk, in the latter part of the year 1214, and there solemnly swore

upon the high altar to withdraw their allegiance from the Crown and openly rebel, unless King John confirmed by a formal charter the ancient liberties of England; and they then engaged to demand this of the sovereign in the early part of the ensuing year, arming themselves in the meantime, so as to compel John, if necessary, to confirm those liberties which had been confirmed by the charters of his predecessors and his own solemn but disregarded oath. As the first step in order to bring the king to his senses, the barons disclaimed all allegiance to him, were formally absolved from their oaths of fidelity, and chose for their general, Robert Fitz Walter, with the title of Marshal of the Army of God and of the Holy Church. After the fortress of Bedford had surrendered to them, and they were in possession of the metropolis, by private agreement with the citizens, the king sent a message to them to desire that a place and time of meeting might be fixed for the purpose of his complying with their demands. Accordingly, the famous meadow called Runingmede, or Runemede (from the Saxon word *rune*, signifying council), situated on the south-west bank of the Thames, between Staines and Windsor, in the hundred of Godley or Chertsey, in Surrey, was selected for the interview. This meadow had been constantly used for national assemblies, and was named Councilmede. The conferences between the king and the armed barons opened on Monday the 15th of June, and closed on Friday the 19th of June, 1215, being in the seventeenth year of his reign. After the adjustment of preliminaries, articles or heads of agreement were drawn up and sealed; these articles were then reduced to the form of a charter, to which the great seal of the realm was solemnly affixed, and the instrument was given by the king's hand as a confirmation of his own act, but it was not signed by him as commonly supposed. This celebrated event in our history took place in a small island, still called Magna Charta Island, situated in the Thames, not far beyond Aukerwyke, in Buckinghamshire. Many originals of the Great Charter were made, for the purpose of depositing one in every diocese. Two of these are extant in the British Museum, and it is said that there are two others in existence, one in the Cathedral at Salisbury, and the other in that at Lincoln. Cordiality never afterwards really existed between John and the barons. The king dissembled and intrigued with the Pope in order to get rid of his obligations, and the barons threatened and rebelled against the sovereign for the purpose of maintaining our ancient liberties, until the unexpected demise of this, the most contemptible of the Plantagenet dynasty, put an end to his disgraceful scheming.

Magna Charta was not firmly established as the Common Law of the realm and the inalienable right of the subject for nearly a century after the conferences at Runingmede, during which period this country was kept in a constant state of alarm and excitement by the struggles of the barons' war, but at length this constitutional barrier against regal encroachments was finally secured to the people by its solemn confirmation by Edward I. No fewer than thirty-two Acts of Parliament were obtained from 1267 to 1416, from the sovereigns of England, for the purpose of fixing the Great Charter as the broad basis of our legislation, and the material guarantee of the freedom of political opinion, and of vindicating the right of publicly discussing and scrutinising the conduct and measures of the government of the day.

The Great Charter, as set forth in the statutes at large, is expressed to be made in the 9th year of King Henry III. (that is in 1225), and confirmed by King Edward I. in the 25th year of his reign (that is in 1297). The original is written in the Latin language, which, although not of that pure classicality that will be appreciated by the scholar, is nevertheless simple, vigorous, and unmistakable, breathing that enlightened spirit of sturdy independence, which, for the reputation of England, it is to be hoped may be quenchless and invincible. The original Latin is printed in the Statute-book in one column, and an English translation of it in another.

This memorable document commences thus:—

Edward, by the Grace of God, King of England, Lord of Ireland, and Duke of Guyan, to all to whom these presents shall come, greeting. We have seen the Great Charter of the Lord Henry, formerly King of England, our father, of the liberties of England in these words: Henry, by the Grace of God, King of England, Lord of Ireland, Duke of Normandy and Guyan, and Earl of Anjou, to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Provosts, Officers, and to all Bailiffs, and other our faithful subjects, which shall see this present Charter, greeting. Know ye that we, unto the Honor of Almighty God, and for the salvation of the souls of our progenitors and successors, to the advancement of Holy Church, and amendment of our realm, of our mere and free will (i. e. not by compulsion), have given and granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all freemen of this our realm, these liberties following, to be kept in our kingdom of England for ever.

Magna Charta is a collection of statutes, or capitulary, which consists of thirty-seven chapters, which are for the most part declaratory of our ancient and cherished customs, supplying,

however, many of the deficiencies of the Common Law. The 1st chapter is a confirmation of liberties in these words:—

First, we have granted to God, and by our present charter have confirmed for us and our heirs for ever, that the Church of England shall be free and shall have all her whole rights and liberties inviolable. We have granted also and given to all the freemen of our realm, for us and our heirs for ever, these liberties underwritten, to have and to hold to them and their heirs, of us and our heirs for ever.

The beginning of this chapter is somewhat impious, the creature giving to the Creator, but the ecclesiastics attempt to get rid of the impropriety by the explanation that that which is given to the Church is given to the Deity! It is remarkable, that all the great written laws of the Middle Ages begin with a provision in favor of the liberties and immunities of the National Church, vindicating them from the influence of the papal authority and the encroachments of the secular power. Our robust ancestors plainly understood that unless our homage to our Maker proceeded from an unfettered and intelligent faith, religion became soul-degrading and superstitious.

The 2nd chapter relates to the relief of the Crown's tenant of full age:—

If any of our earls or barons, or any other, which holdeth of us in chief by knights service, die, and at the time of his death his heir be of full age, and oweth to us relief, he shall have his inheritance by the old relief; that is to say, the heir or heirs of an earl, for a whole earldom, by one hundred pounds; the heir or heirs of a baron, for a whole barony, by one hundred marks; the heir or heirs of a knight, for one whole knight's-fee, one hundred shillings at the most, and he that hath less shall give less according to the old custom of the fees.

The Great Charter only aimed at modifying the grievances of feudalism, which created the military tenure of knight-service. It was reserved for the vigorous administration of Cromwell to abolish this military tenure, which he did by intermitting the Court of Wards in 1645. So perfectly hopeless was the restoration of this oppressive system at the restoration of the second Charles, that the provision annihilating these feudal slaveries, contained in the statute 12 Car. II. c. 24, simply embodied this wholesome law of the Commonwealth, and rendered it perpetual.

The statute of Charles II. did away with the effect of the four next chapters of the Great Charter. It will be only necessary, therefore, to mention their subjects:—Chapter three related to the wardship of an infant heir of an earl, baron, or knight; chapter four prohibited the guardian from wasting the lands of his ward, and from destroying his tenants, a plain indication of the wretched condition of the serfs in those days; chapter five compelled such guardians to keep in repair such lands; and chapter six that such heirs should be married without disparagements, that is, should not be compelled to contract an improper or unequal marriage.

The 7th chapter concerns a widow, and enacts that:—

A widow, after the death of her husband, immediately, and without any difficulty, shall have her marriage, and her inheritance, and shall give nothing for her dower, her marriage, or her inheritance, which her husband and she held the day of the death of her husband, and she shall tarry in the chief house of her husband forty days after the death of her husband, within which days her dower shall be assigned her (if it were not assigned her before), or that if the house be a castle, and she depart from the castle, then a competent house shall be forthwith provided for her, in the which she may honestly dwell, until her dower be to her assigned, as it is aforesaid, and she shall have in the meantime her reasonable estovers of the common; and for her dower shall be assigned unto her a third part of all the lands of her husband which were his during coverture, except she were endowed of less at the church door. No widow shall be distrained to marry while she chooses to live single, nevertheless, she shall find surety that she shall not marry without our (the royal) license and assent (if she hold of us), nor without the assent of the lord, if she hold of another.

A widow's dower is that right which she has to a third of the profits of her deceased husband's real property. A statute of Wm. IV. having abolished dower at the church door has placed it in the power of her husband entirely to defeat his widow's dower by a very simple process. Husbands for the most part avail themselves of this privilege. There is hardly then one widow out of a thousand who is not now deprived of this right. A widow's temporary privilege to sojourn in her deceased husband's dwelling-house is called her quarantine. This concession to a widow has two objects, to prevent the interposition of a supposititious child, a deceit which it is said was very commonly practised in the middle ages, and also to provide against the destitute situation into which a widow may be cast by the death of her husband. She may make reasonable use of all the benefits and advantages connected with such residence, and is entitled to be sustained by the husband's victuals; but if she marry again during the forty days, she forfeits her quarantine. The common practice of resorting to marriage settlements, and making wills for the purpose of equitably adjusting the several interests of a family, obviates the harsh operation of the

general laws relating to women, the fairness of which is extremely questionable. A widow may now marry again whenever she pleases.

The 8th chapter relates to Crown debts :—

We or our bailiffs shall not seize any land or rent for any debt, as long as the present goods and chattels of the debtor do suffice to pay the debt, and the debtor himself be ready to satisfy therefor. Neither shall the pledges of the debtor be distrained, as long as the principal debtor is sufficient for the payment of the debt. And if the principal debtor fail in payment of the debt, having nothing wherewith to pay, or will not pay where he is able, the pledges shall answer for the debts. And if they will, they shall have the lands and rents of the debtor, until they be satisfied of the debt which they before paid for him, unless the principal debtor can show himself to be acquitted against the said sureties.

This order of enforcing Crown-debts from debtors and their sureties appears to be clear and satisfactory. It is the prerogative of the Crown to claim priority for taxes and penalties before all other creditors, and to recover them by a very prompt and efficacious process, because *thesaurus regis est pacis vinculum et bellorum nervi* (the public revenue is at once the security of peace and the sinews of war).

The 9th chapter perpetuates our Teutonic right of self-government, the source and bulwark of our constitutional freedom. It enacts that :—

The City of London shall have all their old liberties and customs. Moreover, we will and grant that all other cities, boroughs, towns, and the barons of the five ports, and all other ports, shall have all their liberties and free customs.

The 10th chapter prohibited excessive distress for more service for a knight's-fee than was due, all which has been abolished.

The 11th chapter enacts that :—

Common Pleas shall not follow our court, but shall be holden in some place certain.

The courts of law originally held their sittings in the place where the sovereign was actually residing, so that they followed him in his progress throughout the country, a mode of procedure irksome, expensive and detrimental. The Court of Common Pleas, which adjudicated upon disputes as to property, and which was erected in the reign of Henry III. became by this chapter of *Magna Charta* the first fixed judicature in the country, and has ever since administered justice in the City of Westminster.

The 12th chapter relates to assizes and provides that :—

Assizes or recognitions of *novel disseisin* and *mortancestor*, shall not be taken but in the shires, and after this manner ; we, or if we be out of this realm, our chief justicers shall send our justicers through every county once in the year, which, with the knights of the shire, shall take the said assizes in those counties ; and those things that at the coming of our foresaid justicers, being sent to take those assizes in the counties, cannot be determined, shall be ended by them in some other place in their circuit ; and those things which for difficulty of some articles cannot be determined by them, shall be referred to our justicers of the bench, and there shall be ended.

Assizes or actions of *novel disseisin* and *mortancestor* have long been abolished, and more simple remedies established. A novel disseisin was so called to distinguish it from an ancient disseisin, and it arose in this way :—The judges in the olden time, when travelling was perilous and slow, went their circuits but once in seven years, all disseisins then or dispossessings of the lawful owners of lands which took place before the last circuits were ancient, but all disseisins since were novel. Mortancestor was an action brought against a person who had taken possession of property after the death of an ancestor, and before his heir-at-law had entered into their occupancy. This chapter of the Great Charter is interesting as showing that our circuits are a very old institution of our judicial system.

The 13th chapter relates to assizes of darrein presentment, a now abolished method of trying the right to present a priest to an ecclesiastical benefice.

The 14th chapter is directed against excessive fines, and provides that :—

A freeman shall not be amerced, i. e. fined for a small fault, but after the manner of the fault ; and for a great fault after the greatness thereof, saving to him his contenement ; and a merchant likewise, saving to him his merchandise ; and any other's villain than ours shall be likewise amerced, saving his wainage, if he fall into our mercy. And none of the said amerciaments shall be assessed, but by the oath of honest and lawful men of the vicinage. Earls and barons shall not be amerced but by their peers, and after the manner of their offence. No man of the church shall be amerced after the quantity of his spiritual benefice, but after his lay-tenement, and after the quantity of his offence.

A man's contenement is that which is absolutely necessary for his support and maintenance, as his tools and instruments of trade, and wainage is that that is necessary for the laborer and the farmer for the cultivation of his land, as carts, implements of husbandry.

The 15th and 16th chapters relate to the making of bridges and defending of river-banks, a subject which now forms part of local law.

The 17th chapter enacts that :—

No sheriff, constable, escheator, coroner, nor

any other our bailiffs, shall hold pleas of our Crown.

Pleas of the Crown comprehend the criminal department of the law. It was ever the anxious care of our ancestors that a person accused of crime should be tried by a superior judge and a jury, and not by an inferior magistrate, since an incompetent judge is too often calamitous to the innocent. It appears, indeed, to be a subject of very serious consideration, whether the powers of summary punishment, which are being given, session after session, to the local magistracy, is not a wide departure from our constitutional principles, and a mode of administering, carelessly and precipitately, the criminal law of the land, without a proper regard to the due execution of justice and the perfect maintenance of truth.

The 18th chapter enacts that :—

If any that holdeth of us lay-fee do die, and our sheriff or bailiff do show our letters-patent of our summons for debt, which the dead man did owe to us, it shall be lawful to our sheriff or bailiff to attach and inroll all the goods and chattels of the dead, being found in the said lay fee, to the value of the same debt, by the sight of lawful men, so that nothing thereof shall be taken away, until we be clearly paid off the debt, and the residue shall remain to the executors to perform the testament of the dead, and if nothing be owing unto us, all the chattels shall go to the use of the dead (saving to his wife and children their reasonable parts).

Debts owing to the Crown take precedence of all other debts, and this appears to be perfectly fair, for it is only by the certain payment of taxes that the government of a country can be carried on. The old law which prohibited a man from willing away all his property from his wife and children has long since been abrogated, and a man can now by a valid will deprive his widow and children of any participation in the property which he may leave. Whether the abolition of this wholesome law was expedient is a very nice question. It is not universally safe to rely altogether upon the conscientious obligations of men to do that which is right, and since no law will affect the dispositions of a just man, it would perhaps have been better not to have altered this old doctrine.

The subjects of the 19th, 20th, and 21st chapters, relating to purveyance for a castle, doing of castle ward, and taking of horses, carts, and woods for the service of the royal castles, have been rendered obsolete by the abolition of feudalism.

The 22nd chapter declares thus:—

We will not hold the lands of them that be convict of felony but one year and one day, and then those lands shall be delivered to the lords of the fee.

The addition of the day to the year appears to have been intended to prevent any dispute about whether the year is to be calculated as inclusive or exclusive of its last day.

The 23rd chapter enacts that :—

All wears from henceforth shall be utterly pulled down in the Thames and Medway, and through all England, except by the sea-coast.

It is obvious that wears in navigable rivers would be obstructive of free communication.

The 24th chapter relates to the writ called *præcipe in capite*, which has been abolished.

The 25th chapter directs that :—

One measure of wine shall be through our realm, and one measure of ale, and one measure of corn, that is to say, the quarter of London; and one breadth of dyed cloth, ruffets and haberjects, that is to say, two yards within the lists, and it shall be of weights as it is of measures.

The subject of weights and measures is now regulated by the 5 & 6 Wm. IV. c. 63. There appears to be a growing feeling amongst commercial men to introduce the decimal system of coinage, weights and measures, but adhesion to old methods is likely to retard its introduction.

The 26th, 27th, and 28th chapters, relating to the writ of inquisition of life and member, and the old feudal tenures and wager of law, have been entirely superseded by their abolition.

The 29th chapter emphatically declares that:—

No freeman shall be taken or imprisoned, or be dissesed of his freehold, or liberties, or free customs, or be outlawed or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny, or delay to any man, either justice or right.

This is a very important passage of the Great Charter, as it is declaratory of the ancient and fundamental law of this country. The lawful judgment of one's peers is that never to be over-rated right belonging to every Englishman to a trial by a jury of his countrymen upon any litigation, whether relating to his private rights or his public wrongs. This ancient and valuable institution it behoves every Englishman jealously to preserve; it behoves us all actively to defeat every attempt to innovate upon or supersede it, for it is the soul and spirit of our national jurisprudence, the repressor of tyranny, the safeguard of the poor, the buckler of innocence, and the vindicator of our rights, our liberties, opinions, and political principles.

It is required by our law that the twelve jurors be unanimous in their verdict, the reason for which would appear on criminal

trials to be out of compassion to the prisoner, by giving him the benefit of every doubt, in accordance with the benignant quality of mercy. The unanimity required in trials of a civil nature is said to have arisen from the now abolished punishment, to which every juror was liable, for returning an improper verdict, and as each juror might have been subjected to a conviction, it was no doubt reasonable that every one should have a power of dissenting, and not be concluded by the opinion of the others.

The 30th chapter evinces a liberal treatment of foreigners :—

All merchants (if they were not openly prohibited before) shall have their safe and sure conduct to depart out of England, to come into England, to tarry in and go through England, as well by land as by water, to buy and sell, without any manner of evil tolts, i. e. extortions, by the old and rightful customs, except in time of war. And if they be of a land making war against us, and such be found in our realm at the beginning of the war, they shall be attached without harm of body or goods, until it be known unto us, or our chief justice, how our merchants be intreated there in the land making war against us; and if our merchants be well intreated there, theirs shall be likewise with us.

It was by such humane and hospitable practices as these, that our country has attained the proud position of being the first commercial nation in the world.

The 31st, 32nd, and 33rd chapters, relating to the royal escheat, the lord's services and the patronage of abbeys, have been entirely superseded.

The 34th chapter would appear to be harsh and uncivil; it is this :—

No man shall be taken or imprisoned upon the appeal of a woman for the death of any other than of her husband.

Now, the occasion of this restriction was that when a woman brought an appeal of death, her opponent lost his right of defending himself against her by combat, and therefore, it was limited to widows. The present constitutional mode of prosecuting for the crime of manslaughter or murder is by indictment.

The 35th chapter, relating to county-courts, sheriffs, turns, and leets, has long since fallen into desuetude by reason of new laws upon these subjects.

The 36th chapter enacts that :—

It shall not be lawful from henceforth to any to give his land to any religious house, and to take the same land again to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom it received them. If any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee.

It is curious to trace the ingenious devices to which the ecclesiastics had recourse for the purpose of acquiring land and accumulating wealth; to defeat these mischievous contrivances many acts of parliament beginning with this chapter of Magna Charta, and ending with the 9 Geo. II. c. 36, have been passed. This last statute imposes many restrictions and conditions upon the gifts of land and funded property to charities.

The concluding chapter of Magna Charta sets forth that its establishment was bought from the Crown, like most of our great liberties, with a fifteenth of our moveable property, in consideration of which the king grants 'for us and our heirs, that neither we nor our heirs shall attempt to do anything whereby the liberties contained in this charter may be infringed and broken. And if anything should be done to the contrary, it shall be held of no force or effect.'

As to the difficulty of overrating its value, see 2 *Hall. M. A.*, p. 326.

Magna Charta et Charta de Foresta sont appelés les deux grandes charters.—2 *Inst.* 570. (The Magna Charta, and the Charter of the Forest, are called the two great charters.)

Magna fuit quondam magnæ reverentia chartæ.—2 *Inst. Proem.*—(Reverence for the Great Charter was formerly great.)

Magna precaria, a great or general reap-day.

Magnus portus, the town and port of Portsmouth.

Maha-gen, a banker or any great shopkeeper among the Hindoos.

Mahal [*Indian*, literally, a place], any land or public fund producing a revenue to the government of Hindostan. *Mahalaat* is the plural.

Maiden, an instrument formerly used in Scotland for beheading criminals. It consisted of a broad piece of iron about a foot square, very sharp in the lower part, and loaded above with lead. At the time of execution it was pulled up to the top of a frame about ten feet high, with a groove on each side for it to slide in. The prisoner's neck being fastened to a bar underneath, and the sign given, the maiden was let loose, and the head instantly severed from the body. It was the prototype of the French guillotine.

Maiden Assise, an assise whereat no capital conviction takes place. In such a case, the sheriff of the county presents the judges with white gloves.—*Encyc. Lond.*

Maiden Rents, a noble paid by the tenants of some manors on their marriage. This was said to be given to the lord for his omitting the

custom of *mercheta*, whereby he was to have the first night's lodging with his tenant's wife; but it seems more probably to have been a fine for license to marry a daughter.

Maignagium [fr. *maignen*, Fr.], a brazier's shop, or perhaps a house.

Maihem. See MAYHEM.

Maihemium est inter crimina majora minimum, et inter minora maximum.—Co. Litt. 127.—(Mayhem is the least of great crimes, and the greatest of small.)

Maihemium est membri mutilatio; et dici poterit, ubi aliquis in aliquâ parte sui corporis effectus sit inutilis ad pugnandum.—Co. Litt. 126.—(Mayhem is the mutilation of a member, and can be said to take place when a man is injured in any part of his body so as to be useless in fight.)

Maihemium est homicidium inchoatum.—3 *Inst.* 118.—(Mayhem is incipient homicide.)

Mail [fr. *malle*, Fr., a trunk], a bag of letters carried by the post, or the vehicle which carries the letters. Also, armour.

Maile, a kind of ancient money, or silver halfpence; a small rent.—9 *Hen. V.*

Maills and Duties, the rents of an estate, whether in money or victuals.—*Scotch phrase.*

Maiming, depriving of any necessary part. See MAYHEM.

Mainad, a false oath, perjury.

Maine-port, a small tribute, commonly of loaves of bread, which in some places the parishioners pay to the rector in lieu of small tithes.

Mainovre, or **Mainœuvre**, a trespass committed by hand.

Mainour, Manour, or **Meinour**, a thing taken away which is found in the hand (*in manu*) of the thief who took it.

Mainpernable, that which may be held to bail.

Mainpernor [fr. *main*, Fr., hand, and *preneur*, taker], surety, a kind of bail. See BAIL.

Mainprize [fr. *main*, Fr., and *pris*, taken], delivery into the custody of a friend upon security for appearance. The writ of mainprize is obsolete.

Main-rent, vassalage.

Mainsworn, forsworn.

Maintainors, persons who second or support a cause in which they are not interested, by assisting either party with money, or in any other manner.

Maintenance, an officious intermeddling in a suit which in no wise concerns one, by assisting either party with money, or otherwise, to prosecute or defend it. By the Roman law, it was a species of *crimen falsi* to enter into any confederacy, or do any act to support another's law-suits, by money, witnesses, or patronage.

It is either *ruralis*, in the country, as where one assists another in his pretensions to lands, by taking or holding the possession of them for him; or where one stirs up quarrels or suits in the country; or it is *curialis*, in a court of justice, where one officiously intermeddles in a suit depending in any court, which does not belong to him, and with which he has nothing to do.—2 *Rol. Abr.* 115. Maintaining suits in the spiritual courts is not within the statutes relating to maintenance.—*Cro. Eliz.* 549. A man may, however, maintain a suit in which he has any interest, actual or contingent; and also a suit of his near kinsman, servant, or poor neighbor, out of charity and compassion, with impunity.—*Bac. Abr.* tit. 'Maintenance.' It is an invidious inquiry, but suggested by the practice of a peculiar class of lawyers, how far an attorney may be guilty of this offence. An attorney ought not to undertake a suit upon an understanding that he should bear all the costs out of his own pocket, and that his client should be indemnified from all loss. If an attorney take up a doubtful claim, and inform the party of it, and offer to recover the same for him upon terms of future profit and advantage to himself, derivable from the fruits of such suit, he is, according to the generally received opinion, guilty of maintenance, and in the second instance, barratry; but *secus* the bare solicitation to conduct a suit. The simple advancing of money for the purpose of carrying on a suit, however poor the client may be, cannot be deemed maintenance if the attorney has any expectation of being repaid; and, indeed, such an act is a charitable office, where the motives are upright.

Any legitimate common interest will justify persons jointly subscribing to pay the expenses of a suit, even when it is carried on by a third party.

This offence is punished by common law, and also by 1 Ric. II. c. 4, by fine and imprisonment; and by 32 Hen. VIII. c. 9, by a forfeiture of 10*l.*

Also, the protection and support of children, parents, wives, &c. See 4 & 5 *Wm. IV.* c. 76; 18 & 19 *Vict.* c. 87; as to maintenance of infants in Equity, see *Smi. Ch. Pr.* 555; and see ALIMONY.

Maisnada, a family.

Maison de Dieu, a monastery hospital, or alms-house.

Maisura, a house, mansion, or farm.

Majesty, a title of sovereigns. It was first used among ourselves in the reign of Henry VIII.

Majestas is defined by Ulpian (*Dig.* 48, tit. 4, s. 1) to be '*crimen illud quod adversus populum Romanum vel adversus securitatem ejus committitur.*' He then gives various instances of the crime of *majestas*, some of which pretty nearly correspond to treason in English law; but all the offences included under *majestas*

comprehend more than our term treason. One of the offences included in *majestas* was the effecting, aiding in, or planning the death of a *magistratus populi Romani*, or of one who had *imperium* or *potestas*. Though the phrase, '*crimen majestatis*,' was used, the complete expression was *crimen læsæ, imminutæ, diminutæ, minutæ, majestatis*.

Major [fr. *maier*, Old Eng., power], a mayor; an officer in the army; also, a person of full age, as distinguished from a minor.

Major hæreditas venit unicuique nostrûm à jure et legibus quam à parentibus.—2 *Inst.* 56. (A greater inheritance comes to every one of us from right and the laws than from parents.)

Major domo, a steward or master of a household.

Majora regalia, the greater rights of the Crown, such as regard the Royal character and authority.—1 *Bl. Com.* 241.

Majore pœnâ affectus quam legibus statuta est, non est infamis. – 4 *Inst.* 66.—(One affected with a greater punishment than is provided by the laws is not infamous.)

Majori inest minus.—(The less is in the greater.)

Majority, full age; the greater number; the office and rank of major.

Majua, a petty dealer in Hindostan.

Majun, a banker or considerable trader in Hindostan.

Majus jus, a writ or law-proceeding in some customary manors, in order to try a right to land.

Majus dignum trahit ad se minus dignum.—*Co. Litt.* 43.—(The more worthy draws to itself the less worthy.)

Majus est delictum seipsum occidere quam alium.—3 *Inst.* 54.—(It is a greater crime to kill one's self than another.)

Maker, the person who signs a promissory note, who stands in the same situation, after the note is endorsed, as the acceptor of a bill of exchange.

Making law, clearing one's self of an action, &c., by an oath and the oath of neighbors.

Mal, a prefix, meaning bad, wrong, fraudulent; as mal-administration, mal-practice, malversation, &c.

Mala, a mail, or port-mail; a bag, to carry letters, &c.

Mala fides, bad faith; the opposite to *bona fides*, good faith. Questions of bad faith must be judged of by a jury.—1 *East*, 318.

Mala grammatica non vitiat chartam. Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est.—6 *Co.* 39.—(Bad grammar does not vitiate a charter. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided.)

Mala in se, acts which are wrong in themselves, whether prohibited by human laws or not, as distinguished from *mala prohibita*; such as murder, robbery, perjury, &c.—1 *Step. Com.* 36–39.

Malandrinus, a thief or pirate.

Mala praxis. If the health of an individual be injured by the unskilful or negligent conduct of a surgeon, or apothecary, or general practitioner, in assuming to heal a dislocated or fractured limb, or internal disorder, an action for compensation may be sustained (8 *East*, 348); or the wrong doer may be proceeded against by censure in the college, or, for gross negligence or misconduct he might be indicted.—*Com. Dig.* 'Physician.' And if a medical practitioner, through ignorance or want of skill, should, in attempting to deliver a child, unnecessarily wound the same, and it be afterwards born alive, and then die of such wound, he will be guilty at least of manslaughter.—*The King* v. *Long*, 4 *C. and P.* 398; *Rex* v. *Senior*, 1 *Mood. Cr. C.* 346; 3 *Step. Com.* 462.

Mala prohibita, wrongs which are prohibited by human laws, but are not necessarily *mala in se*, or wrongs in themselves, as treason, playing at unlawful games.—*Step. Com.* i. 36, 39; iv. 96.

Malary, judicial, belonging to a judge or magistrate.—*Roberts' Indian Glos.*

Malberge [*mons placiti*, Lat.], a hill, where the people assembled at a court, like our assizes; which by the Scotch and Irish are called *parley hills.*—*Du Cange.*

Malconna, a treasury or store-house in Hindostan.—*Rob. Ind. Glos.*

Malecreditus, one of bad credit, who is not to be trusted.—*Fleta*, l. 1, c. xxxviii.

Maledicta expositio quæ corrumpit textum.—4 *Co.* 35.—(It is a bad exposition which corrupts the text.)

Malediction, a curse, which was anciently annexed to donations of lands made to churches or religious houses, against those who should violate their rights.

Malefaction, a crime, an offence.

Malefactor, an offender against law; a criminal.

Maleficia non debent remanere impunita; et impunitas continuum affectum tribuit delinquenti. 4 *Co.* 45.—(Evil deeds ought not to remain unpunished; and impunity affords continual incitement to the delinquent.)

Maleficia propositis distinguuntur.—*Jenk. Cent.* 290.—(Evil deeds are distinguished from evil purposes.)

Maleficium, waste; damage; injury.—*Civ. Law.*

Maleson [fr. *malum*, Lat., evil; and *sonus*, a sound], a curse.—*Bailey.*

Malesworn, or **Malsworn**, forsworn.

Maletent, Maletoute, a toll for every sack of wool.

Malfeasance, the commission of some unlawful act.

Malice [fr. *malitia*, Lat.], a formed design of doing mischief to another, technically called *malitia præcogitata*, or malice prepense or aforethought. It is either *express*, as when one with a sedate and deliberate mind and formed design kills another, which formed design is evidenced by certain circumstances discovering such intention, as lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm, or *implied*, as where one wilfully poisons another; in such a deliberate act the law presumes malice, though no particular enmity can be proved.—1 *Chit. Gen. Pr.* 46; 4 *Step. Com.* 154.

Malicious burning. The statute law of England and Ireland relating to the offences of maliciously setting fire to property, or maliciously attempting so to do, is consolidated and amended by 24 & 25 Vict. c. 97. As to buildings, ss. 1–8; corn, trees, vegetable productions, ss. 16–18; mines, ss. 26 & 27; ships, ss. 43 & 44. By 12 Geo. III. c. 24, s. 1, which is unrepealed, the offence of maliciously setting fire to ships of war is a capital felony. See ARSON.

Malicious injuries, doing mischievous damage to private property, not with an intent to gain by another's loss, but out of a spirit of wanton cruelty or of deep revenge. The 24 & 25 Vict. c. 97, consolidated and amended the laws relating to malicious injuries to property. As to the malicious destruction of works of art, science, &c., in public institutions, see s. 39.—4 *Step. Com.* 222.

Malicious prosecution, a prosecution preferred without reasonable or probable cause, by which a person's reputation is attempted to be wilfully destroyed. The remedy is an action on the case for a false and malicious prosecution, in which damages are recovered.

Malignare, to malign or slander; also to maim.

Malik, a proprietor.—*Indian.*

Malitia præcogitata, malice aforethought. See MALICE.

Malitia est acida; est mali animi affectus. Buls. 49.—(Malice is sour; it is the quality of a bad mind.)

Malitia supplet ætatem.—Dyer, 104 *b.*—(Malice supplies [the want of] age.)

Mallum and **Mallus.** See METHEL.

Malo grato, in spite; unwillingly.

Malt mulna, a quern or malt-mill.

Malt-shot, or **Malt-scot,** certain payment for making malt.

Malt-tax. See 22 & 23 *Vict.* c. 18, ss. 7, 8.

Malum in se. See MALA IN SE.

Malum hominum est obviandum.—4 *Co.* 15. (The malice of men is to be avoided.)

Malum non habet efficientem, sed deficientem causam.—3 *Inst. Proeme.*—(Evil has not an efficient, but a deficient cause.)

Malum prohibitum. See MALA PROHIBITA.

Malum non præsumitur.—4 *Co.* 72.—(Evil is not presumed.)

Malum quo communius eo pejus.—(The more common an evil is, the worse.)

Malus usus est abolendus, quia in consuetudinibus, non diuturnitas temporis, sed soliditas rationis est consideranda.—Co. Litt. 141.—(An evil custom is to be abolished, because, in customs, not length of time, but solidity of reason, is to be considered.)

Malveilles [fr. *malveillance*, Fr.], ill-will; crimes and misdemeanors; malicious practices.

Malveisa, a warlike engine to batter and beat down walls.—*Mat. Par.*

Malveisin [fr. *mauvais voisin*, Fr.], an ill neighbor.

Malveis procurors, such as used to pack juries, by the nomination of either party in a cause, or other practice.—*Art. super Chart.* c. x.

Malversation, misbehaviour in an office, employment, or commission, as breach of trust, extortion, &c.

Man, Isle of, an island in the Irish Sea off the coast of Cumberland, Westmoreland, and Lancashire. The island is divided into two districts, which are subdivided into six sheadings including 17 parishes. Each sheading has its own coroner, to whom the jury-list for sheading is committed, and who is bound to summon the juries from that list when required.—*Hale's Hist.* p. 255; 4 *Inst.* 283.

This was formerly a distinct territory, but by 5 Geo. III. cc. 26, 39, the whole island and all its dependencies, except the landed property of the Athol family, and some other rights belonging to them, are inalienably vested in the Crown, and subjected to the regulations of the British excise and customs. See 3 & 4 *Wm. IV.* c. 60, as to its trade regulations; 3 & 4 *Vict.* c. 63; 16 & 17 *Vict.* c. 104, s. 354; 18 & 19 *Vict.* c. 96, s. 24; 19 & 20 *Vict.* c. 61; 23 & 24 *Vict.* c. 56; and 26 & 27 *Vict.* c. 86.

Mana, an old woman.

Manacle [fr. *manus*, Lat.], chain for the hands; shackle.

Manager, a superintendent, a conductor or director. As to a fraud by a manager of a company, see 24 & 25 *Vict.* c. 100, ss. 82, 83, 84.

Managium, a mansion-house or dwelling-place.

Manbote, a compensation or recompense for homicide, particularly due to the lord for killing his man or vassal, the amount of which was regulated by that of the *wer.*—*Anc. Inst. Eng.*

Manca, Mancus, or **Mancusa,** a square piece of gold coin, commonly valued at 30 pence.

Manceps [Lat.], a farmer of the public revenues; one who sold an estate with a promise of keeping the purchaser harmless; one who bought an estate by outcry; one who undertook a piece of work and gave security for the performance.

Manche-present, a bribe; a present from the donor's own hand.

Manchester, *bishopric of,* established by 10 & 11 Vict. c. 108.

The 'Manchester Parish Division Act, 1850,' is 13 & 14 Vict. c. 41. The 23 & 24 Vict. c. 69, enables the Ecclesiastical Commissioners for England to apply certain funds towards the repairs of the cathedral or collegiate church of Manchester.

Mancipate, to enslave; to bind; to tie.

Mancipatio. Every father, in the Roman law, had such an authority over his son, that before the son could be released from his subjection and made free, he must be twice sold and bought, his natural father being in the first instance the vendor. The vendee was called *pater fiduciarius.* After this fictitious bargain, the *pater fiduciarius* sold him again to his natural father, who could then, but not till then, manumit or make him free. The imaginary sale was called *mancipatio*; and the act of giving him liberty, or setting him free, was called *emancipatio.*

Also, the selling or alienating of certain lands by the balance or money paid by weight, and in the presence of five witnesses. This mode of alienation took place only among Roman citizens, and that only in respect to certain estates situated in Italy, which were called *mancipia.—Encyc. Lond.* Abolished by Justinian, when he obliterated the distinction between things *mancipi,* and things *nec mancipi.* See *Sand. Just.* 175.

Manciple [fr. *manceps,* Lat.], a clerk of the kitchen or caterer, especially in colleges.

Mandamus (*we command*), a high prerogative writ of a most extensive remedial nature. In form it is a command issuing in the Queen's name from the Court of Queen's Bench only (except a *mandamus* to examine witnesses in India, &c., under 1 Wm. IV. c. 22, s. 1, and a *mandamus* under 17 & 18 Vict. c. 125, which may be awarded by any of the three superior courts of common law), and addressed to any person, corporation, or inferior court of judicature within the Crown's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty, and which the Court of Queen's Bench has previously determined, or at least supposes to be consonant to right and justice.

It is used principally for public purposes, and to enforce performance of public rights or duties. It enforces, however, some private rights when they are withheld by public officers.

It is a general rule that this writ is only to be issued where a party has no other specific remedy; and he must apply to the court without delay. To induce the court to interfere, there must be not only a specific legal right, but also the absence of any other specific legal remedy. The jurisdiction is to be exercised with great caution, because it is altogether in the discretion of the court, and no proceeding in error lies upon it.

By *mandamus,* arbitrations and awards, when made under public acts, may be enforced; overseers and public officers may be compelled to deliver up parish books, &c. to their successors; burial may be enforced, and also the statement of a special case, when the sessions have agreed that there should be a case. It will lie to compel justices to set out evidence in their convictions, in pursuance of the 3 Geo. IV. c. 23, s. 1, and generally to perform their duties. But by 11 & 12 Vict. c. 44, s. 5, the court may, in lieu of a *mandamus,* grant a rule ordering justices to do an act. It also lies to compel lords of manors to admit copyholders, and corporations to fill up vacant offices, and to proceed to the election of mayor; to restore persons wrongfully ousted from an office or right, or to admit a person wrongfully refused. So it formerly lay to the Ecclesiastical Courts to compel probate to the executor named in a will, or letters of administration to the next of kin.

The remedy by *mandamus* is extended by the Common Law Procedure Act, 1854, which provides (ss. 68–77), that the plaintiff in any action in any of the superior courts, except replevin and ejectment, may indorse upon the writ and copy to be served a notice that he intends to claim a writ of *mandamus,* and may, thereupon, claim in the declaration, either together with any other demand which may now be enforced in such action, or separately, a writ of *mandamus,* commanding the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested. The declaration in such action must set forth sufficient grounds upon which such claim is founded, must show that the plaintiff is personally interested therein, that he sustains or may sustain damage by the non-performance of such duty, and that performance thereof has been demanded by him, and refused or neglected. The pleadings and other proceedings in any action in which a writ of *mandamus* is claimed are the same in all respects, as nearly as may be, as in an ordinary action for the recovery of damages, and costs are recoverable by either party. The provisions of the C. L. P. A. 1852 & 1854, so far as they are applicable, apply to the proceedings and pleadings upon a prerogative writ of *mandamus* issued by the Court of Queen's Bench.

By 19 & 20 Vict. c. 108, s. 43, no *man-*

damus shall in future issue to a judge or officer of a county-court for refusing to do any act relating to the duties of his office; but application must be made to a superior court or a judge for a rule or summons to show cause why such act should not be done.—4 *Step. Com.* 5–10, 72 n, 418 n, 604; *Gude's Crown Prac.*; *Impey on Mandamus*; and 2 *Selw. Nisi Prius*, 1083–1111; *Chit. Arch. Prac. by Pren.* 229, 1102; and *Day's C. L. P. Acts.*

Mandant, the principal in the contract of mandate.

Mandatary [fr. *mandatarius*, Lat.], he to whom a mandate, charge, or commandment is given; also, he that obtains a benefice by *mandamus*.

Mandata licita strictam recipiunt interpretationem, sed illicita, latam et extensam.—Bacon. (Lawful commands receive a strict interpretation, but unlawful, a wide and broad interpretation.)

Mandatarius terminos sibi positos transgredi non potest.—Jenk. Cent. 53.—(A mandatary cannot exceed the bounds placed upon himself.)

Mandate [fr. *mandatum*, Lat.], a judicial command, charge, commission.

Also, a bailment of goods, without reward, to be carried from place to place, or to have some act performed about them. The person employing is called in the civil law *mandant*, or *mandator*, and the person employed *mandatarius* or mandatory.

The distinction between a mandate and a deposit is, that in the latter, the principal object of the parties is the custody of the thing; and the service and labor are merely accessorial. In the former, the labor and service are the principal objects of the parties, and the thing is merely accessorial.

Three things are necessary to create a mandate: (1) that there should exist something which should be the subject of the contract, or some act or business to be done; (2) that it should be to be done gratuitously; (3) that the parties should voluntarily intend to enter into the contract.

A mandatory incurs three obligations: (1) to do the act which is the object of the mandate, and with which he is charged; (2) to bring to it all the care and diligence that it requires; (3) to render an account of his doings to the mandator.

A mandator contracts to reimburse a mandatary for all expenses and charges reasonably incurred in the execution of the mandate, and also to indemnify him for his liability on all contracts which arise incidentally in the proper discharge of his duty.

The contract of mandate may be dissolved either by the renunciation of the mandatary at any time before he has entered upon its execution, or by his death; for, being founded in personal confidence, it is not presumed to pass to his representatives, unless there is some special stipulation to that effect. But if the mandate be partly executed, there may in some cases arise a personal obligation on the part of the representatives to complete it.—*Story's Bailments*, c. iii.

In the canon law, a rescript of the pope, by which he commands some ordinary collator or precentor to put the person there nominated in possession of the first benefice vacant in his collation. As to their abuses, see 2 *Hall. M. A.* p. 212.

Royal mandates to judges for interfering in private causes, constituted a branch of the royal prerogative, which was given up by Edward I. And the 1 W. & M. st. 2, c. 2, declared that the pretended power of suspending or dispensing with laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal.

Mandati Dies, Maundy Thursday.

Mandato, panes de, loaves of bread given to the poor upon Maundy Thursday.

Mandator, director. See MANDATE.

Mandatory, preceptive; directory.

Mandatum, a fee or retainer given by the Romans to the *procuratores* and *advocati*. *Mandatum* is sometimes used in the sense of a command from a superior to an inferior.

Mandavi ballivo (*I have commanded the bailiff*). If a bailiff of a liberty have the execution and return of a writ, the sheriff may return that he commanded the bailiff to execute it; and if the bailiff have not made a return, the sheriff should return that fact accordingly (*mandavi ballivo, qui nullum dedit responsum*); or if he have made a return, the sheriff should return it.—1 *Chit. Arch. Prac. by Pren.* 618.

Manentes [fr. *maneo*, Lat., to continue], tenants. Obsolete.

Manerium dicitur à manendo, secundum excellentiam, sedes magna, fixa, et stabilis.—Co. Litt. 58.—(A manor is called from '*manendo*,' a seat, according to its excellence, great, fixed, and firm.)

Mangonare, to buy in a market.

Mania, mental alienation, which see.

Mania a potu, otherwise denominated *delirium tremens*, a disease induced from the intemperate use of spirituous liquors, or certain other diffusible stimuli.

Manifesta probatione non indigent.—7 Co. 40.—(Things manifest do not stand in need of proof.)

Manifesto, or **Manifest,** a public declaration made by a prince, in writing, showing his intentions to begin a war or other enterprise, with the motives that induce him to it, and the reasons on which he founds his rights and pretensions.—*Encyc. Lond.*

In commercial navigation, a document signed by the master, containing the name or names of the places where the goods on board have been laden, and the place or places for which they are respectively destined, the name and tonnage of the vessel, the name of the master, and the name of the place to which the vessel belongs, a particular account and description of all the packages on board, with the marks and numbers thereon, the goods contained in such packages, and the names of the respective shippers and consignees, as far as such particulars are known to the master. A separate manifest is required for tobacco. The manifest must be made out, dated, and signed by the captain, at the place or places where the goods, or any part of the goods, are taken on board.—*McCull. Comm. Dict.*

Manner, act; as to take a thief in the act of stealing.

Manning, a day's work of a man.

Mannire, to cite any person to appear in court and stand in judgment there; it is different from *bannire*; for both of them are citations; this is by the adverse party, and that is by the judge.—*Du Cange.*

Mannopus, goods taken in the hands of an apprehended thief.—*Cowel.* See MANU OPERA.

Mannus, a horse.

Manor [fr. *manerium*, Lat.; *manoir*, Fr., habitation, or *manendo*, of abiding there, because the lord usually resided there], a noble sort of fee, granted partly to tenants for certain services to be performed, and partly reserved to the use of the lord's family. The *tenementales* were granted out; the *dominicales* were reserved to the lord; the whole fee was termed a lordship or barony; and the court appendant to the manor the Court Baron. See *Co. Litt.* 58 *a*; 1 *Step. Com.* 219, 225; and COPYHOLD.

Man-queller [fr. *man*, and *cwellan*, Sax.], a murderer.

Manrent, a kind of bond between lord and vassal, by which protection was stipulated on the one hand, and fidelity with personal service on the other.—*Rob. Scot.* b. 1.

Mansa, or **Mansum,** a mansion or house.—*Spelm.*

Manse, a house or habitation, either with or without land.

Manse, or **Mansum presbyteri,** a parsonage or vicarage-house; sometimes called *presbyterium.*

Manser, a bastard.—*Cowel.*

Mansion [*mansio*, Lat., *à manendo*], the lord's house in a manor.

Mansion-house, a dwelling house.—3 *Inst.* 64.

Manslaughter, the unlawful killing of another without malice express or implied. It is either—

(*a*) Voluntary, upon a sudden heat, or
(*β*) Involuntary, upon the commission of some unlawful act.

Both are felony; and punished at the discretion of the court, by penal servitude for life, or not less than three years, or by imprisonment, with or without hard labor, for any term not exceeding two years, or by a fine.—24 & 25 *Vict.* c. 100, s. 5. See 4 *Step. Com.* 147.

Manstealer, a kidnapper.

Mansum capitale, the manor-house, or lord's court.

Mansura, the habitation of people in the country.

Mansus, a farm.

Mantea, a long robe or mantle.—*Old Records.*

Mantheoff [fr. *mannus*, Lat., a nag, and *theoff*, Sax., a thief], a horse-stealer.—*Leg. Alf.*

Manticulate, to pick pockets.—*Bailey.*

Man-trap, engines to catch trespassers, now unlawful, unless set in a dwelling-house for defence between sunset and sunrise.—24 & 25 *Vict.* c. 100, s. 31.

Manualia beneficia, the daily distributions of meat and drink to the canons and other members of cathedral churches for their present subsistence.

Manualis obedientia, sworn obedience or submission upon oath.

Manucaptio, a writ that lay for a man taken on suspicion of felony, &c., who cannot be admitted to bail by the sheriff or others having power to let to mainprise.—*F. N. B.* 249.

Manucaptor, one who stands bail for another.

Manufacture, anything made by art. As to a patent for a manufacture, see LETTERS-PATENT.

Manu forti (*with strong hand*).

Manumission, the act of giving freedom to slaves.

Among the Romans it was performed in three several ways: 1st, when, with his master's consent, a slave had his name entered in the census or public register of the citizens; 2nd, when the slave was led before the prætor, and that magistrate laid his wand (*vindicta*) on his head; 3rd, when the master, by his will, gave his slave freedom.

Among us, in the time of the Conqueror, villeins were manumitted by their master delivering them by the right hand to the viscount in full court, showing them the door, giving them a lance and a sword, and proclaiming them free. Others were manumitted by charter. There was also an implied manumission, as when the lord made an obligation for payment of money to the bondman at a certain day, or sued him where he might enter without suit, and the like.—*Encyc. Lond.*

Manumittere, idem est quod extra manum vel

potestatem ponere.—Co. Litt. 137.—(To manumit is the same as to place beyond hand and power.)

Manung, or **Monung**, the district within the jurisdiction of a reeve, apparently so called from his power to exercise therein one of his chief functions, viz., to exact (*amanian*) all fines.—*Anc. Inst. Eng.*

Manu opera, cattle or implements of husbandry; also, stolen goods taken from a thief caught in the fact.

Manupastus, a domestic; perhaps the same as *hlafæta.—Anc. Inst. Eng.*

Manupes, a foot of full and legal measure.

Manus, an oath, from the ceremony of laying the hand on the book; also, the person taking an oath, or compurgator.

Manus mortua, quia possessio est immortalis, manus pro possessione et mortua pro immortali. Co. Litt. 2.—(Mortmain (dead hand), because it is an immortal possession; *manus* stands for possession, and *mortua* for immortal.)

Manus mediæ, or **infimæ homines**, men of a mean condition, or of the lowest degree.

Manutenentia, the old writ of maintenance. *Reg. Orig.* 182.

Manwyrth, the value or price at which a man is estimated, according to his degree; apparently synonymous with *wer-geld.* It occurs only in the laws of Hlothhære and Eadric.—*Anc. Inst. Eng.*

Mara, a mere, lake, or great pond, that cannot be drawn dry.—*Par. Antiq.* 418.

Marcatus, the rent of mark by the grant anciently reserved in leases, &c.

Marchandises avariées [Fr.], damaged goods.

Marchers, or **Lord Marchers**, those noblemen who lived on the marches of Wales and Scotland, who, in times past, had their laws and regal power, until they were abolished by 27 Hen. VIII. c. 26.

Marches, the boundaries of countries and territories; the limits between England, Wales, and Scotland. Also, in Scotland, the boundaries between private properties.—*Co. Litt.* 106 *b.*

Marches, *Court of*, an abolished tribunal in Wales, where pleas of debt or damages, not above the value of 50*l.*, were tried and determined.—*Cro. Car.* 384.

Marchet, or **Marchetta**, a pecuniary fine, anciently paid by the tenant to his lord for the marriage of one of the tenant's daughters. This custom obtained, with some difference, throughout all England and Wales, as also in Scotland; and it still continues to obtain in some places. It is also denominated *gwahr-merched*, i. e. maid's fee.—*Co. Litt.* 117 *b*, 140 *a.*

Marchioness [formed by adding the English female termination to the Latin *marchio*], a dignity in a woman answerable to that of marquess in a man, conferred either by creation, or by marriage with a marquess.

Mareschall, or **Mareshal**, a marshal.

Marettum [fr. *maret*, Fr., a fen or marsh], marshy ground overflowed by the sea or great rivers.—*Co. Litt.* 5.

Marinariorum Capitaneus, an admiral or warden of the ports.

Marinarius, a mariner or seaman.

Marine, a general name for the navy of a kingdom or state; as also the whole economy of naval affairs, or whatever respects the building, rigging, arming, equipping, navigating, and fighting ships. It comprehends also the government of naval armaments, and the state of all the persons employed therein, whether civil or military. Also one of the marines, which see.

Marine Insurance. See INSURANCE.

Marines, a military force drilled as infantry, whose especial province is to serve on board ships of war when in commission. The force was first established about the middle of the last century. When serving on board ship, their discipline is regulated by the Naval Discipline Act, 24 & 25 Vict. c. 115; when on shore by an Act annually passed, called the Marine Mutiny Act. See 26 & 27 *Vict.* c. 9.

Marine Society, a charitable institution for the purpose of apprenticing boys to the naval service, &c. incorporated by 12 Geo. III. c. 67.

Marischal, an officer in Scotland, who, with the Lord High Constable, possessed a supreme itinerant jurisdiction in all crimes committed within a certain space of the court, wherever it might happen to be.

Mariscus, a marshy or fenny ground.—*Domesday; Co. Litt.* 5 *a.*

Maris et fœminæ conjunctio est de jure naturæ.—7 *Co.* 13.—(The connection of male and female is by the law of nature.)

Maritagio amisso per defaltam, an obsolete writ for the tenant in frank-marriage to recover lands, &c. of which he was deforced.

Maritagium, the portion which is given with a daughter in marriage. Also the power which the lord or guardian in chivalry had of disposing of his infant ward in matrimony.—*Spelm.* See 1 *Reeves*, c. iii., p. 121, and c. v., 297. N. B. In this volume of Reeves, sheets I and K have been paged alike.

Maritagium est aut liberum aut servitio obligatum; liberum maritagium dicitur ubi donator vult quod terra sic data quieta sit et libera ab omni seculari servitio.—Co. Litt. 21.—(A marriage portion is either free or bound to service; it is called frank-marriage when the giver wills that land thus given be exempt from all secular service.)

Maritagium habere, for **Maritare**, to have the free disposal of an heiress in marriage.

Marital [fr. *maritus*, Lat.], pertaining to a husband; incident to a husband.

Maritated, having a husband.

Maritima Angliæ, the profit and emolument arising to the Crown from the sea, which anciently was collected by sheriffs; but it was afterwards granted to the Lord High Admiral. *Par.* 8 *Hen. III.* m. 4.

Maritime Courts, the Court of Admiralty and its court of appeal, the Judicial Committee of the Privy Council. Courts of Vice-Admiralty are established in Her Majesty's possessions beyond the seas, with jurisdiction over maritime causes, including those relating to prize. By 2 Wm. IV. c. 51, it is enacted, that in all cases where a ship comes within the local limits of a court of Vice-Admiralty, suits may be commenced therein for 'seamen's wages, pilotage, bottomry, damage to ships by collision, breach of regulations of the royal service at sea, salvage, and droits of admiralty,' notwithstanding the cause of action may have arisen out of the local limits of such courts.

Maritime law, the law relating to harbors, ships, and seamen. It forms an important branch of the commercial law of all maritime nations. It is divided into a variety of different departments, such as those with respect to harbors, the property of ships, the duties and rights of masters and seamen, contracts of affreightment, average, salvage, &c. No system or code of maritime law has ever been issued by authority in Great Britain. The laws and practices that now obtain amongst us in reference to maritime affairs have been founded principally on the practices of merchants, the principles laid down in the civil law, the laws of Oleron and Wisby, the works of distinguished jurisconsults, the judicial decisions of our own and foreign countries, &c. A law so constructed has necessarily been in a progressive state of improvement, and, though still susceptible of amendment, it corresponds at this moment more nearly, perhaps, than any other system of maritime law, with those universally recognised principles of justice and general convenience by which the transactions of merchants and navigators ought to be regulated.

The decisions of Lord Mansfield did much to fix the principles and to improve and perfect the maritime law of England. It is also under great obligations to Lord Stowell. The decisions of the latter, chiefly, indeed, respect questions of neutrality, growing out of the conflicting pretensions of belligerents and neutrals during the late war; but the principles and doctrines which he unfolds in treating those questions throw a strong and steady light on all branches of maritime law. It has occasionally, indeed, been alleged—and the allegation is probably, in some degree, well founded—that his lordship has conceded too much to the claims of belligerents. Still, however, his judgments must be regarded, allowing for this excusable bias, as among the noblest monuments of judicial wisdom of which any country can boast. 'They will be contemplated,' says Mr. Serjeant Marshall (*Insur. Prel. Disc.*), 'with applause and veneration, as long as depth of learning, soundness of argument, enlightened wisdom, and the chaste beauties of eloquence hold any place in the estimation of mankind.'—*McCull. Comm. Dict.* As to the maritime laws of early times, see 3 *Hall. M. A.*, p. 333.

Maritime State, consists of the officers and mariners of the British navy, who are governed by express and permanent laws, or the articles of the navy, established by Act of Parliament.

Mark [fr. *marc*, Welsh; *mearc*, Sax.; *merche*, Dut.; *marque*, Fr.], a token; an impression; a proof; an evidence; license of reprisals; also, a sum of 13*s.* 4*d.*

In commerce and manufacture, a certain character struck or impressed on various kinds of commodities, either to show the place where they were made, and the persons who made them; or to witness that they have been viewed and examined by the officers charged with the inspection of manufactures; or to show that the duties imposed thereon have been paid. It is also used to indicate the price of a commodity. If one use the mark of another, to do him damage, an action on the case will lie, and an injunction may be obtained in Chancery. 2 *Cro.* 471.

Those who are unable to write sign a cross, for their mark, when they execute any document.

Markepenny, a penny anciently paid at the town of Maldon by those who had gutters laid or made out of their houses into the streets.—15 *Edw. I.*

Market [anciently written *mercat*, fr. *mercatus*, Lat.], a public time and appointed place of buying and selling; also purchase and sale. It differs from the *forum*, or market of antiquity, which was a public market-place on one side only, or during one part of the day only, the other sides being occupied by temples, theatres, courts of justice, and other public buildings.

A market can only be set up by virtue of a royal grant, or by long and immemorial usage, which presupposes a grant.

All contracts for anything vendible in fairs or markets overt are binding, if made according to the following rules:—(1) the sale must be in a place that is open, so that any one who passes by may see it, and that is proper for the sale of such goods; (2) it must be an actual sale for a valuable consideration; (3) the buyer must not know that the seller has a wrongful possession of the goods sold; (4) the sale must not be fraudulent between two to bar a third person of his right; (5) there must be a sale and a contract by persons able to contract; (6)

the contract must be originally and wholly in the market overt; (7) toll ought to be paid where required by statute; (8) the sale ought not to be in the night, but between sun and sun; though, if the sale be made in the night, it may bind the parties.—5 *Rep.* 83. See 1 *Step. Com.* 671; ii., 53, 72, 537; and iii., 520.

Market, Court of Clerk of the, a tribunal incident to every fair and market in the kingdom, to punish misdemeanors therein; as a court of *piedpoudre* is to determine all disputes relating to private or civil property. The object of this, the most inferior criminal jurisdiction, is principally the recognisance of weights and measures, to try whether they be according to the true standard thereof or not, which standard was anciently committed to the custody of the bishop, who appointed some clerk under him to inspect the abuse of them more narrowly; and hence this officer, though usually a layman, is called the clerk of the market.

The 5 & 6 Wm. IV. c. 63, has superseded his functions as regards weights and measures, and enacts that inspectors or examiners of weights and measures shall be appointed, who shall attend with the stamps and copies of the imperial standard weights in their custody at each of the several market towns, and examine and stamp, if found correct, such weights and measures as shall be brought to them for that purpose, and give, if required, a certificate of such stamping, and that it shall be lawful for any magistrate or authorized inspector, to enter, at all reasonable times, any shop or other place where goods are exposed for sale, in order to examine the weights and measures, and if found incorrect, such weights and measures shall be liable to be seized and forfeited, and the person in whose possession the same shall be found, or who shall obstruct such examination, shall be liable to a penalty of five pounds. See 4 *Step. Com.* 403.

Market geld, the toll of a market.

Market overt, an open market. See MARKET.

Market price. See VALUE.

Market towns, those towns which are entitled to hold markets.—1 *Step. Com.* 128.

Marketable, such things as may be sold; such for which a buyer may be found.

Markets and Fairs Clauses Act, 1847, 10 & 11 *Vict.* c. 14.

Marketzeld. See MARKET GELD.

Marksman, a person who cannot write, and therefore makes his mark only in executing instruments, another writing his name opposite to such mark.

Marlebridge, *Statute of,* 52 Hen. III. A.D. 1267, enacted at Marlebridge, now said to be Marlborough. See *Barr* on *Stat.* 60; 2 *Reeves,* vii. 62; and *Hale's Hist.*, note *b.*

Marque [fr. *mearc,* Sax.; *signum,* Lat.], a mark, a sign; reprisals. See LETTER OF MARQUE.

Marquis or **Marquess** [fr. *marquis,* Fr.; *marchio,* Lat.; *margrave,* Ger.], one of the second order of nobility, next in order to a duke. The first marquis was Robert de Vere, Earl of Oxford, whom Richard II. in the year 1386 made Marquis of Dublin. The first and last woman that was created a marquess was the lady Ann Bolein, and then the spelling *marquess* seems to have been considered a feminine term.

The general style of a marquis is 'most high and mighty prince,' and he is styled by the sovereign 'our right-trusty and entirely-beloved cousin.' His title is 'most honourable;' and his sons, by courtesy, are styled lords, and his daughters ladies.

The word, according to some authors, comes from the *Marcomanni,* an ancient people who inhabited the marshes of Brandenburgh. Others derive it from the German *marche,* limit; and others from *marcisia,* which, in the Celtic language, signifies a wing of cavalry. Nicod derives it from the corrupt Greek *νομαρχία,* a province. Alciat and Pauchet bring it from *marc,* a horse, taking a marquis to be properly an officer of horse. Menage derives it from *marca,* a frontier; and Selden, Krantzius, and Hottoman, do the same. Pasquier, from the old French *marche,* or from *marchir,* to confine, the guard of the frontiers being committed to them.—*Encyc. Lond.*

Marquisate, the seigniory of a marquis.

Marriage [fr. *maritagium,* low Lat.], a solemn contract, dictated by nature, and instituted by Providence, whereby a man is united to a woman for the lawful purposes of civilised society. The common law treats it as a civil contract, and deems it to be good and valid where it is entered into by persons willing and able to contract, and who actually do contract, according to the solemnities established by law. Each party must exercise free-will in entering into the contract, for it is the consent, and not the mere union of the parties, which constitutes the marriage. If either party to the marriage has not consented to it, or if the consent of either of them has been obtained by fraud, error, or duress, such marriage is absolutely void, although all the formalities required by law to constitute a valid marriage may have been observed. It follows that persons who have not sufficient mental capacity to enable them to consent, i. e. lunatics, idiots, and children, cannot contract a valid marriage. The marriage of a lunatic contracted during a lucid interval is good, unless a commission of lunacy has been taken out and remains unrevoked at the time of the marriage, when it is void by 15 Geo. II. c. 30.

The marriage of a child under seven years of age is a mere nullity. The age of consent

is fourteen in males and twelve in females. If either of the parties are between the age of seven and the respective ages of fourteen and twelve, the marriage is not absolutely void, but inchoate or imperfect. It cannot be annulled until the party wishing to annul it has arrived at the age of consent. Either of them upon attaining that age may declare the marriage void; or upon their both attaining it they may agree to live together; in the former case a judicial dissolution would not be necessary, and in the latter another marriage ceremony would not be requisite. It is to be observed that a promise to marry *in futuro* is not binding, if the party be not twenty-one years of age; but where there are mutual promises to marry between two persons, one of whom is of the age of twenty-one, and the other under that age, the adult is bound by the promise, but the minor is not, and if the adult break the promise, the minor may maintain an action on the breach, in order to recover damages; but if the minor break the promise, no action can be maintained upon it by the adult.

The parties to a marriage must be able as well as willing to contract, i. e. they must not labor under any legal disability. The disabilities are:—

(1) A prior marriage undissolved, and the former husband or wife still living; a second marriage under such circumstances is absolutely void, and is punishable as a felony. See BIGAMY.

(2) Proximity of relationship, i. e. being within the prohibited degrees of consanguinity or affinity.

Consanguinity comprehends those related to a person by blood; they are either of lineal or of collateral consanguinity; affinity comprehends those related by marriage.

Before the year 1835, marriages between the prohibited degrees were voidable but not absolutely void, i. e. if their validity was questioned during the lifetime of the parties, they would be pronounced void, but after the death of either party their validity could not be questioned, and they were treated as valid to all intents and purposes. But in 1835, the statute 5 & 6 Wm. IV. c. 54 came into operation, whereby it was enacted that all marriages celebrated between persons within the prohibited degrees of consanguinity or affinity shall be absolutely void for all purposes whatever. The marriages which are now illegal in respect of proximity of degree are the following:—Those between persons in the ascending and descending lines, *in infinitum*. The ascending and descending lines form what is called lineal consanguinity, as, father, grandfather, great grandfather, and so upwards, in the direct ascending line, and son, grandson, great grandson, &c. in the direct descending line. Every generation, in lineal consanguinity, whether in the ascending or descending line, constitutes a degree, thus:—a man's father and his son are related to him in the first degree, his grandfather and grandson in the second, his great grandfather and great grandson in the third degree, and so on.

Marriages, also, between collaterals to the third degree inclusive, according to the mode of computation in the civil law, are prohibited. Collaterals are those who descend from a common ancestor, but do not ascend or descend from one another, as brothers, uncles, nephews, &c. A man's parents are counted as one degree in collaterals; his brothers and sisters, grandfather and grandmother, are in the second degree; and his uncles, aunts, nephews, and nieces, in the third degree. The prohibition as to collaterals extends not only to consanguinity, but also to affinity. Cousins-german, or first cousins, being in the fourth degree of collaterals, may marry; a nephew and great aunt, or a niece and great uncle, are also in the fourth degree, and may marry; and although a man may not marry his grandmother, he can, if he like, marry his grandmother's sister. But a man can marry neither his sister nor his wife's sister, for both are related to him in the second degree; nor his sister's daughter, nor wife's sister's daughter, for both are in the third degree. Though those of the consanguinity of the wife are always related by affinity to the husband, and *vice versâ*, yet those of the consanguinity of the husband are not at all necessarily related to those of the consanguinity of the wife; hence two brothers may marry two sisters, or father and son may marry mother and daughter. If a brother and sister marry two persons not related, and the brother and sister die, the widow and widower may intermarry, for, though a man is related to his wife's brother by affinity, he is not so to his wife's brother's wife, whom, if other circumstances will admit, it would not be unlawful for him to marry. These prohibitions extend to the relations of the half blood, as well as to the whole blood, and they also apply though one of the parties be a bastard; for though, as to many civil consequences a bastard is deemed *nullius filius*, the law recognises his relationship to his natural parents for moral purposes.

(3) Impotence or inability to consummate the marriage, arising from corporal defect or infirmity. In order to nullify the marriage the impotence must have existed at the time when it was solemnised, and must be incurable.

(4) The fraudulent suppression or alteration of the name of one or both of the parties in the publication of banns. A suit for nullity on this ground cannot be instituted by the person who was guilty of the fraudulent suppression or alteration against the other spouse, if he or she was not a party to it. If both were cog-

nisant of it either may maintain the suit. If one only was cognisant of it the innocent party can take advantage of it. In the case of a marriage by license, however, the fraudulent suppression or alteration of a name does not invalidate the marriage. See *Bevan f. c.*, *M'Mahon* v. *M'Mahon*, 2 *Sw. & Tr.* 230.

The 22nd section of the 4th Geo. IV. c. 76, enacts that 'if any person shall knowingly and wilfully intermarry in any other place than a church or such public chapel wherein banns may be lawfully published, without due publication of banns or license from a person having authority to grant the same first had and obtained, or shall knowingly and wilfully consent to or acquiesce in the solemnisation of marriage by any person not being in holy orders, the marriage of such persons shall be null and void to all intents and purposes whatsoever.'

(5) After a marriage has been dissolved neither party can contract a second marriage until the time limited for an appeal against the decree of dissolution has expired without any appeal being presented, or until such appeal has been dismissed, or until in the result of such appeal the marriage has been declared to be dissolved (20 & 21 Vict. c. 85, s. 57). The time limited for an appeal is three months from the date of the decree, if Parliament be then sitting, or if Parliament be not sitting at the end of the three months then fourteen days next after its meeting. A second marriage contracted by a person whose first marriage had been dissolved within three months of the decree of dissolution, was pronounced null and void.—*Chichester* v. *Mure*, *f. c. Chichester*, 32 *L. J.* (*P. M. & A.*) 120.

The 7th Geo. IV. c. 76, directs that the consent of parents or guardians shall be obtained to the marriage of minors, but the marriage is not invalidated by the want of such consent. The consent required is either of the father, or, if the father be dead, then of a guardian lawfully appointed, if there be no guardian, then of the mother, being unmarried, and if there be no mother unmarried, then of any guardian appointed by the Court of Chancery. But where the person whose consent is required is *non compos mentis*, or where such person, being the guardian of the mother, is abroad, or the consent to a proper marriage is unreasonably, or from undue motives, withheld, the Lord Chancellor, upon petition, has power to give relief. If the marriage is by the publication of banns, and the party whose consent is required dissent from the marriage, he or she attends the church and states his objection immediately after the banns are published by the minister, who will request the attendance of the dissenting party in the vestry room after the conclusion of divine service, when the sufficiency of the objection will be decided upon by the minister; and if the objection be valid, the publication of the banns will be void; but if the objection be invalid, the marriage will be duly solemnised. If a marriage be about to be effected by license, and there is an objection to the same, the person whose consent is required enters a *caveat* against the granting a license with the master of the faculties, before whom a discussion will take place upon it, and he will decide the question according to his discretionary jurisdiction. It is to be observed, that if the minor be a widow or widower, no consent is necessary, since he or she would be then deemed emancipated.

In January 1858 the Divorce Act (20 & 21 Vict. c. 85) came into operation, and the jurisdiction of the Ecclesiastical Courts in England in respect of all suits and matters matrimonial, except so far as relates to the granting of marriage licenses, was transferred to the Court for Divorce and Matrimonial Causes. The Act also gave the court a jurisdiction to dissolve marriages and to deal with the property of persons whose marriage was dissolved, and with the custody of their children. Any husband may obtain a dissolution of his marriage upon proving to the satisfaction of the court that his wife has been guilty of adultery; and any wife may obtain a dissolution who can prove that her husband has been guilty of incestuous adultery, or of bigamy with adultery, or of rape, or of sodomy, or beastiality, or of adultery coupled with cruelty, or with desertion without reasonable excuse for two years and upwards (ss. 27 & 31). But if the petitioner has been accessory to or conniving at the adultery of the other party to the marriage, or has condoned the adultery complained of, or has presented or prosecuted the petition in collusion with the other parties to the suit, the court is bound to dismiss the petition (s. 30). And if the petitioner has been guilty of unreasonable delay in presenting or prosecuting the petition, or of cruelty towards the other party to the marriage, or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of and without reasonable excuse, or of such wilful neglect or misconduct as has conduced to the adultery, the court has a discretionary power either to pronounce or to refuse a decree (s. 31).

Divorces *a mensâ et thoro* are abolished by the Act, and judicial separations are substituted (ss. 6, 7). A sentence of judicial separation may be obtained either by a husband or wife on the ground of adultery, or cruelty, or desertion without cause for two years and upwards. A sentence of judicial separation has the same force and effect as a divorce *a mensâ et thoro* formerly had (ss. 7 & 16). It

also places the wife in the position of a *feme sole*, with respect to property, from the date of the sentence, as long as the separation continues, and in the event of her dying intestate, her property is dealt with as if her husband were dead (s. 25). She is also considered as a *feme sole* for the purposes of contracts, wrongs, and injuries, and suing and being sued in any civil proceeding (s. 26). Her husband is in no way liable for her contracts or torts, except in cases where he has neglected to obey an order for the payment of alimony to her when he is liable for necessaries (s. 26). See RESTITUTION OF CONJUGAL RIGHTS; JACTITATION OF MARRIAGE.

The law respecting the jurisdiction of the courts of one country to determine the validity or invalidity of marriage contracts between subjects of another country, or between subjects of their own country who have been married abroad, and respecting their jurisdiction to dissolve such marriages, is so uncertain and unsettled that it is impossible to give a clear or correct summary of it. It may, however, be useful to direct attention to a few of the principal decisions since the passing of the Divorce Act. An English court has jurisdiction to inquire into and to determine the validity or invalidity of any marriage which has been solemnised in England. Thus, where two French persons came to this country for the purpose of evading the law of France, and were married here, and returned immediately after the marriage, and the marriage was held null and void by the French court, the English court held it to be valid.—*Simonin* v. *Mallac*, 2 *Sw. & Tr.* 67.

In a case where marriages were alleged to have taken place in Scotland and in Ireland, but the husband had never been domiciled in England, the court refused to entertain a petition for restitution of conjugal rights presented by the wife.—*Yelverton* v. *Yelverton*, 1 *Sw. & Tr.* 574.

In suits for dissolution by a husband, it is necessary to satisfy the court that the husband has a *bonâ fide* domicile in England at the time of the commencement of the suit.—*Brodie* v. *Brodie*, 2 *Sw. & Tr.* 259.

But in one case where it did not appear whether the husband's domicile was English or Irish, the court made a decree at the instance of the wife.—*Bond* v. *Bond*, 2 *Sw. & Tr.* 93.

In another case, where the husband and wife had abandoned their English domicile and settled in America, where the husband deserted the wife and contracted a marriage with another woman, the court dissolved the first marriage at the wife's prayer.—*Deck* v. *Deck*, 2 *Sw. & Tr.* 91.

Marriage was formerly treated as indissoluble, and the divorces pronounced by the Scotch and other foreign courts were not recognised by the English courts. The well-known case of *R.* v. *Lolley*, *Russ. & Rep.* 237, proceeded upon this principle. Subsequent decisions have, however, very much shaken its authority, and the question has never been raised since the passing of the Divorce Act, which, for the first time, rendered marriage dissoluble in England.

The ancient Greek legislators considered the relation of marriage as a matter not merely of private, but also of public or general interest. This was particularly the case at Sparta, where the subordination of private interests and happiness to the real or supposed exigencies of the state was strongly exemplified in the regulations on this subject. For instance, by the laws of Lycurgus, criminal proceedings might be taken against those who married too late (*γραφὴ ὀψιγαμίου*), or unsuitably (*γραφὴ κακογαμίου*), as well as against those who did not marry at all (*γραφὴ ἀγαμίου*). These regulations were founded on the generally recognised principle, that it was the duty of every citizen to raise up a strong and healthy progeny of legitimate children to the state. So entirely, in fact, did the Spartans consider the *τεκνοποιΐα*, or the production of children, as the main object of marriage, and an object which the state was bound to promote, that whenever a woman had no children by her own husband, she was not only allowed but even required by the laws to cohabit with another man.—*Xen. de Rep. Lac.* i. 8.

The consequences of marriage among the Romans were:—(1) The power of the father over the children of the marriage, which was a completely new relation, an effect indeed of marriage, but one which had no influence over the relation of the husband and wife. (2) The liabilities of either of the parties to the punishments affixed to the violation of the marriage union. (3) The relation of husband and wife with respect to property, to which head belong the matters of *Dos*, *Donatio inter virum et uxorem*, *Donatio propter nuptios*, *&c.* Many of these matters, however, are not necessary consequences of marriage, but the consequences of certain acts which are rendered possible by marriage. The Roman notion of marriage was that of a complete personal unity of the husband and wife (*consortium omnis vitæ*), as shown by a continuous cohabitation, the evidence of continuing consent; for the dissent of either party, when formally expressed, could dissolve the relation. Neither in the old Roman law, nor in its later modifications, was a community of property an essential part of the notion of marriages, unless we assume that, originally, all marriages were accompanied with the *conventio in manum*, for, in that case, the wife became *filiæ-familias loco*, and passed into the *familia*

of her husband; or if her husband were in the power of his father, she became to her husband's father in the relation of a granddaughter. The legal deduction from this is, that her legal personality was merged in that of her husband, all her property passed to him by a universal succession (*Gaius*, ii. 96, 98); and she could not thenceforward acquire property for herself. Thus she was entirely removed from her former family as to her legal *status*, and became as the sister to her husband's children. In other words, when a woman came *in manum*, there was a blending of the matrimonial and the filial relation. The position of a Roman woman, after marriage, was very different from that of a Greek woman. The Roman presided over the whole household; she educated her children, watched over and preserved the honor of the house, and, as the *mater-familias*, she shared the honors and respect shown to her husband. Far from being confined, like the Greek women, to a distinct apartment, the Roman matron, at least during the better centuries of the republic, occupied the most important part of the house, the *atrium*.—*Smith's Dict. of Antiq.*

Marriage among the Hebrews is a matter of strict obligation, for they understand literally, and as a precept, the words uttered to our first parents, *Gen.* i. 28.

Marriage Acts, 4 Geo. IV. c. 76, and 6 & 7 Wm. IV. c. 85, amended by 7 Wm. IV. and 1 Vict. c. 22, 3 & 4 Vict. c. 72, 19 & 20 Vict. c. 119, 23 Vict. c. 24, and 26 & 27 Vict. cc. 27, 90.

The 4 Geo. IV. c. 76, directs that all the rules prescribed by the rubric, prefixed to the office of matrimony in the Book of Common Prayer, shall be duly observed, and prescribes, in conformity with the canons of the church, the previous publication of banns, or in lieu thereof, a license from the ecclesiastical authority to marry without banns. It also requires that the marriage shall be in a church or public chapel, wherein banns may be lawfully published, and shall take place between eight and twelve in the forenoon, except in the case of a special license, and be solemnised by a person in holy orders.

The 6 & 7 Wm. IV. c. 85, for the relief of Dissenters, which was amended by 7 Wm. IV. and 1 Vict. c. 22, and 3 & 4 Vict. c. 72, has introduced new regulations, which provide that the officer called the superintendent registrar, appointed for every poor law union, parish, or place, under the 6 & 7 Wm. IV. c. 86, shall be the superintendent registrar of marriages therein, and has established two new modes of proceeding to celebrate marriage, in addition to those sanctioned by the former Marriage Act, viz., a marriage by the superintendent registrar's certificate, without license, or by his certificate with license.

Neither of these acts extend to the marriages of the royal family, nor to any marriage taking place out of England.

Marriage articles, an agreement in order to marriage; a stipulation between the parties, which is to be binding in case of marriage.

Marriage brokage, a consideration paid for contriving a marriage, and illegal as contrary to public policy.

Marriage consideration, the highest consideration recognised by law. A marriage consideration, in a settlement made prior to marriage, or in pursuance of articles entered into before marriage, runs through the whole settlement, as far as it relates to the husband and wife and issue, and protects them.

Marriage portion, the portion of one given in marriage.

Marriage Registry Act, the 6 & 7 Wm. IV. c. 86, amended by 1 Vict. c. 22. See BIRTHS, BURIALS, AND MARRIAGES.

Marriage settlement, a conventional arrangement usually made before marriage, and in consideration of it (which is the highest consideration known to the law), whereby a jointure is secured to the wife, and portions to children, in the event of the husband's death. If it be made after marriage, it will, as a general rule, be fraudulent and void against all persons who are creditors of the husband at the time of the settlement, unless such settlement contain a provision for debts, or is made in pursuance of articles made before marriage, or unless it be against a single debt, or the debt be secured by mortgage, in which case it would not affect the settlement, for to do that, it seems the party must be insolvent at the time.

These settlements seem to have been in use among the ancient Germans, and their kindred nation the Gauls. Of the former Tacitus gives us this account:—'*Dotem non uxor marito, sed uxori maritus offert. Intersunt parentes et propinqui, ac munera probant.*'—*De Mor. Ger.* c. xviii. And Cæsar has given us the terms of a marriage settlement among the Gauls, as nicely calculated as any modern jointure:—'*Viri quantas pecunias ab uxoribus, dotis nomine, acceperunt; tantas ex suis bonis, æstimatione factâ, cum dotibus communicant. Hujus omnis pecuniæ conjunctim ratio habetur, fructusque servantur. Uter eorum vitâ superârit, ad eum pars utriusque, cum fructibus superiorum temporum, pervenit.*'—*De Bel. Gall.* l. 6, c. xvii.

By 20 & 21 Vict. c. 85, s. 45, the Divorce Court is empowered, in cases where a marriage has been dissolved, or a sentence of judicial separation has been pronounced on the ground of the wife's adultery, to order such settlement, as it shall think reasonable, to be made of any property to which the wife is entitled, either in possession or in reversion, or of any part

thereof, for the benefit of the innocent party, and of the children of the marriage, or either or any of them. By 22 & 23 Vict. c. 61, s. 5, the court is empowered, after a final decree of nullity of marriage, or dissolution of marriage, has been pronounced, to inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and to make such orders, with reference to the application of the whole or a portion of the property settled, either for the benefit of the children of the marriage, or of their respective parents, as to the court shall seem fit.

Married woman. See HUSBAND AND WIFE.

Marrow, author of a famous book, written in the reign of Henry VII., and said to be still in manuscript, on the office of a justice of peace—a work which has been quoted by later writers, such as Fitzherbert and Lambard, with great commendation, and seems to have been followed by them on the subject.—4 *Reeves*, c. xxvii., p. 186.

Marshal, or **Mareschal**, primarily denotes an officer who has the care or command of horses. Nicod derives the word from *polemarchus*, master of the camp; Matthew Paris, from *martis senescallus*. In the old Gaulish language, *march* signified horse; whence *mareschal* might signify him who commanded the cavalry. Spelman, Skinner, and Menage derive it from the German *maer*, a horse, and *schalk*, servant, which makes some imagine the title was first given to farriers, or those who shod and bled horses; and that in time it passed to those who commanded them. There are several officers of this name, the chief of whom is the Earl Marshal of England, which see.

There are other inferior officers called marshals, who attend the judges on the assizes, and receive records for trials, &c. See 15 & 16 *Vict.* c. 73, s. 7.

Marshal (Lord). See CHIVALRY, *Court of.*

Marshal of the Queen's Bench, an officer who had the custody of the Queen's Bench Prison. The 5 & 6 Vict. c. 22, abolished this office, and substituted an officer, who is called Keeper of the Queen's Prison.

Marshalling, the act of arranging or of putting into proper order.

The doctrine of marshalling assets and securities depends upon the principle, that a person having two funds out of which to satisfy his demands, shall not, by his election, prejudice a person who has only one such fund. If, therefore, one who has a claim upon two funds, resorts to the only fund upon which another has a claim, the latter stands in his place for so much against the fund, to which otherwise he could not have access; the object being that every claimant shall be satisfied as far as, by any arrangement consistent with the nature of the several claims, the property which they seek to affect can be applied in satisfaction of such claims. This is in accordance with the great ethical maxim, *Sic utere tuo ut alienum non lædas*—so exercise your own right as not unnecessarily to defeat that of your neighbor.

The doctrine, as exercised in the administration of a deceased's assets, comprehends five different classes of persons:—

(1) Between creditors. Since freehold and copyhold estates have been rendered liable to simple contract debts, it is not now necessary to resort to this doctrine for the purpose of enforcing their payment.

(2) Between legatees. Where one or more legacies are charged upon real estate, and other legacies are not so charged, if the personal estate prove insufficient to pay them all, the legacies charged on the real estate shall be paid thereout; or if they have been paid out of the personal estate, the other legacies, as to so much thus paid thereout, shall stand in their place as a charge upon the land; but where the charge of a legacy upon real estate fails to affect it, in consequence of an event happening subsequently to the death of the testator, as the death of the legatee before the time of payment, equity will not marshal so as to turn such legacy upon the personal estate, in which case it would be vested and transmissible, whereas, as against the real, it would sink by the death of the legatee.

(3) Between creditors and legatees. Where there are specialty debts and legacies, and the real estate descends, if the creditors exhaust the personal estate the legatees stand in their place, and can come upon the real estate, against the heir-at-law. But if a testator devises his real estate, and gives general pecuniary legacies not charged on such real estate, and dies leaving specialty debts, and the specialty creditors exhaust the personal estate, the legatees shall not stand in their place and come on the realty, because it was the intention of the testator that the devisee should have the real estate as well as that the legatees should be paid. Nevertheless, where a mortgagee of a devised, as well as of a descended estate, has exhausted the personal assets by resorting to them in the first instance, a legatee shall stand in his place and be satisfied out of the mortgaged premises to the extent of the personalty applied in their exoneration; for the application of the personal assets in exoneration of the real estate mortgaged does not take place so as to defeat a legacy. A specific legatee will not be allowed to stand in the place of specialty creditors as against real estate devised, although the devisee be the heir. A devisee and a specific legatee must contribute *pro ratâ* to satisfy such specialty debts of a testator as his general personal estate is insufficient to pay. If land be devised for, or

made subject to, the payment of debts, assets will be marshalled in favor of legatees who will stand in the place of the creditors who may have been satisfied out of the personal assets. Where simple contract creditors exhaust the personal assets, the legatees may stand in their place as to the real estate descended.

(4) Between legatees and vendors. Where a vendor, having a lien upon land for the unpaid purchase money, resorts to the personalty in the first instance for the realisation of his claim, the purchased estate, when it descends, and the personal assets will, as against the heir, be marshalled in favor of simple contract creditors and pecuniary legatees; but where the purchased estate is devised, then marshalment against the devisee will take place in favor of the simple contract creditors only, and not of legatees.

It is a general rule, that assets are not marshalled in favor of legacies given to charities. Thus, if a testator gives his real estate and personal estate, consisting of personalty savouring of realty, as leaseholds and mortgage securities, and also pure personalty, to trustees, upon trust to sell, and pay his debts and legacies, and bequeathed the residue to a charity, equity will not marshal the assets by throwing the debts and ordinary legacies upon the proceeds of the real estate, and the personalty savoring of the realty, in order to leave the pure personalty for the charity.

(5) Between widows and legatees. A widow's paraphernâlia (the necessary wearing apparel excepted) are liable to her deceased husband's debts; but a widow being preferred to a general legatee, she is entitled to marshal assets in those cases in which a general legatee would be entitled to do so, i. e. as against realty descended or devised, should it be subjected by the will to the payment of debts. If a devised estate be subject to a mortgage or other specific incumbrance, she will be entitled to marshal the assets as against the devisee, by throwing the charge upon the estate, since a legatee would have that right.

Where a person having two estates mortgages both to one mortgagee, and afterwards only one of such estates to a second mortgagee, who has no notice of the first mortgage, the court, in order to relieve the second mortgagee, has directed the first to take his satisfaction out of that estate only which is not in mortgage to the second mortgagee, if that be sufficient to satisfy the first mortgage, in order to make room for the second mortgage, even though the estates descended to two different persons. And if one of two estates in mortgage is subject to a portion, the person entitled to the portion may, if it be necessary, compel the mortgagee to resort to the other estate, so that the payment of the portion, as well as the mortgage, may be worked out. But this marshalling will not be enforced to the prejudice of a third party. The doctrine also has been carried to a great extent in bankruptices; 'for,' as observed by Lord Eldon, in *Aldrich* v. *Cooper* (8 *Ves.* 382, 1802), 'a mortgagee whose interest in the estate was affected by an extent of the Crown, has found his way, even in a question with the general creditors, to this relief, that he was held entitled to stand in the place of the Crown, as to those securities which he could not affect *per directum*, because the Crown affected those in pledge to him.' See 2 *Tudor's Lead. Cas.* 49–71.

Marshalling court-armour has now fallen into the hands of the heralds.

Marshalsea, *Court of the*, originally held before the steward and marshal of the royal house, and instituted to administer justice between the sovereign's domestic servants, that they might not be drawn into other courts, and thereby their service become lost. It held pleas of all trespasses committed within the verge of the court (twelve miles round the sovereign's residence), where only one of the parties was in the royal service (in which case the inquest was taken by a jury of the country); and of all debts, contracts, and covenants, where both of the contracting parties belonged to the royal household, and then the inquest was composed of men of the household only. But this court being ambulatory, Charles I. erected a new court of record, called the *curia palatii* or palace court, to be held before the steward of the household and knight marshal, and the steward of the court or his deputy, with jurisdiction to hold plea of all manner of personal actions whatsoever, which should arise between any parties within twelve miles of the royal palace at Whitehall, not including the city of London.

The court was held once a week for causes under 20*l.* together with the ancient Court of Marshalsea in the borough of Southwark, and a writ of error lay thence to the Court of Queen's Bench. Abolished by 12 & 13 Vict. c. 101, s. 13.

Marshalsea Prison. By 5 & 6 Vict. c. 22, amended by 11 & 12 Vict. c. 7, this prison is consolidated with others, and denominated the Queen's Prison, which see.

Mart [contracted fr. *market*], a place of public traffic.

Martial, Courts, military and naval tribunals with jurisdiction over offences, committed by persons serving in the army, navy, or marines, against the articles of war, and the provisions of the Mutiny Act, the Naval Discipline Act, or the Marine Mutiny Act. Such persons are, however, amenable to the jurisdiction of the ordinary civil and criminal courts in respect of offences cognizable by those courts. See *Simmons on Courts-martial*, 30; *Thring's Criminal Law of the Navy*. As to the more speedy trial

of a person subject to the Mutiny Act, who may be guilty of the murder or manslaughter of a person subject to that Act, see 25 & 26 *Vict.* c. 65.

Martial law, that rule of action which is imposed by the military power; it has no place in the institutions of this country, unless the articles of war established under the mutiny acts be considered as of that character. The prerogative of proclaiming martial law within this kingdom is destroyed, as it would appear, by the Petition of Right.

Martinmas, the feast of St. Martin of Tours on the 11th November; commonly corrupted into *martilmas* or *martlemas.* It is the third of the four cross quarter-days of the year.

Martyria, a figure by rhetoric, by which the speaker brings his own experience in proof of what he advances.

Masagium, a messuage.

Masculine, relating to the male sex. A statute frequently declares that words in it which import the masculine gender shall be deemed to include females, unless there is something in the act inconsistent with such construction; and by 13 and 14 Vict., c. 21, s. 4, it is enacted that in all acts passed after the commencement of the next session, such words shall be deemed and taken to include females, unless the contrary is expressly provided.

Master [fr. *meester*, Dut.; *maistre*, Fr; *magister*, Lat.], a director; a governor; a teacher; one who has servants. It is a title given to several officers and persons of authority and command.

Master and Apprentice, a business relationship which should be constituted by deed, containing all proper and explicit stipulations. If the apprentice be under age, an adult person should covenant for his good conduct, because a minor cannot be sued for misconduct.

At Common Law a master has such an interest in the apprentice, that he may defend him with force, or maintain an action for any injury to him, whereby a loss of service accrues; he may also support an action for his detention. The master is entitled to all the apprentice's earnings, however considerable, in case he should wrongfully absent himself.

An apprentice may compel maintenance and enforce proper instruction; and magistrates or a Court of Equity will, in some cases, enforce a return of the premium, or a just proportion of it. Consult *Chitty on Apprentices.*

Master and Clerk. A clerk is a superior order of servant, and his duty is limited to the particular trade or employment for the service in which he is hired. If he be hired at specified yearly wages, he is to be considered as hired for an entire year, and the service cannot be put an end to before the end of an entire year, unless upon some adequate ground of misconduct by one of the parties. See *Huttman* v. *Bullnois,* 2 *C. and P.* 510; and *Archard* v. *Homer,* 3 *C. and P.* 349.

If a bond or covenant be taken from a surety for the faithful conduct of a clerk, it should be so framed as to continue to operate, notwithstanding any change in the firm or partners by death or other event, for otherwise it would cease to operate on the retiring or addition of a partner. And on behalf of a surety, it should be expressly provided that he shall be at liberty to withdraw his guarantee, upon giving a certain reasonable notice, for otherwise he might continue liable, notwithstanding notice of his desire to determine his liability, and notwithstanding a new security had been taken and the original hiring was only as long as the employer and the clerk should think fit. It should also be stipulated that the obligee or master shall, at stated periods, ascertain and communicate to the surety the state of the clerk's accounts, for, otherwise, it frequently happens that the master, confiding in the surety, lets the clerk proceed in his irregularities to a ruinous extent, and then sues the surety for the whole defalcation; and, unless it be expressly so stipulated, delay in examining the clerk's accounts, or any conduct short of stipulated indulgence, will not release a surety from liability even in equity.—5 *B and Ald.* 187. As to embezzlement by clerks, see EMBEZZLEMENT.

Masters in Chancery, officers of the High Court of Chancery. They were either ordinary or extraordinary. Abolished by 15 & 16 Vict. c 80. See CHIEF CLERKS; COMMISSIONERS TO ADMINISTER OATHS IN CHANCERY; and TAXING MASTERS.

Masters of the Common Law Courts. There are five masters on the plea side of each of the courts of Queen's Bench and Exchequer, and also in the Common Pleas. They are appointed by 7 Wm. IV. and 1 Vict. c. 30, and their duties are to tax costs, compute damages, attend the judges in court, &c.—*R. H.* 32 *Geo. III.*; 4 *T. R.* 580, *Q. B.*; 1 *Chit. Arch. Prac. by Pren.* 10.

Master of the Crown Office, the Queen's coroner and attorney in the criminal department of the Court of Queen's Bench, who prosecutes at the relation of some private person or common informer; the Crown being the nominal prosecutor.—6 & 7 *Vict.* c. 20. See CROWN OFFICE.

Master of the Faculties, an officer under the archbishop, who grants licenses and dispensations, &c.

Master of the Horse, the third great officer of the royal household, being next to the Lord Steward and Lord Chamberlain. He has the privilege of making use of any horses, footmen, or pages belonging to the royal stables.

Masters in Lunacy. See LUNACY, MASTERS IN.

Master of the Mint, an officer who receives bullion from goldsmiths for coinage, and pays them for it, and superintends everything belonging to the mint. He is usually called the warden of the mint.

Master of the Ordnance, a great officer, to whose care all the royal ordnance and artillery were committed.—39 *Eliz.* c. 7. But see 18 & 19 *Vict.* c. 117.

Master of Reports and Entries. This Chancery official is not to be continued after the next vacancy.—18 & 19 *Vict.* c. 134.

Master of the Rolls [*magister rotulorum*, Lat.] The chief of a body of officers called the Masters in Chancery, of whom there were eleven others, including the Accountant-General. He is judge of the equity court, which ranks next to that of the Lord Chancellor, and has the keeping of the rolls and grants which pass the Great Seal, and the records of the Chancery. All orders and decrees by him made, except such as by the course of the court are appropriated to the Great Seal alone, shall be deemed to be valid, subject, nevertheless, to be discharged or altered by the Lord Chancellor, and so as they shall not be enrolled till the same are signed by the Lord Chancellor.—3 *Geo. II.* c. 30. But by 3 & 4 Wm. IV. c. 94, he is specially directed to hear motions, pleas, and demurrers, as well as causes generally.—5 *Reeves*, 160.

Master and Servant, a relation founded in convenience, whereby a person calls in the assistance of others, where his own skill and labor are not sufficient to carry out his own business or purpose.

Servants are of several descriptions:—'

1st. Servants in husbandry, termed laborers. These are placed, by virtue of several statutes, under the control of magistrates, who have power to regulate their hours of work and amount of wages, and of compelling the payment thereof in money and not in goods, and prescribing punishment for misconduct. Servants in husbandry are very generally hired by the year, as from Michaelmas to Michaelmas, and this is an entire hiring for a year; and, unless otherwise stipulated, no wages are payable until the end of the year. A master cannot, by way of correction, even moderately beat his servant or laborer in husbandry or otherwise, as he might his child or apprentice; and if he do, the servant may lawfully depart or obtain his discharge by application to a justice, and support an action for the battery.—5 & 6 *Wm. IV.* c. 19. Consult *Burn's Justice*, tit. 'Servants.'

2nd. Servants in particular trades. These are also subject to the control of the magistrates, under several acts, some of them confined to particular trades, as the silk, cloth, woollen, linen, fustian, cotton, iron, leather, hat, lace, clock, paper, tailor, shoemaker, and other trades; and disputes between master and servants in husbandry, artificers, calico printers, handicraftsmen, miners, colliers, keelmen, pitmen, glass-blowers, and other laborers in general, are regulated by several more general acts. They will be found collected in *Burn's Justice*, tit. 'Servants.'

3rd. Menial or domestic servants. If no terms be stipulated, it is considered a hiring, with reference to the general understanding on the subject, that is, a continuing service, until the expiration of a month's warning given by either party. In the case of a domestic servant hired in the usual way, it appears to have been considered that he is entitled to his wages up to the time he actually serves, though he die or do not continue in the service the whole year, either for misconduct or otherwise, but not to any wages after the time of such discharge (6 *T. R.* 226). A master cannot, without express stipulation, deduct from the wages the value of articles broken or lost by a servant's want of care, however gross (4 *Camp.* 134). If a yearly servant be dismissed before the year expires, for misconduct which will justify his dismissal, he will not be entitled to any wages even for any part of the time during which he served (6 *Car. and P.* 15).

It is not legally compulsory on a master or mistress to give a discharged servant any character; and no action is sustainable for the refusal; but if a character be given, it must accord with the truth; for if a false good character be given, and the servant afterwards rob his new master, the person who gave such false character is liable to an action, and to compensate for the entire loss; and he is liable to punishment in certain cases of false character under 32 Geo. III. c. 56. And if a bad character be untruly and maliciously given, the party giving it will be liable to an action for defamation, though, until the untruth of the character given and express malice have been proved, the communication is presumed to have been privileged, and no action is sustainable (8 *B. and C.* 578).

A master is, in general, liable, civilly, and sometimes criminally, for torts committed by his servant in the course of or under color of his employ, but he is not liable for the wilful misfeasance of his servant, who has wholly lost sight of his duty (1 *East*, 106). As to embezzlement by servants, see EMBEZZLEMENT. As to the starving or ill-treatment of a servant by his master, see 24 & 25 *Vict.* c. 100, s. 26.

The offence of taking corn or other food by a servant from the possession of his master, contrary to his orders, for the purpose of

giving the same to horses or other animals of such master, which was a felony at Common Law, is no longer a felony, but is punishable upon summary conviction by fine or imprisonment. See 26 & 27 *Vict.* c. 103.

Master of a ship [*magister navis*, Lat.], the person intrusted with the care and navigation of a ship, possessing what some foreign jurists have called the exercitatorial power over her. The master may delegate his power whenever it may be for the welfare of the ship and the due accomplishment of the voyage.

The master of a ship is the confidential servant or agent of the owners; and in conformity with the rules and maxims of the law of England, the owners are bound to the performance of every lawful contract made by him relative to the usual employment of the ship.

From this rule of law it follows that the owners are bound to answer for a breach of contract, though committed by the master or mariners against their will, and without their fault. Nor can the expediency of this rule be doubted. The owners. by selecting a person as master, hold him forth to the public as worthy of trust and confidence. And in order that this selection may be made with due care, and that all opportunities of fraud and collusion may be obviated, it is indispensable that they should be made responsible for his acts.

The master has power to hypothecate or pledge both ship and cargo for necessary repairs executed in foreign ports during the course of the voyage; but neither the ship nor cargo can be hypothecated for repairs executed at home.

The master has no lien upon the ship for his wages, nor for money advanced by him for stores or repairs.

The master is bound to employ his whole time and attention in the service of his employers, and is not at liberty to enter into any engagement for his own benefit that may occupy any portion of his time in other concerns; and therefore, if he do so, and the price of such engagement happen to be paid into the hands of his owners, they may retain the money, and he cannot recover from them.

During war, a master should be particularly attentive to the regulations as to sailing under convoy; for, besides his responsibility to his owners or freighters, he may be prosecuted by the Court of Admiralty, and fined in any sum not exceeding 500*l.* and imprisoned for any term not exceeding one year, if he wilfully disobey the signals, instructions, or lawful commands of the commander of the convoy, or desert it without leave.

A penalty of 10*l.* in addition to the payment of the wages due is imposed on every master of a vessel who, having, on account of unfitness or inability to proceed on the voyage, left any seafaring man at any foreign port or place, shall neglect or refuse to deliver an account of the wages due to him, and to pay the same.—17 & 18 *Vict.* c. 104, s. 209.

The law makes no distinction between carriers by land and carriers by water. The master of a merchant ship is, in the eye of the law, a carrier, and is as such bound to take reasonable and proper care of the goods committed to his charge, and to convey them to the place of their destination, the act of God and the Queen's enemies only being excepted. Every act which may be provided against by ordinary care renders the master responsible. He would not, for example, be liable for damage done to goods on board in consequence of a leak in the ship occasioned by the violence of a tempest, or other accident, but if the leak were occasioned by rats he would be liable, for these might have been exterminated by ordinary care, as by putting cats on board, &c. On the same principle, if the master run the ship in fair weather against a rock, or shallow, known to expert mariners, he is responsible. If any injury be done to the cargo by improper or careless stowage the master will be liable.—*Abbott on Shipping*, pt. 2 c. ii.; *Maude and Pollock on Shipping*, c. iii.; *McCull. Comm. Dict.*

Master of the Temple, the chief ecclesiastical minister of the Temple Church, London.

Masura, a decayed house; a wall; the ruins of a building; a certain quantity of lands, about four oxgangs.—*Old Records.*

Match-maker, one who contrives marriages.

Mate, the deputy of the master in a merchant ship, taking, in his absence, the command. There are sometimes only one, and sometimes two, three, or four mates in a merchantman, according to her size, denominated first, second, third, &c. mates. The law, however, recognises only two descriptions of persons in a merchantman—the master and mariners; the mates being included in the latter, and the captain being responsible for their proceedings.

In men-of-war the officers immediately subordinate to the captain are called lieutenants. But the master or officer whose peculiar duty it is to take charge of the navigation of the ship, has certain mates under him selected from the midshipmen. The boatswain, gunner, carpenter, &c. have each their mates or deputies taken from the crew.—*McCull. Comm. Dict.*

Matelotage [fr. *matelot*, Fr.], the hire of a ship or boat.—*Cole.*

Mater-familias, the mother or mistress of a family.—*Civ. Law.*

Material evidence, evidence which tends to prove the affirmative or negative of a question in issue.

Matertera, a maternal aunt; the sister of one's mother.

Matertera magna, a great aunt.

Math, a mowing.

Mathematical evidence, proof established by a demonstration.

Matricide, slaughter of a mother.

Matricula, a register of the admission of officers and persons entered into any body or society, whereof a list is made; hence those who are admitted into our universities are said to be matriculated. The stamp-duties on matriculations at Oxford are repealed by 18 & 19 Vict. c. 36, s. 1; and at Cambridge by 21 Vict. c. 11. It is also a kind of alms-house.

Matrimonial causes, suits for the redress of injuries respecting the rights of marriage. They were formerly a branch of the ecclesiastical jurisdiction, but have been transferred to the jurisdiction of the court for divorce and matrimonial causes by 20 & 21 Vict. c. 85.

They are either:—

(1) *Causæ jactitationis matrimonii,* a suit instituted when one of the parties boasts or gives out that he or she is married to the other, whereby a common reputation of their marriage may ensue. The party injured may petition the divorce court, which will enjoin a perpetual silence on that head.

(2) Restitution of conjugal rights. A suit brought when a husband or wife is guilty of the injury of living apart from the other without any sufficient reason. The court will compel them to come together again.

(3) Judicial separation, and (4) dissolution of marriage, which have superseded the divorces *à mensâ et thoro,* and *à vinculo matrimonii.* See MARRIAGE.

Matrimonial crown, a grant by which the husband of the Scottish queen acquired the right to assume the title of king, to have his name stamped upon the coin, and to sign all public instruments together with the queen. In such cases the subjects took an oath of allegiance to him; his authority became, in some measure, co-ordinate with that of the queen, and without his signature no public deeds seem to have been considered as valid.—*Encyc. Lond.*

Matrimonia debent esse libera.—(Marriages ought to be free).

Matrimonium, the inheritance descending to a man *ex parte matris* (*from his mother*).

Matrimonium subsequens tollit peccatum præcedens.—*Jur. Civ.*—(Subsequent marriage cures preceding criminality).

Matrimonium subsequens legitimos facit quoad sacerdotium, non quoad successionem, propter consuetudinem regni quæ se habet in contrarium. Co. Litt. 345.—(A subsequent marriage makes the children legitimate as far as relates to the priesthood, not as to the succession, on account of the custom of the kingdom, which is contrary thereto.)

Matrimony, marriage; the nuptial state; the contract of man and wife.

Matrina, a godmother.

Matrix Ecclesia, the mother-church.

Matron, a married woman; a mother of a family.

Matron of Queen's Prison. See 5 & 6 *Vict.* c. 22, s. 22.

Matrons, *Jury of.* See JURY-WOMEN.

Matter in ley ne serra mise in boutche del jurors.—*Jenk. Cent.* 180.—(Matter of law shall not be put into the mouth of the jurors.)

Maturiora sunt vota mulierum quam virorum. 6 *Co.* 71.—(The desires of women are more mature than those of men.)

Maturity, the time when a bill of exchange or promissory note becomes due.

Maundy [fr. *maund,* Sax., an alms-basket] **Thursday** [*dies mandati,* Lat., the day of the command], the day preceding Good Friday, on which princes give alms.

Maxim [fr. *maximum,* Lat.], an axiom; a general principle; a leading truth.

Maxims of the law are holden for law; and all other cases that may be applied to them shall be taken for granted.—1 *Inst.* 11.

Maxima *ita dicta quia maxima est ejus dignitas et certissima auctoritas, atque quod maximè omnibus probetur.*—*Co. Litt.* 11.—(A maxim is so called because its dignity is greatest, and its authority the most certain, and because universally approved by all.)

Maximè paci sunt contraria vis et injuria. Co. Litt. 161.—(Force and injury are chiefly contrary to peace.)

Maximus erroris populus magister.—*Bacon.* (The people is the greatest master of error.)

Mayhem, the deprivation of a member proper for defence in fight, as an arm, leg, finger, eye, or a foretooth, and some others; yet not, as it has been said, a jawtooth, or the ear, or a nose, because they have been supposed to be of no use in fighting. One remarkable circumstance peculiar to an action for mayhem is, that the court may, on view of the wound, afterwards increase the damages awarded by the jury.—3 *Salk.* 115. See 24 & 25 *Vict.* c. 100, ss. 18, 29, and 2 *Step. Com.* 487 & iv. 162.

Mayhemavit (*he has maimed*).

Maynooth, *St. Patrick's College at.* See 23 & 24 *Vict.* c. 104.

Mayor [according to some etymologists this word was anciently written *meyr,* and comes fr. the British *miret,* to keep, or fr. the old English *maier,* power, and not from the Latin *major*]. The annual chief magistrate of a corporation, who, in London, York, and Dublin, is called Lord Mayor.

Mayors of corporations are justices of the

peace *pro tempore*. Their powers and duties depend generally on the provisions of charters, corporate usages, or express enactments in Acts of Parliament.

The 9 Geo. IV. c. 17, substitutes a declaration in lieu of the sacramental test. See 3 & 4 *Wm. IV.* c. 31, which prevents elections taking place on Sundays. As to elections under the Municipal Act, consult the Act itself, 5 & 6 Wm. IV. c. 76. A mayor is to hold office until its acceptance by his successor, 6 & 7 Wm. IV. c. 105, s. 4. As to the re-election of mayor, see 3 & 4 *Vict.* c. 47; and 6 & 7 *Vict.* c. 89; and as to his appointing a deputy, see 16 & 17 *Vict.* c. 79, ss. 7, 8.

Mayoralty, the office of a mayor.

Mayoress, the wife of a mayor.

Mead, or **Meadow** [fr. *mæde*, Sax.], ground somewhat watery, not ploughed, but covered with grass and flowers.—*Encyc. Lond.*

Meal-rent, a rent formerly paid in meal.—*Phillips.*

Mean, or **Mesne** [fr. *medius*, Lat.], a middle between two extremes, whether applied to persons, things, or time. See MESNE.

Mease [fr, *messuagium*, Lat.], a messuage or dwelling-house; also, half of a thousand.

Meason-due [corruption of *maison de Dieu*, Fr.], a house of God; a monastery; religious house or hospital.

Measure [fr. *mensura*, Lat.], that by which anything is measured; the rule by which anything is adjusted or proportioned.

The sovereign, as the arbiter of commerce, has the regulation of weights and measures. By 5 Geo. IV. c. 74, 6 Geo. IV. c. 12, 5 & 6 Wm. IV. c. 63, and 18 & 19 Vict. c. 72, repealing the former acts on the subject, standards are fixed for length, weight and capacity; and it is provided that all contracts for sale, by weight or measure, where no special agreement is made to the contrary, shall be taken to refer to the standards so established. It is also enacted, that all articles sold by weight shall be sold by avoirdupois weight, except gold, silver, platina, diamonds, or other precious stones, which may be sold by troy weight; and drugs which, when sold by retail, may be sold by apothecaries' weight, and further, that it shall be penal for any person to sell by measure of capacity, other than one of the imperial measures, or some multiple or aliquot part thereof.

Measure of value. In the ordinary sense of the word, measure would mean something by comparison with which we may ascertain what is the value of anything. When we consider further, that value itself is relative, and that two things are necessary to constitute it, independently of the third thing which is to measure it; we may define a measure of value to be something by comparing with which any two other things, we may infer their value in relation to one another.—2 *Mill's Pol. Eco.* 101.

Measurer, or **Meter**, an officer in the city of London, who measured woollen clothes, coals, &c. See ALNAGER.

Measuring money, a duty which some persons exacted, by letters-patent, for every piece of cloth made, besides alnage. It is abolished.

Mederia, a house or place where metheglin or mead was made.—*Old Records.*

Med-sceat, a bribe; hush money.—*Anc. Inst. Eng.*

Medfee, a reward; a bribe; that which is given to boot.—*Scott.*

Mediæ et infimæ manus homines, men of a mean and base condition.—*Blount.*

Medianus homo, a man of middle fortune.

Mediate testimony, secondary evidence, which see.

Mediators of questions, six persons authorised by statute, who, upon any question arising among merchants, relating to unmerchantable wool, or undue packing, &c. might, before the mayor and officers of the staple, upon their oath, certify and settle the same; to whose order and determination therein the parties concerned were to give entire credence, and to submit.—27 *Edw. III.* st. 2, c. 24.

Medical Act, 21 & 22 Vict. c. 90, amended by 22 Vict. c. 21, 23 Vict. c. 7, and 23 & 24 Vict. c. 66.

Medical jurisprudence, forensic medicine, which see.

Medical practitioner. By 6 & 7 Wm. IV. c. 89, it is provided, that whenever it shall appear to a coroner that a deceased was attended at his death, or during his last illness, by any legally qualified medical practitioner, he may issue his order for the attendance of such practitioner as a witness at the inquest; and where the deceased was not so attended, an order for the attendance of any legally qualified medical practitioner, being at the time in actual practice, in or near the place where the death happened; and the coroner may also direct the performance, by the medical witness or witnesses, of a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, provided, however, that if any person shall state, on oath, before the coroner, his belief that the death was caused entirely or in part by the improper or negligent treatment of any person, such person shall not be allowed to perform or assist at the *post mortem* examination. It is also enacted, that where it shall appear to the majority of the jury that the cause of death has not been satisfactorily explained by the witnesses in the first instance, they may name to the coroner, in writing, any other legally qualified practi-

tioner or practitioners, and require their attendance as witnesses, or for the performance of a *post mortem* examination, whether one shall have been previously performed or not. And further, that all such medical witnesses shall be allowed remuneration for their attendance and trouble, and on the other hand shall forfeit 5*l.* for every neglect to obey an order for their attendance, with a proviso, however, that when the death took place in any public hospital or infirmary, or any county or lunatic asylum, no such remuneration shall be allowed to any person whose duty it was to attend the deceased as a medical officer of such institution. As to medical relief to paupers, see 4 & 5 *Wm. IV.* c. 76, s. 54.

For some valuable hints as to the conduct of medical witnesses, consult *Beck's Med. Jurisp.* tit. 'Medical Evidence.'

Medico-legal [*medico-legalis*, Lat.], relating to legal medicine.

Medietas linguæ. See DE MEDIETATE LINGUÆ.

Medio acquietando, a judicial writ to distrain a lord for the acquitting of a mesne lord from a rent, which he had acknowledged in court not to belong to him.—*Reg. Jur.* 129.

Meditatio fugæ, an intention of flight.—*Scotch phrase.*

Medlefe, Medleta, Medletum [fr. *mêler*, Fr., to meddle], a sudden scolding at and beating one another.—*Bract.* l, 3, c. xxxv.

Medsypp, a harvest supper or entertainment given to laborers at harvest home.—*Cowel.*

Meeting-house Act, the 7 & 8 Vict. c. 45.

Megbote, a recompense for the murder of a relation.—*Saxon word.*

Meigne, or **Maisnader,** a family.

Meiny, Meine, or **Meinie,** the royal household; a retinue.

Meldfeoh, the recompense due and given to him who made discovery of any breach of penal laws committed by another person, called the promoter's (i. e. informer's) fee.—*Leg. Mæ.* c. xx.

Melieur serra prize pour le roy.—Jenk. Cent. 192.—(The best shall be taken for the king.)

Melior dabit nomen rei.—Bacon—(The better will give a name to a thing.)

Melior est justitia verè præveniens, quam severè puniens.—3 *Inst. Epil.*—(Justice truly preventing is better than severely punishing.)

Melior est conditio possidentis, et rei quam actoris.—4 *Inst.* 180.—(The condition of the possessor is the better, and the condition of the defendant than that of the plaintiff.)

Melior est conditio possidentis ubi neuter jus habet.—Jenk. Cent. 118.—(The condition of the possessor is the better where neither of the two has a right.)

Meliorations, improvements, betterments.—*Scotch term.*

Meliorem conditionem ecclesiæ suæ facere potest prælatus deteriorem nequaquam.—Co. Litt. 101.—(A bishop can make the condition of his own church better, but by no means worse.)

Meliorem conditionem suam facere potest minor, deteriorem nequaquam.—Co. Litt. 337. (A minor can make his own condition better, but by no means worse.)

Melius est omnia mala pati quam malo consentire.—3 *Inst.* 23.—(It is better to suffer every ill than to consent to ill.)

Melius est recurrere quam malè currere.—4 *Inst.* 176.—(It is better to recede than to proceed badly.)

Melius est in tempore occurrere, quam post causam vulneratam remedium quærere.—2 *Inst.* 299.—(It is better to restrain in time than to seek a remedy after injury inflicted.)

Melius inquirendum, a writ that lay for a second inquiry, where partial dealing was suspected; and particularly of what lands or tenements a man died seised, on finding an office for the king.—*F. N. B.* 255.

Members, places where a custom-house has been kept of old time, with officers or deputies in attendance. They are lawful places of exportation or importation.

Members of Parliament. See HOUSE OF LORDS and HOUSE OF COMMONS.

Membrum, a slip or small piece of land.

Membrum pro membro (*limb for limb*), an obsolete law of retaliation.

Memorandum in error, a document alleging error in fact, accompanied by an affidavit of such matter of fact.—15 & 16 *Vict.* c. 76, s. 158.

Memorial, that which contains the particulars of a deed, &c., and is the instrument registered, as in the case of an annuity, which must be registered.

Memory, *time of legal.* By Statute Westminster the First, 3 Edw. I. A.D. 1276, the time of memory was limited to the reign of Richard I. July 6, 1189. But see the Prescription Act, 2 & 3 *Wm. IV.* c. 71.

Menace, a threat.

Menagium, a family.

Mendlefe. See MEDLEFE.

Menials [fr. *mœnia*, Lat., walls], those servants who live within their master's walls.—*Termes de la Ley.*

Men of straw. 'We have all heard of a race of men who used in former days to ply about our own courts of law, and who, from their manner of making known their occupation (i. e. by a straw in one of their shoes), were recognised by the name of *straw-shoes*. An advocate or lawyer who wanted a convenient witness, knew by these signs where to find one, and the colloquy between the parties was brief. "Do n't you remember?" said the advocate (the party looked at the fee, and gave

no sign; but the fee increased, and the powers of memory increased with it)—"To be sure I do." "Then come into court and swear it!" And straw-shoes went into court and swore it. Athens abounded in straw-shoes.'—*Quart. Rev.* xxxiii. 344.

Mensa, patrimony, or goods, and necessary things for livelihood.

Mensa et thoro, *divorce à.* Superseded by a judicial separation. See A MENSA ET THORO, and MARRIAGE.

Mensalia, such parsonages or spiritual livings as were united to the tables of religious houses, and called *mensal benefices* amongst the canonists.

Mens testatoris in testamentis spectanda est. Jenk. Cent. 277.—(The testator's intention is to be regarded in wills.)

Mensura domini regis, or **Mensura regalis,** the royal standard measure, which was kept in the Exchequer, according to which all measures were to be made. But see MEASURE.

Mental alienation, insanity.

It was remarked some years back by Esquirol, that insanity belongs almost exclusively to civilized nations. That it should do so is an inference which we might almost draw *à priori.* In a savage state the mind is uncultivated, its reasoning powers undeveloped, and consequently free from the various exciting causes which are perpetually operating on highly cultivated minds. In civilized life we may be said to beat out or expand our brains, and thus expose a more extended surface to the action of external causes than those who are actuated only by the ordinary excitements of the natural wants and appetencies. Dr. Livingstone's black servant became insane at the sight of a ship! Dr. Prichard is disposed to think that congenital predisposition, so powerful a cause of insanity in civilized life, is wanting in the uncivilized state; and it is not going too far to suppose that as we see in refined states of society varieties of structure created, morbid varieties of organisation may be increased or multiplied. There are many diseases, constitutional in civilized life, wholly unknown in the savage state.

'Some writers,' says Foville, 'have endeavoured to turn altogether from the investigation of the material organic cause of madness, resting on the belief that this is not a physical or material disease, but rather a disease of the soul.

'This extraordinary proposition is evidently an absurd profession of materialism; is it not in fact to deprive the soul of its most noble attributes, to degrade and debase it to the level of matter, to suppose it susceptible of alteration?

'The soul should be a stranger to our researches; but considering the brain as the material instrument of its manifestation, as the organ of intelligence, we seek in this organ the cause of the derangement which occurs in its functions.'

Pinel placed the primary seat of insanity in the stomach and intestines, from which he supposed it radiated, and ultimately deranged the understanding; he afterwards, however, was inclined to give up all hope of ever being able to account for it by pathological appearances.

It is one of those metaphysical subtleties, so prevalent on the subject of insanity, that the acts of an insane mind are *involuntary.* It certainly can be of little practical consequence what epithet is applied to the acts of a mind admitted to be insane; though it seems to be an abuse of language to call any act involuntary which proceeds from a person's own free will. The exercise of the will may be greatly influenced by the condition of the mind, even to such an extent as to deprive a person of all criminal responsibility. But this does not necessarily prove insanity, unless, for instance, every man who commits a criminal act under the influence of strong passions is considered as insane. The objection to this distinction is, that it is used as a test in the decision of doubtful cases, every one being left to decide as he pleases what acts are voluntary, and what involuntary.

Before an individual can be accounted sane on a particular subject, it must appear that he regards it correctly, in all its relations to right and wrong. The slightest acquaintance with the insane will convince anyone of the truth of this position. In no school of logic, in no assembly of the just, can we listen to closer and shrewder argumentation, to warmer exhortations to duty, to more glowing descriptions of the beauty of virtue, or more indignant denunciations of evil doings than in the hospitals and asylums for the insane. And yet many of these very people may make no secret of entertaining notions utterly subversive of all moral propriety; and, perhaps, are only waiting a favorable opportunity to execute some project of wild and cruel violence. The purest minds cannot express greater horror and loathing of various crimes than madmen often do, and from precisely the same causes. Their abstract conceptions of crime, not being perverted by the influence of disease, present its hideous outlines as strongly defined as they ever were in the healthiest condition; and the disapprobation they express at the sight arises from sincere and honest convictions. The *particular* criminal act, however, becomes divorced in their minds from its relations to crime in the *abstract*; and, being regarded only in connexion with some favorite object, which it may help to obtain, and which they see no reason to refrain from pursuing, is viewed, in fact, as of a highly laudable and

meritorious nature. Herein, then, consists their insanity, not in preferring vice to virtue, in applauding crime and ridiculing justice, but in being unable to discern the essential identity of nature between a particular crime and all other crimes, whereby they are led to approve what, in general terms, they have already condemned.

It is a fact not calculated to increase our faith in the march of intellect, that the very trait peculiarly characteristic of insanity has been seized upon as conclusive proof of sanity in doubtful cases; and thus the infirmity that entitles one to protection is tortured into a good and sufficient reason for completing his ruin.—*Ray.*

The preposterous distinction between civil and criminal cases gives rise in practice to one of the most curious and startling inconsistencies that human legislation ever presented. While the mental impairment is yet slight, comparatively, and the patient is quiet and peaceable, the law considers him incapable of managing himself or his worldly affairs, and provides him with a guardian and a place in the wards of an hospital; but when the disorder has proceeded to such a height as to deprive the maniac of all moral restraint, and precipitate him on some deed of violence, he is to be considered as most capable of perceiving moral distinctions, and consequently most responsible for his actions.

Jurists, who have been so anxious to obtain some definition of insanity, which shall embrace every possible case, should understand that such a wish is chimerical from the very nature of things. Insanity is a disease, and, as is the case with all other diseases, the fact of its existence is never established by a single diagnostic symptom, but by the whole body of symptoms, no particular one of which is present in every case. To distinguish the manifestations of health from those of disease requires the exercise of learning and judgment; and, if no one doubts this proposition, when stated in reference to the bowels, the lungs, the heart, the liver, the kidneys, &c., what sufficient or even plausible reason is there why it should be doubted when predicated of the brain? The functions of those organs proceed with the regularity and sameness of clockwork, compared with the ever-varying and unequal phenomena of this, and yet there are persons—who assume a magisterial tone in writing or talking of the latter—who would defer to a tyro's judgment in whatever concerns the others. If, when anxious to know all we can, respecting a disease of the lungs or stomach, we repair to those who have a high and well-founded reputation in the pathology of those parts, why adopt the converse of this rule in regard to diseases of the brain? No reasonable person would desire to set up an insuperable barrier between the domain of professional knowledge and that of common sense and common information; but it is not too much to insist that facts, established by men of undoubted competence and good faith, should be rejected for better reasons than the charge of 'groundless theory.'—*Ray*, 46.

It is a curious fact, that many benevolent people in their desire to palliate the sins of criminals have inculcated the same principle which Lord Hale entertained, viz., that all crime is the offspring of partial insanity, for the purpose of drawing from it a very different inference. Hale's inference was that partial insanity furnishes no excuse for crime. The logic by which such opposite conclusions are arrived at is certainly not unworthy the days of Dun Scotus or Thomas Aquinas. Says the latter: Crime must be punished; but all crime proceeds from madness, therefore madness furnishes no exemption from punishment. Says the former: Madmen are not responsible for their criminal acts; but madness is the source of all crime, therefore, madmen and criminals are equally irresponsible and exempt from punishment. Which of these two precious specimens of human subtlety can claim the triumph of absurdity it would not be easy to determine.—*Ray on Insanity*, 47.

There is one operation of the common law which is justly a cause of complaint, namely, that by which lunatics, even when under guardianship, are subject to be imprisoned like others, in default of satisfying a civil execution obtained against them; because whether such imprisonment be considered as a penal or a merely coercive measure, it is altogether inapplicable to the insane. It cannot coerce one who has no control over his own property, and whose mental condition is supposed to be such that he is unable to see any relation between the means and the end; and to punish a person for what he himself had no agency whatever in doing is a violation of the first principles of justice. To incarcerate some madmen in a common gaol would, in all probability, aggravate their disorder, and if the confinement were protracted to the extent which the law would allow, render it utterly incurable.

All our knowledge of human nature, all our experience of the past, forces us to the conclusion that the presence of mental alienation should be admitted in him who commits a crime without positive interest, without criminal motives, and without a reasonable passion.

The subject was thus classified by Esquirol, at least, in its main features:—

(1) *Mania*, an hallucination which extends to all kinds of objects, accompanied with excitement.

(2) *Monomania*, confined to a single or a small number of objects.

(3) *Dementia*, an incapacity of reasoning in consequence of functional disorder of the brain, not congenital.

Dementia appears under two different degrees of severity, which are designated as *acute* and *chronic*.

(4) *Idiotism*, congenital, from original malconformation in the organ of thought. In some countries this melancholy disease is not uncommon, and it has been particularly remarked in the Valais in Switzerland and Carinthia. In the former country the subjects of it are styled Cretins.

The most striking physical trait of idiocy, and one seldom wanting, is the diminutive size of the head, particularly of the anterior-superior portions, indicating a deficiency of the anterior lobes of the brain. Its circumference, measured immediately over the orbital arch and the most prominent part of the occipital bone, is fixed by Gall, whose observations on this subject are entitled to great confidence, at between $11\frac{1}{3}$ and $14\frac{1}{2}$ inches.—*Sur les Fonctions*, 329. The brain consequently equals that of a new-born infant; that is, about one-fourth, one-fifth, or one-sixth of the cerebral mass of an adult in the full enjoyment of his faculties.

In imbecility the development of the moral and intellectual powers is arrested at an early period of existence. It differs from idiocy, in the circumstance that while in the latter there is an utter destitution of everything like reason, the subjects of the former possess some intellectual capacity, though infinitely less than is possessed by the great mass of mankind.

Mental deficiency is manifested under two different forms, which Hoffbauer designates by the terms imbecility (*blödmus*) and stupidity (*dummheit*). The former consists in a defect of the *intensity*, the latter in a defect of the *extensity*, necessary to a sound and healthy mind. By intensity is meant the power of the mind to examine the data presented to it by the senses, and therefrom to deduce correct judgments; by its extensity, the mind perceives and embraces these data, and suffers none to escape—one, it may be added, is the *reflective*, the other the *perceptive* power.

Hoffbauer, while he acknowledges the various and almost imperceptible shades of difference between one case of imbecility and another, has reduced its numberless gradations to five degrees, and those of stupidity to three. To them, as described and explained by him, he looks for the means of a consistent and rational application of the legal principles that should regulate their civil and criminal relation. It hardly needs, however, the high authority of Esquirol to convince us, that these distinctions are drawn with a minuteness and show of accuracy that savours more of the labors of the closet than of the rigid and faithful observation of nature.

(5) *Moral Insanity*, i. e. a morbid perversion of the natural feelings, affections, inclinations, temper, habits, and moral dispositions, without any notable lesion of the intellect, or knowing and reasoning faculties, and particularly without any maniacal hallucination. Consult the interesting paper on insanity, by Dr. Prichard, in *Cyc. of Prac. Med.* The result of this species is various. In many it displays itself in an irresistible propensity to commit murder (homicidal monomania), in others to commit theft (kleptomania); while some are impelled to set fire to buildings, often of the most venerable description (pyromania). Their whole moral character is changed: the pious become impious; the liberal, penurious; the drunken, sober.

On the subject of homicidal monomania, M. Esquirol has made some excellent and practical remarks. He divides the subjects of this form of insanity into three classes:—

In the first group, the individuals who have the desire to kill are incited by motives more or less chimerical; more or less contrary to reason: their insanity is obvious to everyone.

In the second group, the homicidal monomaniacs have no known motives, either imaginary or real; the unfortunate individuals who enter into this group being hurried on by a blind impulse, which they strive to resist, and so escape their destructive propensities.

In the third group, the impulse is sudden, instantaneous, devoid of anything like reflection, and stronger than the will; the act is committed without any motive whatever, and on some beloved objects.

These individuals now under consideration essentially differ from criminals, with whom they have been confounded, and whose punishment they have been made to suffer.

Monomaniacal homicides are isolated, without accomplices to excite them by advice or example. Criminals, on the contrary, generally have immoral comrades, and accomplices aiding and assisting them.

The doctrine of moral insanity has been as yet unfavorably received by judicial authorities, not certainly for want of sufficient facts to support it, but probably from that common tendency of the mind to resist innovations upon old and generally received views.

'If,' observes Dr. Ray, 'a quarter of a century ago, one of the highest law officers of Great Britain pronounced the manifestation of "systematic correctness" of an action a proof of sanity sufficient to render all others unnecessary, it is not surprising that the idea of moral insanity has been considered by the legal profession as having sprang from the teeming brains of medical theorists. In the

fulness of this spirit, Mr. Chitty (*Med. Jurisp.* 352), declares, that "unless a jury should be satisfied that the *mental faculties* have been *perverted*, or, at least, the faculties of reason and judgment, it is believed that the party subject to such a *moral* insanity, as it is termed, would not be protected from criminal punishment;" and in the trial of Howison, for the murder of the widow Geddes, at King's Cramond, Scotland, some few years since, moral insanity, which was pleaded in his defence, was declared by the court to be a "groundless theory." Such opinions, from quarters where a modest teachableness would have been more becoming than an arrogant contempt for the results of other men's inquiries, involuntarily suggest to the mind a comparison of their authors with the saintly persecutors of Galileo, who resolved by solemn statutes that nature always had operated, and always should operate, in accordance with their views of propriety and truth.'—*Med. Jurisp. of Insanity*, 45.

(5) *Demonomania*, a variety of melancholy arising from mistaken ideas on religious subjects.

(6) *Nymphomania*, or *furor uterinus*, a raving mania of females, connected with a disorder of the generative organs.

As to feigned and concealed insanity, see SIMULATED INSANITY.

The various diseases included in the general term insanity, or mental derangement, have been thus arranged by Dr. Ray (*Med. Jurisp. of Insanity*), under two divisions founded on two very different conditions of the brain:—

- INSANITY.
  - Defective development of the faculties
    - Idiocy
      - (1.) Resulting from Congenital defect.
      - (2.) Resulting from an obstacle to the development of the faculties supervening in infancy.
    - Imbecility
      - (1.) Resulting from congenital defect.
      - (2.) Resulting from an obstacle to the development of the faculties supervening in infancy.
  - Lesion of the faculties subsequent to their development.
    - Mania
      - Intellectual
        - (1.) General.
        - (2.) Partial.
      - Affective
        - (1.) General.
        - (2.) Partial.
    - Dementia
      - (1.) Consecutive to mania or injuries of the brain,
      - (2.) Senile, peculiar to old age.

Medical jurists treat of inferior degrees of diseased minds; as the *delirium* of fever resembling mania; *hypochondriasis*, like to melancholy; *hallucination*, i. e. an idea reproduced by the memory, associated and embodied by the imagination; *epilepsy*, tending to *dementia*; *nostalgia*, a form of melancholy originating in despair, from being separated from one's native country; *intoxication*, producing *delirium tremens*, and the *dementia* of old age.

'If a party impeach the validity of a will on account of a supposed incapacity of mind in the testator, it will be incumbent on him to establish such incapacity by the clearest and most satisfactory proofs. The burden of proof rests upon the person attempting to invalidate what, on its face, purports to be a legal act. Sanity must be presumed till the contrary is shown.'—*Williams on Executors*, pt. 1, bk. 2, c. i., sec. 1. If it can be established that a person habitually affected by a malady of the mind has intermissions, and if there was an intermission of the disorder at the time of the act, that being proved is sufficient, and the general habitual insanity will not affect it; but the effect of it is this, it inverts the order of proof and of presumption; for until proof of an habitual insanity is made, the presumption is that the person, like all human creatures, was rational; but where an habitual insanity in the mind of the person who does the act is established, there the party, who would take advantage of an interval of reason, must prove it.—Sir W. Wynn, in *Cartwright* v. *Cartwright*, 1 *Phill.* 100. A will cannot be set aside on the ground that it is inofficious, i. e. not consonant with the testator's natural affection and moral duties, but where the capacity is doubtful the omission, without sufficient reason, of children or relations, or persons who have a claim upon his bounty, is evidence tending to prove incapacity. It is also strong evidence of

incapacity that a will is not consistent or coherent one part with another, or that it is not in accordance with instructions given or declarations made at a previous time, when the testator was unquestionably sound in mind. If the mind of the testator is free from delusion, and if at the time of executing the will he is aware of its contents and is able to remember the different persons who have claims upon his bounty, and to understand the effect of the dispositions contained in the will, he has sufficient capacity to make a good will.

The insane are disqualified from appearing as witnesses in courts of justice, their incompetence being inferred from their mental unsoundness. The fact of incompetence to testify, however, is not necessarily connected with that of insanity, and it would be far more correct to consider the former an independent fact to be established by a distinct order of proofs. The practice of including an act of testifying with that of performing business-contracts, or other civil acts, is certainly not favored by the present state of our knowledge of insanity, nor does it approve itself to the common sense of mankind.

The higher degrees of imbecility must of course disqualify a witness, but its less aggravated forms may not, under all circumstances, have this effect.

'Of an insane person,' says Evans (2 *Pothier on Obligations*, app. 259), 'it might, for defect of other evidence, merit to be considered whether, in civil cases at least, the testimony of such might not be admissible upon points where his understanding did not appear to be subject to disturbance; it being well known that in many of these melancholy instances, especially when the result of some violent passion, the party affected is entirely cool, clear, and collected in his ideas, and as free as other persons from the delusions of a perverted imagination, in everything not connected with the cause of his insanity; with regard to persons who have only temporary fits of madness (those usually termed lunacy), and at other times are in all respects sound of reason, these are then considered as capable of testimony as of any other legal act.'

On the whole, we may conclude, with Georget, 'that it is necessary to know the patient, the character of his madness, his customary relations to surrounding objects, before we can know what degree of confidence to place in his assertions.'

The competence of old men, in the early stages of *dementia*, to testify, is a point frequently discussed in courts of justice, and the want is severely felt of some fixed principles that shall serve as a guide to correct decisions. In every stage of this affection the impairment of the memory is more perceptible in regard to recent than remote impressions; and it often happens that a person may have a distinct recollection of things that occurred in his youth, while those of a month's or a year's date are but imperfectly remembered, if at all. To test the strength of his memory respecting certain things, it is only necessary to ascertain if he remember various other transactions of about the same date in which he was known to have been engaged. If he can do this, it is a strong presumption in favor of his competency, if not, it is incumbent on the party offering his testimony to show why his memory should have been more faithful in the one case than the other. This is rendered still more necessary by the fact, that the weakness of mind incident to this condition makes its subjects more easily swayed by the suggestions of others, and leads them to believe that they remember what they are told they ought to remember, or what they are assured they actually did remember till within a recent period. The slightest examination will show how much dependence can be placed on their recollections of recent events. Consult *Ray's Med. Jurisp. of Insanity; Beck's Med. Jurisp.* tit. 'Mental Alienation;' and *Uwins on Mental Disorders.*

Mentiri est contra mentem ire.—3 *Buls.* 260. (To lie is to go against the mind.)

Mentition, the act of lying; a falsehood.

Mepris, neglect; contempt.

Mer, or **Mere,** a fenny place.

Mera noctis, midnight.—*Cowel.*

Merannum, timbers; wood for building.—*Old Records.*

Mercable [fr. *mercor*, Lat.], to be sold or bought.

Mercantant, a foreign trader.

Mercantile, trading; commercial; relating to traders.

Mercat [fr. *mercatus*, Lat.], market; trade.

Mercative, belonging to trade.

Mercature, the practice of buying and selling.

Mercedary [fr. *mercedula*, Lat., a small fee], one that hires.

Mercen-lage, the Mercian laws, which were observed in many of the midland counties, and those bordering on the principality of Wales, the retreat of the ancient Britons.

Mercenarius, a hireling or servant.

Merchandise Marks Act, 1862, 25 & 26 *Vict.* c. 88.

Merchant [fr. *marchand*, Fr.], one who traffics to remote countries. See COMMERCIAL LAW.

Merchants' Accounts. See 19 & 20 *Vict.* c. 97, s. 9.

Merchant Shipping Act, 1854, 17 & 18 *Vict.* c. 104, amended by 18 & 19 *Vict.* c. 91. And see 17 & 18 *Vict.* c. 120; and 25 & 26 *Vict.* c. 63.

Mercheta, the right of concubinage which certain lords had with their tenants' wives on their wedding night. See Borough-English.

Merciament, an amerciament, penalty, or fine.

Mercimoniatus Angliæ, the impost of England upon merchandise.

Mere right, the right of property.

Merger [fr. *mergo*, Lat., to destroy], an annihilation, by act of law, of a particular in an expectant estate consequent upon their union in the same person—thus accelerating into possession the expectant which swallows up the particular estate.

It is the drowning of one estate in another, and differs from suspension, which is but a partial extinguishment for a time; while extinguishment, properly so termed, is the destruction of a collateral thing in the subject itself out of which it is derived.

The doctrine of merger probably results from the maxim—*nemo potest esse dominus et tenens*; or perhaps from the inconsistency, but for it, of one person owning two estates in fact, whilst one of them, in law, includes the time or duration of both.

'Perhaps,' remarks Preston (3 *Conv.* p. 22), 'the rule that *nemo potest esse dominus et tenens* does not clearly, and beyond all controversy, furnish a principle to which the learning can be exclusively referred; yet of all other rules none affords principles to which the cases on merger bear a nearer affinity.'

When the same person has the legal estate in the fee, and is also entitled to the trust or beneficial ownership of that estate, the trust will merge in the legal ownership, but, on the other hand, the legal estate can never be extincted in the equitable ownership.

Merger is either absolute or qualified, for as we shall presently see, an estate as against one person may be extinguished, whilst as against another it may still have existence.

In order to effect a merger, the following circumstances must concur:—

(1) There must of necessity be two estates at least in the same property, or in the same part of the same property, which must vest in the same person.

Merger, however, will operate between three or more estates, as well as between two.

(2) The several estates must be immediately expectant upon each other; the more remote estate must be without any intervening vested estate or contingent remainder created in the same instant of time and by the same means, which originated the other estates; and the determination or acquisition of an intermediate estate may be the cause of merger, as between estates kept distinct by means of such intermediate estate.

(3) The estate in reversion or remainder must be larger than the preceding estate, for there cannot be a merger as between equal estates of freehold.

With regard to the merger of terms for years in each other, the following propositions may be advanced:—

A term of years derived by way of underlease from a term of years, will merge on the two terms becoming possessed by one and the same person.

An estate for years may also merge in another estate in reversion of the same denomination, and it does not make any difference, whether the reversion is for a longer or shorter period of time than the former or preceding term; therefore, a term in possession, though for a hundred years, will be annihilated by its union with the term in reversion though for two years only. With a view, then, to the doctrine of merger, every term of years is equally extensive in quality at least.

The merger of a longer term in one of shorter duration may be accounted for on the ground that it is merely a relinquishment of the tenancy or rather possession to the person who has the immediate reversion, or, perhaps, remainder.

It is to be observed that both terms must be vested in interest to operate a merger of one of them. See 8 & 9 *Vict.* c. 112.

(4) The several estates must be held in the same legal right; or, when the estates are held in different legal rights, one of them must not be an accession to the other, merely by the operation of law.

The proposition insisted on by some text-writers, that the two estates must come to one and the same person in one and the same right is not tenable, for it is clear that if a husband, possessed in right of his wife, purchase the reversion or remainder, or if an executor have a term in his testator's right, and purchase the reversion, in either instance the term will merge, and yet the husband or executor has the term in one right, and the fee in another. The ground, however, of these cases is that the reversion or remainder was acquired by the party *by his own act.*

The grand effect of merger is, as between the particular tenant, whose estate is annihilated, and the reversioner or remainder-man, to bring the reversion or remainder into the same place and condition, as if the particular estate had never existed, or had determined by completing the period of its duration; nevertheless the particular estate is, for all the purposes of title, to be treated as still subsisting and continuing; and all charges, by way of rent, annuity, underlease, or judgment, are preserved in like manner and for the same time as if such extinguished particular estate were in fact in existence, so that the accelerated reversion or remainder is subjected as well to its own peculiar incumbrances as to the charges upon the merged

estate, *quoad* its originally destined endurance. And see 8 & 9 *Vict.* c. 106, s. 9.

It is to be particularly remarked, that where a tenant-in-tail, whether in possession or not, with remainder or reversion to B. in fee, there being a protector of the settlement, makes an assurance by virtue of the 3 & 4 Wm. IV. c. 74, which, by reason of the non-consent of the protector, is insufficient to bar the remainder or reversion, such assurance bars the issue in tail, and acquires a fee determinable on failure of such issue, but does not divest or displace the remainder or reversion, which, therefore, continues to subsist as an estate, expectant on the determinable fee. If, by any means, the remainder or reversion of B. become afterwards vested in A. the determinable fee does not merge in the remainder or reversion, as upon ordinary principles it would have done, but, by the express provisions of the act, is *enlarged*, and A. has thenceforth a clear fee-simple, founded, in point of title, upon the estate-tail.—3 & 4 *Wm. IV.* c. 74, s. 39.

Owners of both lands and tithes, even tenants for life, are empowered to merge tithes in the lands.—6 & 7 *Wm. IV.* c. 71, ss. 71, 81, &c.

When an engagement has been made by simple contract, and then the same engagement is made by deed, the simple contract is merged and extinguished in the deed.

Merger, in criminal law, is abolished by 14 & 15 Vict. c. 100, s. 12.

Meritò beneficium legis amittit, qui legem ipsam subvertere intendit.—2 *Inst.* 53.—(He justly loses the benefit of law who purposes to overturn the law itself.)

Meritorious consideration, one founded upon some moral obligation; a valuable consideration in the second degree.

Merits, *Affidavit of.* This instrument is necessary when a defendant seeks to set aside proceedings for irregularity, especially if the irregularity be doubtful. In all cases when the facts will warrant it, it is advisable that the affidavit should thus run:—'And this deponent further saith, that he is advised, and verily believes, that he has a good and sufficient defence to this action on the merits;' not merely that he has merits, or that he has a good defence. It must be made either by the defendant himself, or his attorney or agent, or the clerk of the attorney, who has the sole management of the cause, or some person who has had such a connection with the cause as acquaints him with its merits, and this must appear on the face of the affidavit.

The term 'merits,' in an affidavit of this nature, is to be read in a technical sense, and is not to be understood to be confined to a strictly moral and conscientious defence, and therefore a sufficient defence on the merits might be safely sworn to when the defence rests alone on a legal or technical objection, as the statute against frauds, or a statute of limitations.—2 *Chit. Arch. Prac. by Pren.* 978.

Mero Motu. See EX MERO MOTU.

Merscum, a lake; also a marsh, or fen-land.

Merse-ware, the ancient name for the inhabitants of Romney Marsh, Kent.

Mertlage, a church calendar or rubric.—*Cowel.*

Merton, *Statute of,* 20 Hen. III. c. 4, A.D. 1253, so-called because it was enacted at the Priory of Merton, in Surrey. See *Barr. on Stat.* 46; 1 *Reeves,* 260; and *Hale's Hist.* p. 9, n (*a*).

Mescroyantz, unbelievers.

Mese, a house and its appurtenants.

Mesnality, a manor held under a superior lord.

Mesnalty, the right of the mesne.

Mesne [fr. *medius,* Lat.], middle, intermediate.

Mesne Lord, a lord who holds of a superior lord.

Mesne Process, all those writs which intervene in the progress of a suit or action, between its beginning and end, as contradistinguished from primary and final process. Thus, the capias on mesne process is issued after a writ of summons, which is the primary process, and before a *capias ad satisfaciendum,* which is the final process, or process of execution. See CAPIAS.

Mesne Profits, *Action of,* an action of trespass brought to recover profits derived from land, whilst the possession of it has been improperly withheld; that is, the yearly value of the premises. It is brought after a judgment for the plaintiff in an action of ejectment by which possession of the land is recovered, the damages being nominal in most cases of ejectment, except that between landlord and tenant, by 1 Geo. IV. c. 87, s. 2

The action should be brought in the name of the plaintiff, who has recovered judgment in the ejectment, and lies against any person found in possession of the premises after a recovery in ejectment. It cannot be maintained against executors or administrators for the profits accruing during the lifetime of the testator or intestate, and received by him, except, indeed, for those received within six calendar months before the death of the testator or intestate, and then only provided the action be brought against the executor or administrator within six months after entering upon the administration of the estate (3 & 4 Wm. IV. c. 42, s. 2). It may be brought pending error in ejectment, and the plaintiff may proceed to ascertain his damages and sign judgment, but the court will stay execution till the error be determined. The defendant may pay money into court, as in other actions.

The jury are not bound by the amount of the rent, but may give extra damages. But

ground-rent paid by the defendant should be deducted from the damages. A plaintiff may recover in this action the costs of the action of ejectment, and also the costs incurred by him in a court of error. If a plaintiff recover less than 40*s.* damages, he shall have no more costs than damages, unless the judge certify.—2 *Chit. Arch. Prac. by Pren.* 1067; *Woodf. Land. and Ten.* 552; and *Adams' Eject.*

This action precisely answers to the *ἐνοικίου δίκη* of the Greeks.—*Meier. Att. Proc.* 749.

Mesne, *Writ of,* an ancient and abolished writ, which lay when the lord paramount distrained on the tenant paravail; the latter had a writ of mesne against the mesne lord.

Messarius [fr. *messis,* Lat.], a chief servant in husbandry; a bailiff.

Messenger, one who carries an errand; a forerunner.

Messengers are certain officers employed under the direction of the Secretaries of State, and always ready to be sent with despatches, foreign and domestic. They are employed with the Secretaries' warrants to arrest persons for treason, or other offences against the state, which do not so properly fall under the cognizance of the common law, and, perhaps, are not properly to be divulged in the ordinary course of justice.—2 *Hawk. P. C.* c. xvi., s. 9.

There are other officers distinguished by this appellation, as the messengers of the Lord Chancellor, Privy Council, and Exchequer, &c. Also, of the commissioners in bankruptcy, who seize a bankrupt's property, &c.

Messe Thane, one who said mass; a priest.—*Cowel.*

Messina, harvest.

Messis sementem sequitur.—(Harvest follows seed-time.)

Messuage [fr. *messuagium,* law Lat., formed perhaps fr. *mesnage,* by mistake of the *n,* in court hand, for *u,* they being written alike; or fr. *maison,* Fr.], a dwelling house with its outbuildings and curtilage and some adjacent land assigned to the use thereof. As to the legal import of the word, see 2 *Bing. N. C.* 617; *Monks* v. *Dykes,* 4 *M. and W.* 567.

In Scotland, the manor-house, or the principal dwelling-house within a barony.

Metachronism [fr. *μετά,* Gk., against, and *χρόνος,* time], an error in computation of time.

Metayer system. Under this, the land is divided in small farms, among single families, the landlord generally supplying the stock which the agricultural system of the country is considered to require, and receiving in lieu of rent and profit, a fixed proportion of the produce. This proportion, which is generally paid in kind, is usually (as is implied in the words *métayer, mezzaiuolo,* and *medietarius,*) one-half. 1 *Mill's Pol. Eco.* 296 & 363, and 2 *Smi. Weal. of Nat.* p. 3, c. ii.

Metecorn, a measure or portion of corn, given by a lord to customary tenants as a reward and encouragement for labor.

Metegavel [*meat-tax,* Sax.], a tribute or rent paid in victuals.

Meter [fr. *mete,* Sax.], a measurer, as a coal-meter, a land-meter.

Metewand, or **Meteyard,** a staff of a certain length wherewith measures are taken.

Methel, speech, discourse; *mathlian,* to speak, to harangue.—*Anc. Inst. Eng.*

Metropolis, for the better management of, see 18 & 19 Vict. c. 120, amended by 19 & 20 Vict. c. 112.

Metropolis Gas Act, 1860, 23 & 24 Vict. c. 125, amended by 24 & 25 Vict. c. 79.

Metropolis Local Management Act, 18 & 19 Vict. c. 120, amended by 19 & 20 Vict. c. 112; 21 & 22 Vict. c. 104; and 25 & 26 Vict. c. 102.

Metropolitan Building Act, 1855, 18 & 19 Vict. c. 122, amended by 23 & 24 Vict. c. 52, and 24 & 25 Vict. c. 87.

Metropolitan Burials. See 13 & 14 Vict. c. 52; 14 & 15 Vict. c. 89; 15 & 16 Vict. c. 85; 16 & 17 Vict. c. 134; and 20 & 21 Vict. cc. 35, 81.

Metropolitan Commissioners of Lunacy, officers appointed by 2 & 3 Wm. IV. c. 107, to license lunatic asylums. See 8 & 9 Vict. c. 100.

Metropolitan County Courts. See 19 & 20 Vict. c. 108, s. 18.

Metropolitan Police Acts, 10 Geo. IV. c. 44; 3 & 4 Wm. IV. c. 89; 2 & 3 Vict. c. 47; 2 & 3 Vict. c. 71; 2 & 3 Vict. c. 94 (city of London); and 3 & 4 Vict. cc. 84 & 89; 11 & 12 Vict. cc. 42 & 43; 17 & 18 Vict. c. 94; 18 & 19 Vict. c. 120; 19 & 20 Vict. c. 2; 20 & 21 Vict. c. 64; 23 & 24 Vict. c. 135; and 24 & 25 Vict. cc. 51, 124.

Metropolitan Sewers. See 18 & 19 Vict. c. 30; 21 & 22 Vict. c. 104; and 26 & 27 Vict. c. 68.

Metropolitan Stage Carriage Acts, 6 & 7 Vict. c. 86; 13 & 14 Vict. c. 7; and 16 & 17 Vict. cc. 33 & 127.

Metropolitan Supply of Water, 15 & 16 Vict. c. 84.

Metteshep, or **Mettenschep,** an acknowledgment paid in a certain measure of corn; or a fine or penalty imposed on tenants for default in not doing their customary service in cutting the lord's corn.—*Old Records.*

Meubles meublant [Fr.], household furniture.

Meum est promittere, non dimittere.—2 *Rol. Rep.* 39.—(It is mine to promise, not to discharge.)

Meya, a mow or heap of corn.

Michaelmas, the feast of the archangel Michael, celebrated on the 29th of September, and one of the usual quarter days.

Michaelmas Head Court, a meeting of the heritors of Scotland, at which the roll of freeholders is revised.—20 *Geo. II.* c. 50.

Michaelmas Term, a non-issuable term which begins on the 2nd and ends on the 25th of Nov. in every year.

Michel-Gemote, the great meeting or ancient Parliament of the kingdom.

Michel-Synoth, the great council of the Saxons.

Michery, theft; cheating.

Middle-man, an agent between two parties. In Ireland a person who takes land in large tracts from the proprietors, and then leases it out to the peasantry in small portions at a greatly enhanced rent.

Middlesex, *Bill of,* a writ anciently resorted to by the Court of Queen's Bench, in order to enlarge its jurisdiction in civil causes.

The jurisdiction of this court in civil actions was formerly confined to actions of trespass, or other injury alleged to have been committed *vi et armis.* But it might always have held pleas of any civil action other than actions real, provided the defendant was an officer of the court, or in the custody of the marshal, that is, the prison-keeper of the court. On this latter privilege was built the fiction of surmising that the defendant had committed a breach of the peace in the county in which the court sits, and in which it was held to possess an extraordinary criminal jurisdiction, and then issuing a bill of Middlesex against him as for this trespass, and supposing him to be afterwards committed by virtue of that writ and as for that trespass, to the custody of the marshal, so as to bring him within the proper jurisdiction of the court. In proceedings against prisoners or officers of the court, the actions were said to be commenced by bill, in all other cases by original. Both are abolished by 2 Wm. IV. c. 39.

Middlesex Quarter Sessions. By 7 & 8 Vict. c. 71, it is enacted, that there shall be holden for the county of Middlesex two sessions, or adjourned sessions of the peace, in every calendar month, and that the first sessions in January, April, July, and October, respectively, shall be the general quarter sessions of the county; and the second sessions in January, April, July, and October, shall be adjournments of the general quarter sessions.

Middlesex Registration of Deeds, 7 Anne, c. 20; and 25 Geo. II. c. 4.

Midsummer-Day, the summer solstice, which is on the 24th day of June; and the feast of St. John the Baptist, a festival first mentioned by Maximus Tauricensis, A.D. 400. It is generally a quarter day for the payment of rents, &c.

Mile, a measure of length or distance, containing eight furlongs, or 1,760 yards, or 5,280 feet.

Mileage, travelling expenses, which are allowed to witnesses, sheriffs, and bailiffs, according to certain scales of fees, settled by the masters of the several courts of law and equity.

Miles [Lat.], generally a soldier, particularly a knight.

Militare, to be knighted.

Military Asylum of Chelsea, for the reception of children of soldiers.—17 & 18 *Vict.* c. 61.

Military causes, all matters concerning the discipline of the army, and contracts, &c. relating to deeds of arms and war.

Military courts, the court of chivalry and courts martial. See CHIVALRY, COURTS OF, and MARTIAL COURTS.

Military feuds, the genuine or original feuds which were in the hands of military men, who performed military duty for their tenures. See TENURE.

Military forces, the militia or volunteers, and the regular standing army. See ARMY.

Military laws. See MARTIAL LAW.

Military offences, those offences which are cognizable by the courts military, as insubordination, sleeping on guard, desertion, &c.

Military Savings Banks. By 22 & 23 Vict. c. 20 (which repealed former acts), the Queen may establish or continue military or regimental savings banks, for the purpose of receiving sums of money from such of the non-commissioned officers and soldiers employed in her service, either in the United Kingdom or upon foreign stations (India alone excepted), as may be desirous of depositing the same, and for receiving deposits of any moneys or funds whatsoever raised or paid for objects or purposes connected with non-commissioned officers and soldiers, which her Majesty may from time to time think fit to authorize to be deposited in such savings banks. The regulation and the management of such institutions are intrusted to the Secretary at War for the time being, in concurrence with the commander-in-chief, and the commissioners of the treasury.

Military state, the soldiery of the kingdom.

Military tenure, tenure in chivalry or knight-service.

Military testament, a nuncupative will, that is, one made by word of mouth, by which a soldier may dispose of his goods, pay, and other personal chattels, without the forms and solemnities which the law requires in other cases.—1 *Vict.* c. 26, s. 11.

Militia, the national soldiery, as distinguished from the regular forces or standing army, being the inhabitants, or, as they have been sometimes called, the *trained-bands* of a town or county, who are armed on a short notice, for their own defence. As to its origin, see 3 *Hall. Cons. Hist.* p. 262. See 15 & 16 *Vict.* c. 74; 16 & 17 *Vict.* cc. 116, 133; 17 & 18 *Vict.* c. 13; 20 & 21 *Vict.* c. 82; 21 & 22

Vict. cc. 4, 39, 82, 85, 86; 22 & 23 *Vict.* cc. 15, 38, 54; 23 & 24 *Vict.* cc. 94, 120, 133; 25 & 26 *Vict.* cc. 17 & 80; and 26 & 27 *Vict.* cc. 37 & 53.

Millbank Prison, formerly called the Penitentiary at Millbank. A prison in the neighbourhood of Westminster, for the reception of convicts under sentence or order of transportation, to be there confined until the sentence or order shall be executed, or until the convict shall be entitled to freedom, or be removed to some other place of confinement. The justices of the peace have no authority over this prison, but it is placed under such of the inspectors of prisons as shall be appointed for that purpose by one of the principal Secretaries of State, and who are to be a body corporate, by the name of 'The Inspectors of the Millbank Prison.' These inspectors are to make regulations for the government thereof, subject to the approbation of a principal Secretary of State, and to make yearly reports to such secretary, as to all matters relating to the prison or the convicts, which reports are to be afterwards laid before both houses of Parliament. A principal Secretary of State is also to appoint for the prison a governor, chaplain, medical officer, matron, and such other officers as may be deemed requisite.—5 & 6 *Vict.* c. 98; 6 & 7 *Vict.* c. 26; 11 & 12 *Vict.* c. 104; 13 & 14 *Vict.* c. 39; and 23 & 24 *Vict.* c. 60.

Mill-holms, low meadows and other fields in the vicinity of mills, or watery places about mill dams.—*Encyc. Lond.*

Milleate, or **Mill-leat**, a trench to convey water to or from a mill.—7 *Jac. I.* c. 19.

Milled money, coined money.

Minage, a toll or duty paid for selling corn by the mina.—*Cowel.*

Minare, to dig mines.

Minator, a miner.—*Old Records.*

Minator carucæ, a ploughman.—*Cowel.*

Minatur innocentibus, qui parcit nocentibus.—4 *Co.* 45.—(He threatens the innocent who spares the guilty.)

Mine [fr. *mwyn* or *mwy*, Wel., from *maen*, a stone], an excavation or cavern in the earth, which yields metals or minerals. Where stones only are produced, the places from which they are dug out are called quarries.

As to royal mines, see LAND. As to mines in Devon and Cornwall, see 1 & 2 *Vict.* c. 120, and 2 & 3 *Vict.* c. 58, s. 1.

A man may dig mines in his own lands, but he cannot go under the land of his neighbor, for that would be trespass.—6 *Ves.* 147. The lord of a manor, as such, has no right, without a custom, to enter upon copyhold lands in his manor, under which there are mines or veins of coal, to bore for or work the same, for the copyholder may maintain trespass for his so doing, and also obtain an injunction against the lord to restrain him.—17 *Ves.* 281. But a copyholder of inheritance may dig mines in his own land.

A tenant for life may work open mines and sink new shafts or pits to pursue the old veins. And he may also work any mines lawfully opened by a preceding tenant-in-tail, although subsequent to the settlement under which he claims; but if he open a new mine it is waste. 3 *P. Wms.* 288. But see *Leas. and Sales of Sett. Est.* As to the regulation and inspection of mines, see 5 & 6 *Vict.* c. 99; 23 & 24 *Vict.* c. 151; and 25 & 26 *Vict.* c. 79.

Minerator, a minor.—*Old Records.*

Minima pœna corporalis est major qualibet pecuniariâ.—2 *Inst.* 220.—(The smallest bodily punishment is greater than any pecuniary one.)

Minimè mutanda sunt quæ certam habent interpretationem.—*Co. Litt.* 365.—(Things which have a certain interpretation are to be altered as little as possible.)

Miniment, or **Muniment**, the evidences or writings whereby a man is enabled to defend the title of his estate. It includes all manner of evidences.—*Cowel.*

Minimum est nihilo proximum.—(The smallest is next to nothing.)

Mining companies. This designation was formerly applied to the associations formed in London in 1825 for working mines in Mexico and South America; but at present it comprises all mining projects carried on by joint-stock associations.—*McCull. Comm. Dict.*

Minister, an agent; one who acts not by any inherent authority, but under another.

In politics, one to whom a sovereign entrusts the administration of government. In Great Britain, the word *ministry* is used as a collective noun for the heads of departments in the state. The ministry or executive government consists of the following high officers of state, who are also members of the Cabinet Council:—The First Lord of the Treasury, the Lord Chancellor, the Lord President of the Council, the Lord Privy Seal, the Chancellor of the Exchequer, the Secretaries of State for the Home Department, for Foreign Affairs, for the Colonial Department, for the War Department, and for India; of the following officers, many of whom are usually but not necessarily members of the Cabinet Council:—Chief Commissioners of Woods and Forests, and of Works and Public Buildings, Chancellor of the Duchy of Lancaster, First Lord of the Admiralty, President of the Board of Trade, Paymaster-General of the Forces, Master of the Mint, Judge Advocate-General, Postmaster-General, Master-General of the Ordnance, Chief Secretary for Ireland. It sometimes happens that a statesman who holds no office is a member of the Cabinet. The First Lord of the Treasury is at the head of the government and appoints

his colleagues. Besides the officers above-mentioned there are a number of others, including the law officers of the Crown, the Under Secretaries for the different departments, the Lord Lieutenant and the Lord Chancellor of Ireland, and the law officers of Ireland and Scotland, and the great officers of Her Majesty's household, who are also members of the Ministry, and who resign their offices whenever the Prime Minister who has appointed them resigns. All the chief offices in a ministry, and most of the inferior offices, are conferred upon peers and members of the House of Commons who agree with the First Lord of the Treasury in general principles of home and foreign policy, and who act together in Parliament for the promotion of measures in accordance with those principles.

A foreign minister is usually called an ambassador.

In religion, a pastor of a church, chapel, or meeting-house, &c.

Ministerial, attendant; acting under superior authority.

Ministri regis (*ministers of the king*), applied to the judges of the realm, and to all those who hold ministerial offices in the government.—2 *Inst.* 208.

Ministry [contracted fr. *ministery*], office; service. Those members of the government who are in the cabinet. See MINISTER.

Minor, a person under age, who is not yet arrived at the power of managing his own affairs. See INFANT.

Minor ante tempus agere non potest in casu proprietatis nec etiam convenire; differetur usque ætatem; sed non cadit breve.—2 *Inst.* 291.—(A minor before majority cannot act in a case of property, nor even agree; it should be deferred until majority; but a writ does not fail.)

Minor jurare non potest.—*Co. Litt.* 172 *b.*—(A minor cannot swear.)

Minor 17 *annis, non admittitur fore executorem.*—6 *Co.* 68.—(A minor under seventeen years of age is not admitted to be an executor.)

Minor minorem custodire non debet; alios enim præsumitur male regere qui seipsum regere nescit.—*Co. Litt.* 88.—(A minor cannot be guardian to a minor, for he is presumed to direct others badly who knows not how to direct himself.)

Minor non tenetur respondere durante minori ætate; nisi in causâ dotis, propter favorem.—3 *Bulst.* 143.—(A minor is not bound to reply during his minority, except as a matter of favor in a cause of dower.)

Minor, qui infra ætatem 12 *annorum fuerit, utlagari non potest, nec extra legem poni, quia ante talem ætatem, non est sub lege aliquâ, nec in decennâ.*—*Co. Litt.* 128.—(A minor who is under twelve years of age cannot be outlawed, nor placed without the law, because, before such age, he is not under any law, nor in a decennary.)

Minora regalia, the lesser prerogatives of the Crown, relating to the revenue.

Minoress, a female under age.

Minority [fr. *minor*, Lat.], the state of being under age, i. e. twenty-one years; also the smaller number.

Mint [fr. *moneta*, Lat.; *mynet* Sax., money, from *mynetian*, to coin], the place where money is coined. The mint of great Britain is situated near the Tower of London.—57 *Geo. III.* c. 67; 1 & 2 *Wm. IV.* c. 10; 2 *Wm. IV.* c. 34; 1 *Hale*, 213.

Also, a place of privilege in Southwark, near the Queen's prison, where persons formerly sheltered themselves from justice, under the pretext that it was an ancient palace of the Crown. The privilege is now abolished; and the statutes 8 & 9 Wm. III. c. 27; 9 Geo. I. c. 28; 11 Geo. I. c. 22; and 1 Geo. IV. c. 116, enact, that persons opposing the execution of any process in such pretended privileged places within the bills of mortality, or abusing any officer in his endeavour to execute his duty therein so that he receives bodily hurt; and all persons aiding and abetting such opposition, shall be felons and shall be punished accordingly.

Mint-mark. It has been always usual to oblige the masters and workers of the mint, in the indentures made with them, 'to make a privy mark in all the money that they make, as well of gold as of silver, so that another time they might know, if need were, which monies of gold and silver among others of the same monies, were of their own making and which not.' The masters and workers of the mint, after every trial of the pix at Westminster, having there proved their monies to be lawful and good, are immediately entitled to receive their *quietus* under the Great Seal, and to be discharged from all suits or actions concerning those monies; it is then usual for the said masters and workers to change the privy mark before used for another, that so the monies from which they are not yet discharged might be distinguished from those for which they had already received their *quietus*, which new mark they then continue to stamp upon all their monies, until another trial of the pix gives them also their *quietus* concerning those.—*Encyc. Lond.*

Mint-master, one who manages the coinage.

Mintage, that which is coined or stamped.

Minute, 60 seconds, or the 60th part of a degree or hour; also a memorandum.

Minute tithes [*minores decimæ*, Lat.], small tithes, such as usually belong to a vicar, as of wool, lambs, pigs, butter, cheese, herbs, seeds, eggs, honey, wax, &c.

Mirror des Justices. This singular work has

raised much doubt and difference of opinion concerning its antiquity. Some have pronounced it older than the Conquest, others have ascribed it to the time of Edward II. Both these opinions may be partly right. There may perhaps have been a work by this name as early as the first date supposed; but whoever judges from the internal evidence of this book will be satisfied that great part of it is of a period much later, and certainly written after Fleta and Britton; for it states many points of law, as it were, in a stage of progression somewhat receding from those writers, and approaching nearer to those of later times. It is probable that Andrew Horne, whose name it bears, might take up an ancient book of that name, and work it into the volume we now see, in the reign of Edward II., or at the end of the former reign; and if so, we should expect that whatever it propounds was actually law in the reign of Edward II.

This book treats of all branches of the law, whether civil or criminal. Besides this, it gives a cursory retrospect of some changes ordained by former kings; enumerates a list of abuses, as the author terms them, of the common law, proposing, at the same time, what he considers to be desirable corrections. He does the same with *Magna Charta*, the statutes of Merton and Marlbridge, and some principal acts in the reign of Edward I.

This book should be read with great caution, and some previous knowledge of the law as it stood about the same period, for the author certainly writes with very little precision. This, with his assertions about Alfred, and the extravagant punishments inflicted by that king on his judges, have brought his treatise under some suspicions. When read with these hints, *The Mirror of Justices* is certainly a curious, interesting, and, in some degree, an authentic tract upon our old law; though, considering the anachronisms in legal knowledge (if they may be so called) with which it abounds, that the antiquated law is promiscuously blended with that of the time in which it was revised, and that the date of such revision is very uncertain, it is to be wondered that some great writers have relied so much upon this author, as to pronounce upon the antiquity of many articles of our law merely on his authority.—2 *Reeves*, c. xii. 358.

Mis, an inseparable particle used in composition, to mark an ill sense or depravation of the meaning, as miscomputation or misaccompted, i. e. false reckoning. Several of the words following are illustrations of the force of this monosyllable.—*Todd's Johnson's Dict.*

Misa, a compact, a firm peace.—*Old Records.*

Misadventure, *excusable homicide by*, also termed homicide *per infortunium*; it arises where a man, doing a lawful act, without any intention of hurt, unfortunately kills another, as where a person is at work with a hatchet, and the head of it flies off and kills a bystander, or is shooting at a mark and undesignedly kills a man, for the act is lawful, and the effect is merely accidental. So where a parent is moderately correcting a child, a master his apprentice or scholar, or an officer punishing a criminal, and happens to occasion his death, it is only misadventure, for the act of correction was lawful; but if he exceeds the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensue, it is manslaughter at least, and in some cases, according to the circumstances, murder, for the act of immoderate correction is unlawful.—*Fost.* 275; 4 *Stop. Com.* 136.

Misallege, to cite falsely as a proof or argument.

Miscarriage, a wrongful act. See 29 *Car.* II. c. 3, s. 4.

Miscarriage, producing. See ABORTION.

Miscasting, an error in addition.

Miscognisant, ignorant of, unacquainted with.

Miscontinuance, cessation, intermission.

Misdemeanor, a species of crime or offence comprehending all breaches of public law less than felony, as perjury, libels, conspiracies, assaults, &c., which are not so atrocious as murder, burglary, arson, &c., which are felonies.

Misdirection, an error in law or fact made by a judge in charging a jury.

Mise, disbursement, costs; also a tax or tallage, &c.; also, the issue in a writ of right. It is sometimes corruptly used for *mease* or *mees*, i. e. a messuage.

Mise-money, money paid by way of contract or composition to purchase any liberty, &c.—*Blount.*

Misera est servitus, ubi jus est vagum aut incertum.—4 *Inst.* 246.—(Obedience is miserable, where the law is vague or uncertain.)

Miserabile depositum, an involuntary deposit under pressing necessity.—*Civ. Law.*

Miserere (*have mercy*). The name and first word of one of the penitential psalms, being that which was commonly used to be given by the ordinary to such condemned malefactors as were allowed the benefit of clergy: whence it is also called the psalm of mercy.

Misericordia, an arbitrary amerciament or punishment imposed on any person for an offence. It is thus called, according to Fitzherbert, because it ought to be but small and less than that required by Magna Charta.—*Anc. Inst. Eng.*

Also, a discharge of all manner of amerciaments, which a person might incur in the forest. See CAPIAS PRO FINE.—See 1 *Chit. Arch. Prac. by Pren.* 525.

Misericordia communis, a fine set on a whole county or hundred.

Misericordia domini regis est, quâ quis per juramentum legalium hominum de vicineto eatenus amerciandus est, ne aliquid de suo honorabili contenemento amittat.—Co. Litt. 126.—(The mercy of our lord the king is that by which everyone is to be amerced by a jury of good men from his immediate neighbourhood, lest he should lose any part of his own honorable tenement.)

Misevenire, to fail or succeed ill.

Misfeazance, a misdeed or trespass; also, the improper performance of some lawful act.

Misfeazant, a trespass.

Misfeazor, a trespasser.

Misfortune. See CHANGE.

Misjoinder, joining parties in a suit or action, who ought not to have been so joined.

In equity, if the misjoinder be of parties as plaintiffs, all the defendants may demur. If the misjoinder be of parties as defendants, those only can demur who are improperly joined. The improperly joining two different causes of suit in one bill is technically called multifariousness, which see. No suit is to be dismissed on the ground of misjoinder or similar objections; but the court can grant relief, modify its decree, or make amendments according to the circumstances of the case.—15 & 16 *Vict.* c. 86, s. 49.

As to amendments in case of misjoinder of parties at common law, see *C. L. P. A.* 1852, ss. 35–37; *Chit. Arch. Prac. by Pren.* 403, 1550.

Where several persons join in the commission of an offence, all or any number of them may be jointly indicted for it, or each of them may be indicted separately. Misjoinder of defendants may be made the subject of demurrer, motion in arrest of judgment, writ of error, or the court may quash the proceedings. As to the misjoinder of causes of action not in the same right, see *C. L. P. Act* 1862, s. 41; 1 *Chit. Arch. Prac. by Pren.* 225.

Miskenning, a wrongful citation. — *Du Cange; Anc. Inst. Eng.*

Misnomer, a wrong name.

In real and mixed actions at common law a misnomer is a ground of abatement, but no plea in abatement for a misnomer shall be allowed in any personal action; but in all cases in which a misnomer would, but for the following act, have been pleadable in abatement, the defendant shall be at liberty to cause the declaration to be amended at the plaintiff's costs, by inserting the right name. And this is done by taking out a summons before a judge at chambers, founded on an affidavit of the right name, and in case the summons shall be discharged, the costs of such application shall be paid by the party applying, if the judge shall think fit.—3 & 4 *Wm. IV.* c. 42, s. 11. Where a plaintiff has sued a defendant by his wrong Christian name, but has declared against him by his right Christian name, the proceeding is regular under the foregoing Act of Parliament.

Misnomers in proceedings are now frequently amended by the court, provided the other parties have neither been misled nor prejudiced by them. And by 7 Geo. IV. c. 64, s. 19, no indictment or information shall be abated by reason of any dilatory plea or misnomer, or of want of addition, or of wrong addition of the party offering such plea; but if the court shall be satisfied, by affidavit or otherwise, of the truth of such plea, it shall forthwith cause the indictment or information to be amended according to the truth, and call upon the party to plead thereto, and proceed as if no such dilatory plea had been pleaded. See 14 & 15 *Vict.* c. 100.

Mispleading. See JEOFAILS.

Misprision [fr. *mépris*, Fr.], neglect, negligence, or oversight.

All such high offences as are under the degree of capital, but nearly bordering thereon, are misprisions; and it is said that a misprision is contained in every treason and felony whatsoever, and that, if the Crown so please, the offender may be proceeded against for the misprision only. And upon the same principle, while the Court of Star Chamber subsisted, it was held that the sovereign might remit a prosecution for treason, and cause the delinquent to be censured in that court, merely for a high misdemeanor; as happened in the case of Roger, Earl of Rutland, in 43 Eliz., he having been concerned in Essex's rebellion. Every great misdemeanor, according to Coke, which has no certain term appointed by the law, is sometimes called a misprision.

Misprisions are divided in the text-books into two kinds:—

(1) *Negative*, consisting in the concealment of something which ought to be revealed, such is *misprision of treason*, which is the bare knowledge and concealment of treason, without any degree of assent thereto; for any assent makes the party a principal traitor; as indeed the concealment, which was construed to be aiding and abetting, did at the common law; but it was enacted by st. 1 & 2 Ph. & M. c. 10, that a bare concealment of treason shall be only held a misprision. Information will not lie for this offence, but indictment, as for capital crimes. There must be two witnesses at least to support the case.—7 *Wm. III.* c. 3; 1 *Hale P. C.* 374; 4 *Step. Com.* 248.

Besides the last described offence, the mere concealment of a felony is criminal, and is called *misprision of felony*; but if there be an assent, this makes the person assenting either a principal or accessory. *Theftbote*, and *con-*

cealing treasure-trove, are each of them species of negative misprision.—4 *Step. Com.* 248, 313.

(2) *Positive*, otherwise denominated contempt or high misdemeanors, such as the mal-administration of such high officers as are in public trust and employment, usually punishable by parliamentary impeachment; also, embezzlement of the public money, punishable by fine and imprisonment; also, such contempts of the executive magistrate as demonstrate themselves by some arrogant and undutiful behaviour towards the sovereign and government. And to endeavor to dissuade a witness from giving evidence, to disclose an examination before the Privy Council, or to advise a prisoner to stand mute (all of which are impediments to justice), are high misprisions and contempts of the courts, and punishable by fine and imprisonment.

Misprisions of clerks are mistakes made by clerks, &c., in writing or keeping records.

Misrecital, a wrong recital. If it be in the beginning of a deed, which goes not to the end of a deed, it shall not hurt, but if it go to the end of a sentence, so that the deed is limited by it, it is vicious.—*Carth.* 149.

Misrepresentation, i. e. *suggestio falsi*, in a matter of substance essentially material to the subject, whether by acts or by words, by manœuvres or by positive assertions, whereby a person is actually misled and injured, and a fraud perpetrated. And it is wholly immaterial whether the misrepresentor knew the matter to be false, or asserted it, either innocently, by mistake, or, without knowing if it were true or false; for the affirmance of that which is not known to be true is quite as unjustifiable as the assertion of that which is known to be false, since it is equally a means of deception. But equity would not relieve, if the misrepresentation were of a trifling or immaterial thing, or if the other party did not trust to it, or was not misled by it, or if it were vague and inconclusive in its own nature, or if it were upon a matter of opinion or fact equally open to the inquiries of both parties, and in regard to which neither could be presumed to have confided in the other, for *vigilantibus, non dormientibus æquitas subvenit*. Equity cannot indemnify a person from the consequences of indolence and folly or of careless indifference and neglect as to easily accessible means of information.

Missa, the mass.

Missæ presbyter, a priest in orders.—*Blount.*

Missal, the mass-book.

Missaticus, a messenger.—*Old Records.*

Missing ship, a vessel which has not been heard of for a long period, and is supposed to have foundered.

Missive, a letter sent.

Missura, the ceremonies used in the Romish Church to recommend and dismiss a dying person.

Mistake, misconception, error.

The word 'mistake,' as employed in Chancery, is to be understood as an unintentional act or omission, arising from ignorance or imposture. Mistakes are either (1), in a point of law, or (2), of a matter of fact.

As to the former, Equity regards the well-known and ancient maxim, *Ignorantia legis neminem excusat*; for 'otherwise,' observed Lord Ellenborough, *Bilbie* v. *Lumley*, 2 *East*, 469 (1802), 'there is no saying to what extent the excuse of ignorance might be carried.'

The following propositions illustrate this maxim: Where an obligee releases one of two joint-obligors, supposing that, in point of law, the other will still be bound, he nevertheless releases both; and equity will not relieve him, provided his release have not been procured by fraud. So, where a person, having a power of appointment, executes it absolutely without a power of revocation, upon a notion that in law a voluntary deed is always revocable, he is not entitled to relief, unless indeed there had been an intention of inserting such a power, and it has been omitted by mistake in the draft. And all agreements entered into with good faith, but under a mistake of law, will be binding on all the parties, especially those agreements which seek to preserve the honor and peace of families, whose establishment is part of the final cause of government; for, as remarked by Lord Eldon, *Stockley* v. *Stockley*, 1 *Ves. and B.* 30 (1812), 'in family arrangements, this court has administered an equity which is not applied to agreements generally.'

It is, however, to be remarked that if a person acting in plain ignorance of a settled principle of law is induced to give up, by way of compromise, a right or a portion of his indisputable property, of which he has no knowledge, Equity will relieve him from the effect of his error, for the misapprehension that he possesses no title at all to property constitutes rather a mistake of fact, i. e. the fact of ownership, arising from a mistake of law, and it can hardly be said that a person actually intended to part with a right or title of the existence of which he was entirely ignorant. And where a man having a right to an estate, purchased it of another person, being ignorant of his own title, the vendor was compelled to repay the purchase-money, with interest from the time of filing the bill, and costs.—*Bingham* v. *Bingham*, 1 *Ves.* 126 (1748). Equity is indeed disinclined to sustain even family settlements, where there is a mixture of mistake of title, gross personal ignorance, liability to imposition, habitual intoxication, or want of professional advice.

Surprise joined to a mistake of law invalidates agreements upon the equitable ground that those who are unable to protect them-

selves, and of whom undue advantage is taken, ought to be protected.

From the conflicting *dicta* and obscure authorities on this subject, the question as to the effect of mistakes of law is by no means clear and satisfactory; but it would appear that the above deductions are sustainable.

As to the other kind of mistakes, the fundamental rule is that an act done under a mistake or ignorance of a materal fact, i. e. a fact essential to the character of the act, and an efficient cause of its being done, is relieved against in Equity, provided compensation can be made for the injury occasioned by it; and this although there be no fraud and the parties are entirely innocent. But besides the materiality of the fact, it must also be a fact which the exercise of reasonable diligence could not have ascertained; for if so, equity will not relieve, as that would be to encourage culpable neglect. Where, however, each party is equally innocent, and there is not any concealment by one of facts which the other has a right to know, and there is no surprise or imposition, the mistake or ignorance, whether mutual, or on one side only (or *unilateral*, as the Scotch law expresses it), is treated as laying no foundation for equitable interference. It is strictly *damnum absque injuriâ*.—1 *Sto. Eq. Jur.* c. v., and see *Lord St. Leonards' V. and P.* 179. A mistake of a fact and an ignorance of a fact differ in meaning; the former supposes some error of opinion as to the real facts; but the latter may be mere want of knowledge without any error of opinion. The two phrases are, however, convertible, and are commonly used synonymously.

Equity is frequently resorted to, in order to amend written agreements, which on account of a plain mistake (clearly and satisfactorily proved), do not set forth the precise intent of the parties. 'No doubt,' said Lord Hardwicke, *Henkle* v. *R. E. Assur. Co.* 1 *Ves.* 317 (1749), 'but this court has jurisdiction to relieve in respect of a plain mistake in contracts in writing as well as against frauds in contracts in writing, so that if reduced into writing contrary to the intent of the parties, on proper proof that would be rectified.' Marriage settlements and conveyances are on the same grounds rectified and made consistent with the purpose intended. Thus where a solicitor, instructed prior to the marriage of a lady to prepare a settlement of her property so as to reserve to her the same absolute power of disposition over it as she then possessed, prepared a settlement containing a clause restricting anticipation; but with the engrossment of the settlement forwarded to the lady an epitome of it which omitted that clause, and a letter to her, in which he said 'that she would observe that the most unlimited control, both over the principal and interest, was proposed to be secured to her,' and the lady and her then intended husband executed the settlement in ignorance of its containing a clause restricting anticipation; upon a bill filed on the lady's behalf by her next friend, to rectify the settlement by striking out the words 'but not by way of anticipation,' it was ruled that these words were inserted by mistake, and contrary to the intention of the parties.—*Torre* v. *Torre*, 1 *Eq. Rep.* 364 (1853); and see *Walker* v. *Armstrong, on app.* 4 *W. R.* 770 (1856).

Parol evidence is admissible to vary, alter, or explain written instruments, on the ground of accident, mistake, or fraud, and although this is certainly an exception to the rule excluding the reception of parol evidence against written agreements, yet it is obvious that both the exception and the rule stand upon the same ground of policy—the suppression of fraud and the promotion of good faith and confidence.

But besides the relief granted, where the fact of the mistake is clearly established, assistance will be extended to those cases in which the mistake is fairly implied from the nature of the transactions; thus, in the instance of a joint loan to two or more obligors, who give a joint bond for its repayment, Equity will make it joint and several, since the debt being joint, the plain inference is that it was the intent of the parties to attach the responsibility to each obligor and to all equally, which is not effected by a joint bond, for in that case on the death of one obligor the survivor only is liable at law to be sued for the debt; Equity therefore acts upon the presumption that the omission arose from a blunder or mistake.

Equity will also supply defects in conveyances occasioned by mistake, as a surrender in copyhold transfers for valuable, but not for merely meritorious consideration; livery of seisin in feoffments; and instruments given up or cancelled by mistake, and in ignorance of the facts, upon the ground that the party in whose favor they were made is conscientiously entitled to the benefit of such instruments. Besides, Equity regards not the outward form but rather the inward substance and essence of the matter.

It is to be remarked, however, that Equity cannot supply the want of statutory formalities in conveyances, for that would be to assume legislative functions, and to defeat the very policy of the statutes themselves. For instance, a bargain and sale of freeholds requires to be enrolled *within six* (*lunar*) *months*, by 27 Hen. VIII. c. 16; now should the enrolment not have taken place within this time, through mistake or accident, Equity cannot decree an enrolment, *nunc pro tunc*, but it will direct another bargain and sale to be executed and enrolled within the proper time.

Defective executions of all kinds of powers,

arising from accident or mistake, are relieved against, and the defect supplied by compelling the person seised of the legal estate to convey in the manner pointed out by the defective appointment in favor of the donee's creditors, *bonâ fide* purchasers for value, mortgagees, lessees, wives, or children, and also in favor of charities, against remainder-men, and heirs-at-law duly provided for, but such relief must not operate any injustice to others, or involve a breach of trust, and there must be an absence of all counter equity; neither must the intention of the author of the power be thereby defeated, nor the enactments of an act of parliament contravened. See *West* v. *Ray*, 2 *Eq. Rep.* 431 (1854). But as a general rule, the non-execution of a power is not aided, unless brought about by fraud. For Equity will not do that for a person which he does not think fit to do for himself. The exception to this general rule is, that where the power is coupled with a trust, to the execution of which the parties looked with confidence, then Equity will relieve against its non-execution, for the benefit of the *cestuis que trustent.*—*Tollet* v. *Tollet* 2 *P. Wms.* 489 (1728), and 1 *White and Tudor's Lead Cas.* 155–166.

Obvious mistakes or omissions in a will can be rectified or supplied in Equity, when they are apparent upon its face, or may be made out on a due construction of its terms, for in such cases, intention prevails over language. Parol evidence or evidence out of (*dehors*) the will is not admissible to vary or control its terms, although it is to remove a latent ambiguity. Equity will correct mistakes in the computation of legacies, in the property intended to be given, or in the names, descriptions or number of the legatees. A blank for the surname of a legatee cannot be filled up, but a Christian name may be supplied (*In the matter of Rickit's estate*, 1 *Eq. Rep.* 251, 1853), and a part of a surname where the initial of it appears in the will. A will cancelled by mistake may be restored, and will not let in the heir-at-law.

Where there is an excessive appointment under a power by deed, it is void *quoad* the excess, the execution being rendered effectual, so far as the appointment is warranted by the power; *valeat quantum valere potest.*

If a testator's intention be not consistent with the policy of the law so that it cannot be specifically acted upon, yet Equity will give effect to such intention, as nearly as the rules of law will allow, by applying what is technically called the doctrine of *cy-près* (i. e. as near to), which is simply a practically legal scheme to carry out an intent, which is strictly impracticable and not perfectly consistent with legal principles, as where lands are limited to an unborn person for life, with remainder to his first and other sons successively in tail. As such limitations are clearly incapable of taking effect, since the Common Law rule prohibited the limitation of a possibility upon a possibility, and made the remainder to the issue absolutely void, this doctrine, in order to prevent the total frustration of the intention in favor of the issue, gives to the parent the estate-tail, which was designed for the issue; under which estate-tail, unless barred by some act on the part of the parent, the lands will descend to the persons intended to have been made tenants-in-tail by purchase. The intention that the testator's bounty shall flow to the issue is considered as paramount to that which regulates the manner of their taking, and the latter is therefore sacrificed.

This doctrine does not apply to limitations of personalty, except in the case of charities (see CY-PRÈS), or to deeds, or to any attempt made to limit a succession of life estates to the issue of an unborn person, either for a definite or indefinite series of generations; or to a limitation in fee simple to the children of unborn persons. See further as to this doctrine, *Fearne's Cont. Rem.*, and 2 *Lord St. Leonards on Powers*, 60.

While Equity will redress a mistake as between the original parties, and their privies, it will neither relieve against mere accidents, nor rectify mistakes so as to affect *bonâ fide* purchasers for value without notice, for the mistakes or ignorances of parties to conveyances as to their claims cannot be allowed to be turned to the prejudice of such unassailable individuals.

In cases of mistake, the time of limitation which by analogy to that prescribed by the 21 Jac. 1, c. 16, is held to bar the remedy in courts of Equity, begins to run from the time of the discovery of the mistake.—2 *Chit. Eq. Ind. by Mac.* 1422.

In criminal cases a mistake of fact is an excuse, as when a man, intending to do a lawful act, does that which is unlawful. An error, however, in point of law, is no excuse, for *ignorantia juris, quod quisque tenetur scire, neminem excusat.*—*Plowd.* 343.

Mistery [fr. *métier*, Fr.], a trade or calling.

Mistrial, an erroneous trial.

Misuser, abuse of any liberty or benefit which works a forfeiture of it.

Mitigation, abatement of anything penal, harsh or painful.

Mitior sensus (*the more favorable acceptation*). *Mitius imperanti melius paretur.*—3 *Inst.* 24. (He is better obeyed who commands leniently.)

Mittendo manuscriptum pedis finis, an abolished judicial writ addressed to the treasurer and chamberlain of the exchequer to search for and transmit the foot of a fine acknowledged before justices in eyre, into the Common Pleas.—*Reg. Orig.* 14.

Mitter le droit (*to pass a right*).—*Co. Litt.* 273 *a.* See RELEASE.

Mitter l'estate (*to pass an estate*). See *Ibid.*

Mittimus (*we send*), a writ for removing and transferring records from one court to another. Also, a precept or command in writing, directed to the gaoler or keeper of some prison for the receiving and safe keeping of an offender charged with any crime, until he be delivered by due course of law. As to writs into a county palatine, see *C. L. P. A.* 1852, s. 122.

Mittre à large (*to set or put at liberty*).

Mixed actions, suits at common law partaking of the nature of real and personal actions, by which some real property is demanded, and also personal damages for a wrong sustained. They substantially partake, however, of the character of real actions, and are often so called, but they are now abolished, except the action of ejectment.—3 & 4 *Wm. IV.* c. 27. Correctly speaking, however, ejectment is in its form a species of the personal action of trespass.—*Step. Plead.* app. vii.

Those in Roman law, in which some specific thing was demanded, and where also some personal obligations were claimed to be performed. *Hallifax on Roman Law*, 85.

Mixed contract, one in which one of the parties confers a benefit on the other, and requires of the latter something of less value than what he has given; as a legacy charged with something of less value than the legacy itself.—*Civ. Law.*

Mixed government, a form of government, combining monarchy, aristocracy, and democracy, like that of the British Empire.

Mixed larceny, otherwise called compound or complicated larceny, that which is combined with circumstances of aggravation or violence to the person, or taking from a house. See LARCENY.

Mixed laws, those which concern both persons and property.

Mixed property, a compound of realty and personalty.

Mixed questions [*questions mixtes*, Fr.], those which arise from the conflict of foreign and domestic laws.

Mixed questions of law or fact, cases in which a jury are to find the particular facts, and the court is to decide upon the legal quality of those facts by the aid of established rules of law, independently of any general inference or conclusion to be drawn by a jury. All technical expressions, such as asportation, conversion, acceptance, &c., are, in their application, partly matters of law, partly matters of fact.

Yet the term, a mixed question of law and fact, is chargeable with some degree of indistinctness. Questions of law and fact are not in strictness ever mixed. It is always for the jury to decide the one, and the court the other, however complicated the case may be. In some cases the main difficulty may consist in ascertaining the facts, where the application of the law to the ascertained facts admits of no doubt; in another the facts may be clear and simple, and their legal effect doubtful; but still in each case the provinces of the court and jury are perfectly plain and distinct. It is true that, in some instances, the court could not, without the aid of a conclusion of fact drawn by a jury, apply the law; but this consideration does not properly occasion any intermixture or confusion of the respective functions of the court and jury; for the latter, in drawing their conclusion, still confine themselves to mere matters of fact.—6 *East*, 3; 1 *T. R.* 167. See *Taylor's Evid.* 34.

Mixed subjects of property, such as fall within the definition of things real, but which are attended nevertheless with some of the legal qualities of things personal, as emblements, fixtures, and shares in public undertakings, connected with land. Besides these, there are others which, though things personal in point of definition, are, in respect of some of their legal qualities, of the nature of things real; such are animals *feræ naturæ*, charters and deeds, court rolls and other evidences of the land, together with the chests in which they are contained, ancient family pictures, ornaments, tombstones, coats of armour, with pennons and other ensigns, and especially heirlooms.

Mixed tithes, tithes of wool, milk, pigs, &c. consisting of natural products, but nurtured and preserved in part by the care of man. See *Com. Dig. Dismes.*

Mixtum, a breakfast, or a certain quantity of bread and wine.—*Cowel.*

Mizmor [Span.], a dungeon.—*Phillips.*

Mobles [fr. *mobilia*, Lat.], moveable goods; furniture. Obsolete word.

Mocurrery, lands to let on a lease.—*Indian.*

Modal legacy, a bequest with a direction as to the mode in which it is to be applied to the legatee's benefit.

Model, a representation or copy of a thing. The 54 Geo. III. c. 56, gives a copyright in models.

Moderata misericordia, a writ founded on *Magna Charta*, which lies for him who is amerced in a court not of record, for any transgression beyond the quality or quantity of the offence; it is addressed to the lord of the court, or his bailiff, commanding him to take a moderate amerciament of the parties.—*N. N. B.* 167; *F. N. B.* 76.

Moderate castigavit (*he moderately corrected*).

Moderator, a president or chairman.

Modiatio, a certain duty paid for every tierce of wine.—*Mon. Angl.* t. ii., p. 194.

Modification, an ascertaining, by a commission of teinds (tithes), the amount of stipend to be paid to a minister of a parish.—*Scotch term.*

Modius, a measure, usually a bushel.

Modius terræ vel agri, a quantity of ground containing in length and breadth 100 feet.—*Mon. Angl.* iii. 200.

Modo et formâ (*in manner and form*), a phrase used in pleading.

It is the nature of a traverse to deny the matter of fact in the adverse pleading in the *manner and form* in which it is alleged, and, therefore, to put the opposite party to prove it to be true in *manner and form* as well as in general effect. A traverse, when in the negative, generally denies the last pleading, *modo et formâ* (in manner and form as alleged). The plea of *non est factum*, and the replication *de injuriâ*, are almost the only negative traverses that are not pleaded *modo et formâ*.

These words, however, though usual, are said to be in no case strictly essential, so as to render their omission cause of demurrer.

It is always enough to prove the *substance* of an allegation.—*Step. Plead.* 219.

Modus decimandi, a particular manner of tithing arising from immemorial usage, differing from the payment of one-tenth of the annual increase.

It is sometimes a pecuniary compensation; as twopence per acre for the tithe of land; sometimes it is a compensation in work and labor, as that the parson shall only have the twelfth cock of hay, and not the tenth, in consideration of the owner's making it for him; sometimes in lieu of a large quantity of crude or imperfect tithe, the parson shall have a less quantity when arrived to greater maturity, as a couple of fowls in lieu of tithe eggs, and the like. Any means, in short, whereby the general law of tithing is altered, and a new method of taking tithes is introduced, is called a *modus decimandi*, or special manner of tithing.

To make a good and sufficient *modus*, the following rules must be observed:—

(1) It must be certain and invariable.

(2) The substitution must be beneficial to the parson, and not for the emolument of third persons only.

(3) It must be something different from the thing compounded for.

(4) The payment of one species of tithe will not discharge a *modus* for another.

(5) The substitution must be in its nature as durable as the tithes discharged by it.

(6) The *modus* must not be too large, for that is a *rank modus*.

(7) By 2 & 3 Wm. IV. c. 100, it is provided that when tithe is demanded by any lay person, not being a corporation sole, or by any corporation aggregate, any *modus* or discharge set up in answer to such claim shall be deemed valid, upon evidence showing an usage in support of it for thirty years, unless it can be met by evidence that such usage has been by virtue of some agreement in writing, or that before the thirty years the usage was different; and a *modus* or discharge shall in such case be deemed absolutely valid, upon evidence showing an usage for as much as sixty years in support of it, unless it be proved to have been by virtue of some agreement in writing. And, further, that when tithe is demanded by any bishop, parson, or other corporation sole, any claim of *modus* or discharge shall be valid and indefeasible upon evidence of usage during the whole time that two persons in succession shall have held the benefice, and for three years after the institution of a third incumbent, unless it shall be proved that such usage was by some agreement in writing; provided always, that if the whole time of the holding of such two persons shall be less than sixty years, then it shall be necessary to show such usage, not only during the whole of such time, but also during such further period as shall, with such time, be sufficient to make up the full period of sixty years, and the further period of three years aforesaid.

Modus de non decimando non valet.—(An agreement not to take tithes avails not.)

Modus et conventio vincunt legem.—2 *Co.* 73.—(Custom and agreement overrule law.)

Modus legem dat donationi.—*Co. Litt.* 19.—(Custom gives law to the gift.)

Modus levandi fines. The statute 18 Edw. I.

Modus rank, an excessive *modus*.

Moerda, the secret killing of another; murder.—*Teutonic word.*—4 *Bl. Com.* 194.

Mofussil, separated, particularised; the subordinate divisions of a district, in contradistinction to *Sadder* or *Sudder*, which implies the chief seat of government.—*Indian.*

Mofussil-Dewanny adawlut, provincial court of justice.—*Ibid.*

Mohatra [Fr.], a fraudulent contract to screen usury.

Moiety [fr. *moitié*, Fr.], one of two equal parts; an undivided half. But see 3 *Prest. Abr.* 35.

Molendinum, a mill.—*Old Records.*

Molendum, a grist; a certain quantity of corn sent to a mill to be ground.

Molestation, the name of an action competent to the proprietor of a landed estate against those who disturb his possession. It is chiefly used in questions of commonty or of controverted marches.—*Scotch Law.*

Molitura, or **Molta,** the toll or multure paid for grinding corn at a mill.

Molitura libera, a free grinding or liberty of a mill without paying toll.—*Paroch. Antiq.* 236.

Mollah, a doctor of laws.—*Arabic.*

Mollis-bœdling. See BŒDLING.

Molliter manus imposuit. An officer may

lay hands upon another to turn him out of church (for instance), and prevent his disturbing the congregation; and if sued for this and the like battery, he may set forth the whole case, and plead that he laid hands upon him gently (*molliter manus imposuit*) for this purpose.—3 *Step. Com.* 489; 1 *Sand.* 10.

Molman, a man subject to do service.—*Old Records.*

Molmutian, or **Molmutin laws,** the laws of Dunvallo Molmutius, sixteenth king of the Britons, who reigned above four hundred years before the birth of Christ. They obtained in this country until the reign of the Conqueror. These were the first published laws in Britain; and, together with those of Queen Mercia, were translated by Gildas into Latin.—*Usher's Primord.* 126.

Molneda, Mulneda, a mill-pond or pond.—*Paroch. Antiq.* 135.

Molta. See MOLITURA.

Moltura. See *Ibid.*

Monachism, the state of monks.—*Milton's Hist. of Eng.; Bingham's Christ. Antiq.*

Monarchy [fr. μόναρχος, Gk.], a government in which the supreme power is vested in a single person. Where a monarch is invested with absolute power, the monarchy is termed despotic; where the supreme power is virtually in the laws, though the majesty of government and the administration are vested in a single person, it is a limited monarchy. It is hereditary, where the regal power descends immediately from the possessor to the next heir by blood, as in our country; or elective, as was formerly the case in Poland.

Monasticon, a book giving an account of monasteries, convents, and religious houses.

Monetagium, Monya, or **Moneyage,** called also *focagium*, a certain tribute formerly paid by tenants to their lord every third year, that he should not change the money which he had coined, when it was lawful for certain great men to coin money, but not of silver and gold, in their territories. Abrogated by 1 Hen. I. c. 2.—*Hale's Hist,* 217.

Also a mintage, and the right of coining or minting money.

Moneta dicitur à monendo, quia impressione monet nos cujus sit moneta.—Dav. 18.—(Money is called from *monendo,* because by the impression it warns us whose money it may be.)

Moneta est justum medium et mensura rerum commutabilium, nam per medium monetæ fit omnium rerum conveniens et justa æstimatio.—Dav. 18.—(Money is the just medium and measure of commutable things, for by the medium of money a convenient and just estimation of all things is made.)

Monetandi jus comprehenditur in regalibus quæ nunquam à regio sceptro abdicantur.—Dav. 18.—(The right of coining money is comprehended amongst those rights of royalty which are never separated from the kingly sceptre.)

Money [fr. *moneta,* Lat. fr. *monendo,* because by the impression upon it we are warned whose it is], the wheel of circulation, a convenient form of wealth, the universal instrument of commerce, as it facilitates the distribution of the produce of industry according to the convenience of those amongst whom it is shared; the coining of it belongs, in all states, to the sovereign power. *Monetandi jus comprehenditur in regalibus quæ nunquam à regio sceptro abdicantur.—Dav.* 18.—(The right of coining money is comprehended amongst those rights of royalty which never depart from the kingly sceptre.) The materials of which it is now usually made are gold, silver or other metal, and paper; its currency and the intrinsic or denominated value put upon it are by virtue of the prerogative of the Crown. It may be said that the substitution of paper for gold or silver replaces a very expensive medium of commerce by one much less costly, and sometimes more convenient, the expediency and operation of which substitution belongs to the political economy of a state. The 6th section of the 3 & 4 Wm. IV. c. 98, declares that bank notes shall be a legal tender for all sums above 5*l.*, *except* at the Bank of England and its branch banks; and the 56 Geo. III. c. 68, makes silver, *not exceeding* 40*s.*, a legal tender. Copper money not exceeding fivepence three farthings may be tendered. The enactments of 2 & 3 Wm. IV. c. 34, relating to the current copper coin, are to apply to coins of bronze or mixed metals, which may be issued by royal proclamation. See 22 & 23 *Vict.* c. 30. The word 'sterling,' so often found in deeds, as applied to money, seems to be derived from *Easterlings,* a company of merchants, who shortly after the Norman Conquest were employed in regulating the coinage, and means 'English coined money.'

For an account of the Saxon and Norman money, consult *Anc. Inst. Eng.* See 2 *Smi. Wealth of Nations,* 24, 97, and 2 *Mill's Pol. Eco.* 8, 30. For a comparative table of the value of English money from the Conquest to Elizabeth, see 3 *Hall. M. A.* p. 370; and *Ruth. Notes,* c. xiii.

Moneyage. See MONETAGIUM.

Money-bill, in parliamentary language an act by which money is directed to be raised from the subject, for any purpose or in any shape soever, either for governmental purposes, and collected from the whole kingdom generally, or for the benefit of a particular district, and collected in that district, as parish-rates.

With respect to these bills, the House of Commons are so reasonably jealous of their privilege of imposing new taxes upon the subject, that they will not suffer the House of Lords to

exert any other power but that of rejection; they will not pass a money-bill introduced in the House of Lords, nor permit the least alteration or amendment to be made by the House of Lords in the mode of taxing the people by bills of this nature.

Money-broker, a money-changer; a scrivener or jobber; one who lends or raises money to or for others.

Money-land. In equity, land articled or devised to be sold, and turned into money, is reputed as money; and money articled or bequeathed to be invested in land, has, in equity, many of the qualities of real estate, and is descendible and devisable as such according to the rules of inheritance in other cases, and this upon the ground that equity regards substance and not form, and will further the intention of parties. See LAND.

The authorities to show that money directed or agreed to be laid out in land is to be considered as land are very numerous. 'The force of the rule,' observes Fonblanque (1 *Eq. B.* 1, c. 6, s. 9, n. *t*), 'is particularly evinced by those cases in which it has been held, that the money agreed or directed to be laid out, so fully becomes land as, 1st, not to be personal assets; 2ndly, to be subject to the courtesy of the husband, and it should now seem to the dower of the wife (3 & 4 Wm. IV. c. 105); 3rdly, to pass as land by will, if subject to the real use at the time the will was made; 4thly, not to pass as money by a general bequest to a legatee, but it will by a particular description, as so much money to be laid out in land, or by a bequest of all the testator's estate in law and equity. But equity will not consider money as land, unless the covenant or direction to lay it out in land be express.'

The 7 Geo. IV. c. 45, which repealed the 39 & 40 Geo. III. c. 56 (commonly called Lord Eldon's Act), for barring *quasi* entails of money directed to be laid out in lands to be settled, was repealed by 3 & 4 Wm. IV. c. 74, except so far as related to proceedings commenced under it, before the 1st of January, 1834. The 3 & 4 Wm. IV. c. 74, enacts (s. 71) that lands to be sold of any tenure where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate-tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall, for the purposes of the act, be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would have been actually subject to; and all the previous clauses of the act, so far as circumstances will admit, shall, in the case of lands to be sold (except copyhold), apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall, in the case of lands to be sold as aforesaid, being copyhold, apply to such lands, as if the lands to be purchased with the money to arise from the sale thereof were directed to be copyhold, and were actually purchased and settled; and shall, in the case of money subject to be invested in the purchase of land to be so settled as aforesaid, apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; except that where the disposition shall be of leasehold or of money so circumstanced as aforesaid, such leasehold or money shall, as to the person in whose favor or for whose benefit the disposition is to be made, be treated as personal estate; and except as to bankruptcy, the deed of disposition thereof shall be an assignment by deed to be enrolled in Chancery within six calendar months after its execution; and in every case of bankruptcy the disposition of such leasehold or money shall be made by the commissioners, and completed by enrolment, as before directed in regard to lands not held by copy of court roll.

Money-orders, fraudulent issue of, by a post-office officer, punishable by 11 & 12 Vict. c. 88, s. 4.

Monger [fr. *mangian,* Sax., to trade], a dealer or seller. It is seldom or never used alone, or otherwise than after the name of any commodity, to express a seller of such commodity.

Also, a little fishing-vessel.—13 *Eliz.* c. 11.

Moniers, or **Moneyers,** ministers of the Mint; also, bankers.—*Cowel.*

Moniment, a memorial, superscription, or record.

Monition, a summons or citation.—*Civ. Law.*

Monitory letters, communications of warning and admonition sent from an ecclesiastical judge, upon information of scandals and abuses within the cognizance of his court.

Monmouth, county of, made one of the counties of the realm of England by 27 Hen. VIII. c. 26.

Monocracy, a government by one person.

Monogamy [fr. μόνος, Gk., single, and γάμος, marriage], marriage of one wife.

Monomachy [fr. μόνος, Gk., and μάχη, fight], a duel; a single combat.

It was anciently allowed by law, for the trial or proof of crimes. It was even permitted in pecuniary causes, but it is now forbidden both by the civil law and canon laws.

Monomania, insanity upon a particular subject. See MENTAL ALIENATION.

Monopolia dicitur, cum unus solus aliquod genus mercaturæ universum emit, pretium ad

suum libitum statuens.—11 *Co.* 86.—(It is said to be a monopoly, when one person alone buys up the whole of one kind of commodity, fixing a price at his own pleasure.)

Monopolies, *Statute of,* 21 Jac. I. c. 3.

Monopoly [fr. μόνος, Gk., single, and πωλέω, to sell], the exclusive privilege of selling any commodity. A license or privilege allowed by the Crown, for the sole buying, selling, making, working, and using of anything whatsoever, whereby the subject is restrained from that liberty of manufacturing or trading which he had before.

Such grants were very common previously to the accession of the house of Stuart, and were carried to a very oppressive and injurious extent during the reign of Queen Elizabeth. The grievance became at length so insupportable, that, notwithstanding the opposition of government, which looked upon the power of granting monopolies as a very valuable part of the prerogative, they were abolished by the famous Act of 1624, the 21 Jac. I. c. 3. This act declares that all monopolies, grants, and letters-patent for the sole buying, selling, and making of goods and manufactures, shall be null and void. It excepts patents for fourteen years for the sole working or making of any new manufactures within the realm, to the true and first inventors of such manufactures, provided they be not contrary to law nor mischievous to the state. It also excepts grants by Act of Parliament to any corporation, company, or society, for the enlargement of trade, and letters-patent concerning the making of gunpowder. See LETTERS-PATENT.

A monopoly has three incidents mischievous to the public: 1st, the raising of the price; 2nd, the deterioration of the commodity; 3rd, the impoverishing of poor artificers.—11 *Rep.* 86. All monopolies are against the ancient and fundamental laws of the realm, and can only be created by a grant from the Crown.—21 *Jac. I.* c. 3. See LETTERS-PATENT.

Monster, an animal which has not the shape of mankind, but, in any part, evidently bears the resemblance of the brute creation, has no inheritable blood, and cannot be heir to any land, although it be brought forth in marriage; but though it have deformity in any part of its body, yet if it have human shape, it may be an heir.—*Co. Litt.* 7 *b*; 2 *Bl. Com.* 246.

Buffon divides monsters into three classes: 1st, monsters by excess; 2nd, monsters by defect; and 3rd, monsters by alteration or wrong position of parts. Frequent instances occur of an increased number of organs, members, &c. Of monsters by defect, the most remarkable are those which are born without a head, and are hence styled *acephalous.* These live in the womb, but do not survive after birth, since the function of respiration cannot be performed. To this class also belong those which are destitute of lungs, or one or more organs of sense, &c. The defects of the third class are seldom discovered until after death, as they are commonly internal. Among the most remarkable instances of this nature are those in which the rudiments or parts of a fœtus have been discovered.

As monsters by excess are capable of living, so by the law of France they are capable of inheriting.

The enlarged state of the clitoris, which is very common at birth, should not be mistaken for male organs. Foderé mentions cases where females have, in consequence of this, been inscribed in the baptismal registers as males; and in one case the individual was called out under the conscription law (vol. ii., p. 179).

Extra-uterine fœtuses have seldom been brought forth alive, or have long survived.—*Beck's Med. Jurisp.* 221.

Monstrans de droit (*manifestation* or *plea of right*), one of the common law methods of obtaining possession or restitution from the Crown of either real or personal property. It is preferred or prosecuted either on the common law or ordinary side of the Court of Chancery, or in the Exchequer.

Where the Crown is in possession under a title, the facts of which are already set forth upon record, a party aggrieved may *monstrans de droit,* i. e. may make, in opposition to such recorded title, a claim of right, grounded upon certain facts relied upon by him, without denying those relied upon by the Crown, and praying the judgment of the court whether, upon those facts, the Crown or the subject has the right (36 Edw. III. c. 13; 2 & 3 Edw. VI. c. 8). If the right be determined against the Crown, the judgment is that of *ouster le main,* or *amoveas manus,* by which judgment the Crown is instantly out of possession, and it therefore needs no actual execution.—*Chit. Prerog. of the Crown,* 345.

Monstrans de faits ou records (*showing of deeds or records*).

Upon an action brought upon an obligation after the plaintiff has declared, he ought to show his obligation, and so it is of records. *Monstrans de faits* differs from *oyer de faits* in that he who pleads the deed or record, or declares upon it, ought to show it, and the defendant may demand *oyer* of the same.—*Cowel.*

Monstraverunt, a writ which lay for tenants in ancient demesne who held lands by free charter; when they were distrained to do unto their lords other services and customs than they or their ancestors used to do. It is, however, abolished.

Monstrum, a box in which relics are kept; also, a muster of soldiers.—*Cowel.*

Month [fr. *monath*, Sax., moon, which was formerly written *mone*, as month was written *moneth*. The period in which that planet *moneth*, i. e. completeth its orbit.—*Tooke*. There are, however, no vestiges of a verb of this form in the Anglo-Saxon or any of the Gothic languages.—*Jamieson*. The Saxon *monath* is from *mona*, the moon; and the Gothic *menath*, from *mena*, the same; *μήνη*, Greek. Wachter deduces the Gothic word for moon from *mana*, to warn, to admonish, to instruct; and Dr. Jamieson, the Saxon *mona*, from *monian*, the same. May we not then refer also to the Greek verb *μηνύω*, to indicate, to point out, to declare—whence, perhaps, *μήνη*, the moon, and *μήν*, a month? If this be admitted, here is the verb to support Tooke's observation, though in other words, viz. a month meaneth the period in which that planet warns, instructs, and points out.—*Todd*], a space of time either measured by the sun or moon. It is either—

(1) *Lunar*, the time between the change and change, or the time in which the moon returns to the same point, being twenty-eight days.

(2) *Solar*, that period in which the sun passes through one of the twelve signs of the zodiac.

(3) *Calendar*, by which we reckon time, consisting unequally of thirty or thirty-one days, except February, which consists of twenty-eight, and in leap year of twenty-nine days. The calendar month is also called usual, natural, civil, political.

The month of nature, or lunar revolution, is strictly 29 days, 12 hours, 44 minutes, 3 seconds; and there are, of course, twelve such periods, and rather less than 11 days over, in a year. From an early period there were efforts among some of the civilized nations to arrange the year in a division accordant with the revolutions of the moon; but they were all strangely irregular till Julius Cæsar reformed the Calendar, by establishing the system of three years of 365 followed by one (bissextile) of 366 days, and decreed that the latter should be divided as follows:—

Januarius	31	days.
Februarius	30	„
Martius	31	„
Aprilis	30	„
Maius	31	„
Junius	30	„
Quintilis (altered to Julius)	31	„
Sextilis	30	„
September	31	„
October	30	„
November	31	„
December	30	„
	366	„

The general idea of Cæsar was, that the months should consist of 31 and 30 days alternately; and this was effected in the bissextile or leap-year, consisting, as it did, of twelve times thirty with six over. In ordinary years, consisting of one day less, his arrangement gave 29 days to Februarius. Afterwards, his successor Augustus had the eighth of the series called after himself, and from vanity broke up the regularity of Cæsar's arrangement by taking another day from February to add to his own month, that it might not be shorter than July; a change which led to a shift of October and December for September and November as months of 31 days. In this arrangement, the year has since stood in all Christian countries.

The Roman names of the months, as settled by Augustus, have also been used in all Christian countries excepting Holland, where the following set of names prevails:

January	Lauwmaand	chilly month
February	Sprokelmaand	vegetation month
March	Lentmaand	spring month
April	Grasmaand	grass month
May	Blowmaand	flower month
June	Zomermaand	summer month
July	Hooymaand	hay month
August	Oostmaand	harvest month
September	Herstmaand	autumn month
October	Wynmaand	wine month
November	Slagtmaand	slaughter month
December	Wintermaand	winter month

'These characteristic names of the months are the remains of the ancient Gaulish titles, which were also used by our Anglo-Saxon ancestors.' *Brady, Analysis of the Calendar.*

Amidst the heats of the Revolution, the French Convention, in October 1793, adopted a set of names for the months, somewhat like that kept up in Holland, their year standing thus:

	French Months.	Signification.	English Months.
Autumn	1. Vindémiaire	Vintage	Sept. 22
	2. Brumaire	Foggy	Oct. 22
	3. Frimaire	Frosty or Sleety	Nov. 21
Winter	4. Nivose	Snowy	Dec. 21
	5. Pluviose	Rainy	Jan. 20
	6. Ventose	Windy	Feb. 19
Spring	7. Germinal	Springing or Budding	Mar. 21
	8. Floréal	Flowery	Apr. 20
	9. Prairial	Hay Harv.	May 20
Summer	10. Messidor	Corn Harv.	June 19
	11. Thermidor	Hot	July 19
	12. Fructidor	Fruit	Aug. 18

Five days at the end, corresponding to our

17th, 18th, 19th, 20th, and 21st of September, were supplementary, and named *sans-culottides*, in honor of the half-naked populace who took so prominent a part in the affairs of the Revolution. At the same time, to extinguish all traces of religion in the calendar, each month was divided into three decades, or periods of ten days, whereof the last was to be a holiday, the names of the days being merely expressive of numbers—Primidi, Duodi, Tredi, &c. And this arrangement was actually maintained for several years, with only this peculiarity, that many of the people preferred holding the Christian Sunday as a weekly holiday. The plan was ridiculed by an English wit in the following professed translation of the new French Calendar:—

'Autumn—wheezy, sneezy, freezy.
Winter—slippy, drippy, nippy.
Spring—showery, flowery, bowery.
Summer—hoppy, croppy, poppy.'

'Thirty days hath September,
April, June, and November;
All the rest have thirty-one,
But February twenty-eight alone,
Except in leap-year, once in four,
When February has one day more.'

Sir Walter Scott, in conversation with a friend, adverted jocularly to 'that ancient and respectable, but unknown poet who had given us the invaluable formula, Thirty days hath September, &c.' It is truly a composition of considerable age, for it appears in a play entitled *The Return from Parnassus*, published in 1606, as well as in Winter's *Cambridge Almanack* for 1635.—*Chambers' Book of Days.*

Our months bear the appellations first assigned to them by the Romans. But for what reason we abandoned the Saxon titles of the months, but retained the Saxon names of the days, it is difficult to conjecture. As the former were expressive of the period of the year in which they were respectively placed, and the latter merely of the names of the idols worshipped on those particular days, there does not appear to have been much judgment exercised in the rejection of the one or the retention of the other.—*Brady's Clav. Calend.*

Formerly, when the word month occurred in a statute, it was taken to mean a lunar month, unless calendar month was specified.—*Cro. Eliz.* 133. By 13 Vict. c. 21, the word 'month' shall in future Acts mean calendar months; unless words be added showing lunar months to be intended. The month, by the common law and in equity, is but twenty-eight days. In ecclesiastical matters it means a calendar month. A twelve-month, in the singular number, includes the whole year, according to the calendar; but twelve months, six months, &c. in the plural number shall be computed after the rate of twenty-eight days to every month, except in cases of presentations to benefices to avoid lapse, &c. which shall be calendar months. The word month may, indeed, mean lunar or calendar, according to the intention of the contracting parties.—1 *M. and S.* 111; 1 *Saund. Rep.* 251, n. *d.*

By the universal rule of the commercial world, a month is deemed, in all cases of negotiable instruments, and indeed in all commercial contracts, to be a calendar month.—*Story on Bills*, 379. In contracts for stock it means lunar.—*Jocelyn* v. *Hawkins*; 1 *Stra.* 446.

Monumenta quæ nos recorda vocamus sunt veritatis et vetustatis vestigia.—Co. Litt. 118. (Monuments, which we call records, are the vestiges of truth and antiquity.)

Monya. See MONETAGIUM.

Moofly, Mufflee, the Mahomedan law-officer who declares the sentence of the court.—*Indian.*

Mooktear, an agent or attorney.—*Ibid.*

Mooktearnamar, a written authority constituting an agent or vakeel; a power of attorney.—*Ibid.*

Moolavy, Moulavee, a learned and religious man; an interpreter of the Mahommedan law.—*Ibid.*

Moor, an officer in the Isle of Man, who summons the courts for the several sheadings. The office is similar to our bailiff of a hundred.

Moot [fr. *mot, gemot*, Sax., meeting together], to plead a mock cause; to state a point of law by way of exercise, as was commonly done in the inns of court at appointed times.—4 *Reeves*, 433, 574.

Moot-case or **Moot-point,** a point or case unsettled and disputable, such as properly affords a topic of disputation. A case fit for exercising young students and barristers at law.

Moot-hall or **Moot-house,** council-chamber, hall of judgment, town-hall.

Moot-hills, hills of meeting, on which our British ancestors held their great courts. Many of these still exist not only in the British dominions but also in the Netherlands. They commonly consist of a central eminence, on which sat the judge and his assistants; beneath was an elevated platform for the parties, their friends, and 'compurgators,' who sometimes amounted to 100 or more; and this platform was surrounded with a bench to secure it from the access of the spectators.—*Encyc. Lond.*

Moot-man, one of those who used to argue the reader's cases in the inns of court. See MOOT-CASE.

Moota canum, a pack of dogs.—*Cowel.*

Mooter, a disputer of moot points.

Mooting, the chief exercise formerly performed by students in the inns of court.

Mora, a moor, marsh land, a heath, fen land, barren and unprofitable ground.—*Co. Litt.* 5 *a.*

Mora mussa, a watery or boggy moor; a morass.—*Mon. Ang.*, tom. i., p. 306.

Mora reprobatur in lege.—*Jenk. Cent.* 51.—(Delay is reproved in law.)

Moral actions, those only in which men have knowledge to guide them and a will to choose for themselves.—*Rutherf. Nat. Law*, lib. 1, c. i.

Moral evidence, testimony which is obtained neither from intuition nor demonstration, as contradistinguished from mathematical evidence.

Moratur in lege, he demurs; because the party does not proceed in pleading, but rests or abides upon the judgment of the court on a certain point, as to the legal sufficiency of his opponent's pleading. The court deliberate and determine thereupon. See DEMURRER.

Moravian, otherwise called Herrnhutters or United Brethren. A sect of Christians whose social polity is particular and conspicuous. It sprung up in Moravia and Bohemia, on the opening of that Reformation which stripped the chair of St. Peter of so many votaries, and gave birth to so many denominations of Christians. They give evidence on their solemn affirmation.—*Step. Com.* ii., 353, 643; iii., 59 n., 636 n.; iv., 322 n., 415 n., 439 n. See QUAKERS.

More or less (*sive plus sive minus*). These words in a contract, which rests *in fieri*, will only excuse a very small deficiency in the quantity of an estate; for if there be a considerable deficiency, the purchaser will be entitled to an abatement.—*Hill* v. *Buckley*, 17 *Ves.* 394; and see *Cross* v. *Eglin*, 2 *B. & Ad.* 106; *Powell on Powers*, 397.

Morganatic Marriage. The name denotes its Germanic origin, and it is even yet not quite out of use in that country, under the appellation of a left-handed marriage; but the earliest and clearest description of it is to be found in the Book of Feuds, though it is there wrongly attributed to the Salic law, in which no trace of it appears, by a mistake, not unusual, of referring all the customs of the Franks to that code. It is defined to be the lawful and inseparable conjunction of a single man, of noble or illustrious birth only, with a single woman of an inferior or plebeian station, upon these conditions, that neither the wife nor her children shall partake of the titles, arms, or dignity of the husband, or succeed to his inheritance, but shall be contented with a certain allowance, assigned to them by the Morganatic contract. But since these restrictions relate only to the rank of the parties, and the succession to property, without affecting the real nature of a matrimonial engagement, it must be considered in the light of a just marriage, of which it has every essential character. The marriage ceremony was in general regularly performed; the union was for life and indissoluble, and the children in other respects legitimate. This connection was very usual in most countries of Europe; but there cannot be found sufficient proof that the concubines of Charlemagne and some of the early kings of France were wives of this description, nor is there occasion to resort to that supposition in defence of their conduct, since the state of concubinage itself was little inferior to this in the public estimation. See *Croke's Introd. to Horner* v. *Liddiard*, 115—117, A.D. 1800.

Morgangina, or **Morgangiva** [fr. *morgen*, Sax., the morning, and *gifan*, gift], a gift on the morning after the wedding; dowry; the husband's gift to his wife on the day after the wedding.

'The day after the wedding the husband presented the morgangina or gift of the morning to his wife; it consisted of a pair of oxen yoked together, a saddled horse, a buckler, a spear and a sword, symbolical gifts which were intended to prove to her that she was associated with him in his labors and his dangers, his inseparable companion in success and in misfortune.'—*Histoire de France, par Roche and Ph. Chasles.*

Morosus, marshy. See MORA.

Mors dicitur ultimum supplicium.—3 *Inst.* 212.—(Death is denominated the extreme penalty.)

Mors omnia solvit.—*Jenk. Cent.* 160.—(Death dissolves all things.)

Morsellum, or **Morsellus terræ**, a small parcel or bit of land.—*Mon. Ang.* 282.

Mort d'Ancestor. See ASSISE OF MORT D'ANCESTOR.

Mortality. See BILLS OF MORTALITY.

Mortgage [fr. *mort*, Fr., dead, and *gage*, pledge], a dead pledge; a thing put into the hands of a creditor.

A mortgage is the creation of an interest in property, defeasible, i. e. annullable, upon performing the condition of paying a given sum of money, with interest thereon, at a certain time. Mortgages are either legal, which are enforceable at the Common Law, or equitable, which can be enforced only in Chancery. See EQUITABLE MORTGAGE.

This conditional assurance is resorted to when a debt has been incurred or a loan of money or credit effected, in order to secure either the repayment of the one or the liquidation of the other. The debtor or borrower is then the mortgagor, who has charged or

transferred his property in favor of or to the creditor or lender, who thus becomes the mortgagee. If the mortgagor pay the debt or loan and interest within the time mentioned in a clause technically called the proviso for redemption, he will be entitled to have his property again free from the mortgagee's claim; but should he not comply with such proviso, the legal estate becomes perfected in the mortgagee, i. e. indefeasible, and so lost at the Common Law to the mortgagor. It is redeemable, however, in a Court of Equity upon the payment of the debt or loan, with interest and expenses, at any period within twenty years after the last recognition of the mortgage security by the mortgagee; and this because Equity deems the non-compliance with the proviso for redemption a penalty, against which it always relieves when practicable.

Seeing that in by far the greater number of loan transactions the mortgagor never performs the condition in the proviso for redemption, they have been denominated mortgages, as the pledge is then dead or lost (*mortuum vadium*) to the mortgagor at law. A mortgage differs from a vifgage (*vivum vadium*), so called because neither loan nor property is lost, for the creditor enters into possession of the estate, and receives its proceeds in satisfaction of his debt with interest, upon which the debtor becomes entitled to his own again. A Welsh mortgage is one in which the creditor receives the proceeds of his security in satisfaction of the interest of his debt, the principal remaining due and the estate never becoming forfeited, but redeemable at any time; and the creditor not being entitled to sue at law in the absence of a covenant or bond, or to foreclose in equity. When property is conveyed to a mortgagee and his heirs, until out of its rents the loan and interest shall have been received, this is in the nature of a Welsh mortgage, and has been compared to a tenancy by *elegit*.

In order to protect a necessitous mortgagor from the exacting grasp of an inexorable mortgagee, Equity will not suffer any compact whatever to infringe the right of redeeming a mortgage in its courts. The right or equity of redemption then is the chief and inseparable incident to a mortgage—an incident unextinguishable save by a foreclosure decree, a legislative provision, or unreasonable delay.

In applying this inflexible principle practically, it is especially needful to distinguish between a mortgage and a conditional or defeasible settlement or purchase, which is sometimes a matter of great nicety, seeing that neither particular language nor any set form of assurance is necessary to constitute a mortgage. For while Equity will not countenance any scheme for converting a mortgage into a purchase; yet if the transaction is manifestly a settlement or purchase, with a reservation in the settlor or grantor to defeat it on the payment of a given sum within a stipulated time, it will be strictly enforced.

In determining the real character of the contract, the fact of the instrument not having a covenant for the repayment of the consideration-money, or containing uses or a declaration to bar dower, or the expressed consideration being an equivalent for the property, or possession of the property having been taken by the grantee at the time of the execution of the instrument, or the expense of the instrument having been defrayed by the grantee, materially favors the conclusion of a purchase rather than a mortgage.

The following maxims as to mortgage are universally true:—That a mortgage cannot be one-sided, but mutual, i. e. if it be a mortgage as to one party, it must be so as to all; that a creditor shall never obtain any advantage by reason of his debtor's difficulties beyond the liquidation of his debt, interest, and expenses; that once a mortgage always a mortgage; that a mortgage can no more be made irredeemable than a distress irrepleviable; that a mortgage cannot assume another shape by one and the same deed; and that a mortgagee cannot contract with the mortgagor, at the time of the loan, for the purchase of the security at a given price, should default be made in paying off the debt at the appointed day; but this does not render invalid an agreement that the mortgagor, in case he think fit to sell, shall give the mortgagee a preference of pre-emption or refusal, since the mortgagor retains the option of sale; he may redeem or sell, and is not bound to price; and read *Hawkins* v. *Gathercole*, 3 *Eq. Rep.* 348.

Whoever can lawfully sell and purchase property may become mortgagors and mortgagees of it. Equity will direct a mortgage of an infant's estate for payment of his ancestor's debts, by virtue of 1 Wm. IV. c. 47, s. 11; and 2 & 3 Vict. c. 60. By 11 Geo. IV. and 1 Wm. IV. c. 65, the Lord Chancellor may order the estate of a lunatic to be mortgaged.

Every kind of property may be mortgaged except pensions for *future* services (but pensions for wounds, until the further order of the Crown can be mortgaged, *Knight* v. *Bulkeley*, 27 *L. T. Ch.* 592); the salaries and emoluments of public functionaries; full pay and half pay of naval and military men; retiring allowance of a person liable to serve again, or of a servant of the East India Company; commissions in the army; church livings with cure of souls, pursuant to 13

Eliz. c. 20, revived by 57 Geo. III. c. 99, which was not repealed by 1 & 2 Vict. c. 106 so far as it repealed any former acts; and canonries or other ecclesiastical offices.

While an increase in the rate of interest upon default of regular payment is a penalty, and is not admissible, the reservation of a higher rate, with an abatement for punctual payment, may be made.

The modes by which the different kinds of property may be legally mortgaged are these—

(1) *Freeholds.* They are mortgaged either in fee or for the interest in them, of which the mortgagor is seised, or by demise for a long term of years, with a proviso that if the loan and interest be paid at a given day, the legal estate shall be re-conveyed to the mortgagor, or the mortgage-deed shall become void, or the term determine. In a mortgage of a freehold by demise, the mortgagor sometimes covenants that upon default he or his heirs will, at his or their own costs, do all lawful acts for confirming the term, or, if required, for conveying the reversion in fee to such person as the mortgagee, his executors, administrators, or assigns, shall direct.

When an owner in fee *in possession* mortgages, the grant of the title-deeds should always be inserted in the mortgage-deed, and their custody handed over to the mortgagee, who would be postponed to a subsequent mortgagee, if his neglect to take them were so gross as to amount to evidence of a fraudulent intention. *Perry Herrick* v. *Attwood* (*L. C.*), 27 *L. J. Ch.* 121. A first mortgagee can maintain an action of detinue against a second mortgagee, with whom the mortgagor had deposited the genuine conveyance to himself, having delivered a forged one to the first mortgagee. See *Newton* v. *Beck*, 3 *H. and N.* 220.

(2) *Entails.* The 3 & 4 Wm. IV. c. 74, s. 21, provides that the disposition by tenant-in-tail, by way of mortgage, or for any other limited purpose, shall, to the extent of the estate created, be an absolute bar in equity as well as at law, to all persons as against whom such disposition is by the act authorized to be made, notwithstanding any intention to the contrary, expressed or implied in the deed by which the disposition may be effected, provided, that if the estate created by such disposition shall be only an estate *pur autre vie*, or for years absolute or determinable, or if an interest, charge, lien, or incumbrance, should be created, without a term of years absolute or determinable, or any greater estate for securing or raising the same, such disposition should, in equity, be a bar only so far as may be necessary to give full effect to the mortgage, or to such interest, lien, charge, or incumbrance, notwithstanding any intention to the contrary expressed or implied in the deed by which the disposition may be effected. The 38th section enacts, that a voidable estate created in favor of a purchaser or mortgagee for a valuable consideration shall (so far as a subsequent assurance by the tenant-in-tail can operate under the provisions of the act) be confirmed by such assurance, excepting as against a purchaser not having *express* notice of the first assurance.

(3) *Copyholds.* They are for the most part mortgaged by conditional surrender in the manor court by the mortgagor to the mortgagee and his heirs, to be void on payment of the loan with interest on a given day, pursuant to a covenant to surrender contained in a deed, in which the mortgagor covenants for title, payment of loan and interest, &c. The condition should be entered on the rolls, and immediately followed by the surrender, that the true state of the title may appear on the manor-records. On performance of the condition, the mortgagor-surrenderor is in possession as of his old estate, without readmission or fine, upon the conditional mortgagee-surrenderee giving a warrant to the steward to vacate the surrender. In the absence of a special custom, the lord cannot compel a conditional surrenderee to be admitted, even after condition broken. If, however, he be admitted, and the condition is broken, his estate is absolute; and upon paying the mortgage debt, a readmission of the mortgagor will be necessary, and he then acquires a new estate.

Whilst a mortgage transaction rests in covenant, if the mortgagee assign his equitable interest, and the mortgagor surrender to such assignee, the lord may be compelled by *mandamus* to admit him on payment of a single fine.

(4) *Leaseholds.* They are usually mortgaged by underlease at a nominal rent, reserving the last day of the original term in the mortgagor, who covenants to pay the rent and perform the covenants contained in the lease. In this way the mortgagee avoids liability to the lessee's covenants which run with the land. When a renewable lease is mortgaged, the mortgagor should be required to covenant that he will concur, at his own expense, in all lawful acts for obtaining its renewal, and that if he refuse, the mortgagee may renew and charge the estate with the expenses and interest.

A mortgagee of a leasehold should see that the rent is paid, and the covenants of the lease are performed, otherwise he risks the loss of his security by the lessor entering upon the property, and determining the lease.

A provision for fire-assurance is expedient in the mortgage of buildings, which may be effected either by the mortgagor in his own name, and then assigning it to the mortgagee,

or by the mortgagor in the mortgagee's name, which dispenses with an assignment.

(5) *To raise portions under trust terms.* In providing for the raising of portions, it should be expressed when the portion shall vest, when it shall be payable, and the rate of interest it shall carry after it becomes payable, and until it is raised. Provisoes should be inserted, that the trustees may, after the deaths of the life-tenants, or in their lifetime, if they shall direct, raise any part of the portion for advancement of a child, and shall after the deaths of the life-tenants, and until the portion is payable raise a stated sum for maintenance, not exceeding the amount of interest on the principal of the portion, and that the trustees shall not mortgage or sell until the portion becomes payable. The usual mode of raising the portion by mortgage is for the portionist to assign to the mortgagee his share of the sum to be raised, giving the mortgagee a power of attorney to receive it. If the term be reversionary, the life-tenant demises a proportionate part of the estate to the mortgagee for 99 years, provided such tenant so long live, upon trust for him to receive the rents until default shall be made in payment of the interest, and then for the mortgagee to receive the rents and retain his interest. The trustees of the term assign a proportional part of the premises comprised in the term to the mortgagee, with a proviso of redemption either by the tenant for life, or the expectant, on payment of the loan for the portion and costs. The life-tenant, or, if the term be in possession, the remainder-man covenants for payment of the loan and interest, and for title.

(6) *To pay debts by executors, by trustees for sale, and under powers of charging.* An executor may raise money required for the general purposes of the will by a mortgage of the assets, provided the will do not direct a peremptory sale. The mortgage-deed need not state that the loan is wanted for the purposes of the will, for in order to vitiate the security it must be proved that the money was not for such purpose. The mortgagee is not bound to see to the application of his advance. If, however, the will name a particular fund for the payment of debts, a mortgagee should then inquire if such fund have been exhausted.

(7) *Advowsons.* They should be mortgaged in fee with a power of sale, not, however, exercisable during a vacancy, for they cannot produce any profit by presentment, nor can any value be put upon them in an account upon a redemption, so as to lessen the debt, since on a vacancy, the mortgagor, as actual owner, has the right of nomination, and can compel the mortgagee, as having the legal estate, to present his nominee, although there may be an express agreement to the contrary.

(8) *Rectories impropriate and tithes in lay hands.* These may be mortgaged as any other species of realty.

If a warrant of attorney be given by an incumbent, and nothing appears therein necessarily leading to the conclusion that it was intended indirectly to create a charge on his living, it is valid, and the profits of the living may be taken under a judgment and sequestration. The grant of an annuity with a warrant of attorney is the expedient resorted to for raising money. The 1 & 2 Vict. c. 106, provides a form of mortgage of the glebe, tithes, rents, and profits of a benefice for building a fit residence for the parson.

(9) *Turnpike-tolls.* See 3 *Geo. IV.* c. 126.

(10) *Acts of Parliament* frequently confer powers to charge property for manifold purposes, and the form of security is usually provided. It is obvious then that the statute must not only be consulted, but followed in all its special provisions. As specimens, see 6 & 7 *Wm. IV.* c. 71, ss. 77 & 78; 9 & 10 *Vict.* c. 73, s. 11 (Tithe Commutation); 8 & 9 *Vict.* c. 56; 9 & 10 *Vict.* c. 101; 11 *Vict.* c. 22 (Drainage); and 8 & 9 *Vict.* c. 118, s. 133 (Inclosure of Commons).

It is usual for the act to indemnify a mortgagee against the misapplication of his loan, but if it do not, he will be bound to see that his money is applied to the purposes of the given act, although it be paid to the person appointed by the act to receive it.

(11) *Wife's Property.* When husband and wife mortgage the wife's estate for his purposes, there is a resulting trust for her benefit, since her estate is considered as surety only for the debt. The wife or her heir is, therefore, entitled to redeem after the husband's death, notwithstanding that the equity of redemption may be reserved to the husband and his heirs, or to the husband and wife, and their heirs, unless a contrary intention be clearly expressed.—*Heather* v. *O'Neill*; 2 *De Gex. and J.* 399. A similar rule obtains in a mortgage of a wife's chattels-real, her personal representative in case of her death being then entitled. The husband's assets are liable to exonerate the wife's estate from such charge.

(12) *Public Stock.* This may be either the security for a debt or loan, or itself the subject of loan.

The mortgagee of stock in possession may sell immediately after forfeiture, but where the stock is in reversion, he cannot dispose of it, until he has made it his own by foreclosure.

A stock mortgage is made on the terms of securing a retransfer of the same amount of stock sold out, irrespective of the state of the funds at the time named for such retransfer.

(13) *Fund in Court.* When this is assigned, the assignee should obtain a stop-order, by which he gains a priority over an assignee who has neglected to obtain one, and prevents the fund from being transferred to the assignor.

(14) *Chattels Personal.* These are mortgaged by assignment, and if the property be in the possession of others, notice should be forthwith given to them, in order to preserve the priority of the charge. If it be a policy of assurance, notice should be given to the assurance-office.

(15) *Ships.* See 17 & 18 *Vict.* c. 104.

(16) *Freight.* The reward for carrying goods over the sea if in a charter-party may be assigned independently of the ship, and is not within the Registry Acts.

(17) *Building Societies.* See *Stone on Benefit Building Societies.*

(18) *Factors* may pledge goods consigned to them pursuant to 4 Geo. IV. c. 83; amended by 6 Geo. IV. c. 94.

(19) *Policies of Life Assurance.* These are not safe securities, as the mortgagee will have to pay the annual premium if not paid by the mortgagor, unless he can resort to a fund for this purpose. A life-policy is frequently given by way of collateral security. Notice of an assignment of a policy should be given to the insurance office as a protection against bankruptcy, but where a policy is effected in the mortgagee's name, notice is unnecessary, as there is no assignment of it, but only a covenant by the mortgagor to pay the premiums.

(20) *Debts.* A person lending money on the assignment of a debt should be careful to ascertain from the debtor whether he owes such a debt, so as to avoid any after-dispute; to protect himself by an express provision in the mortgage-assignment from being obliged to sue for the debt, since in its absence he would be liable for any loss occasioned by his delay to enforce the payment of the debt; to take, when the debt is recoverable *at law*, a power of attorney to sue in the assignor-mortgagor's name; and to give to the debtor prompt notice of such assignment, in order that he may be estopped from paying the debt to any other person, and also protecting his security from the consequences of the mortgagor's bankruptcy.—Consult *Powell* or *Coote on Mortgages.*

Mortgagee, he that takes or receives a mortgage.

Mortgagor, or **Mortgager,** he that gives a mortgage.

Morth [Sax.], open murder, answering exactly to the French *assassinat* or *muerte de guet-apens.*

Morthlaga, a murderer.

Morthlage, murder.

Mortification, a sort of mortmain.—*Scotch term.*

Mortis causâ donatio. See DONATIO MORTIS CAUSÂ.

Mortmain [fr. *mort,* Fr., dead, and *main,* hand], such a state of possession of land as makes it inalienable; whence it is said to be in a *dead hand*—in a hand that cannot shift away the property. Lands in mortmain are a dead weight upon commerce.

By several old statutes, alienation of lands and tenements in mortmain, i. e. to religious and other corporations, which were supposed to hold them in a dead or unserviceable hand, were prohibited under pain of forfeiture to the lord, the fruits of whose feudal seignory (the great hinge of government in those days) were thus impaired. But by the concurrent consent of the immediate and all other subordinate lords, with that of the lord paramount, i. e. the king, this forfeiture might be dispensed with. And the 7 & 8 Wm. III. c. 37, made a license from the Crown a sufficient dispensation in all such cases. See *Step. Com.* i. 362, 459, 465; iii. 135, 193; iv. 588, 604; and CHARITABLE USES.

Mortmain, Statute of, or **de religiosis, 7** Edw. I. Its object was to aid in enforcing the provisions of the Great Charter on the subject of alienation to religious societies, and to carry that restriction somewhat further.—2 *Reeves,* 154.

Mortpay, dead pay; payment not made.

Mortuary, a burial place; a gift left by a man at his death to his parish church, for the recompense of his personal tithes and offerings not duly paid in his lifetime. Also, a kind of ecclesiastical heriot, being a customary gift claimed by and due to the minister in very many parishes, on the death of his parishioners. Like lay heriots, they were originally only voluntary bequests to the church. It was usual in ancient times to bring the mortuary to church along with the corpse when it was brought to be buried, and thence it is sometimes called a *corpse-present.* In the laws of Canute it was called *soul-scot,* or *saule-sceat,* which signifies *pecunia sepulchralis,* or *symbolum animæ.* The lord must have the best good left him as a heriot; and the church the second best as a mortuary.

The variety of customs with regard to mortuaries, giving frequently a handle to exactions on the one side, and frauds or expensive litigations on the other, it was thought proper, by statute 21 Hen. VIII. c. 6, to reduce them to some kind of certainty. For this purpose it is enacted that all mortuaries or corse-presents to parsons of any parish shall be taken in the following manner, unless where, by custom, less or none at all is due, viz.: for every person who does not leave goods to the value of ten marks, nothing; for every person who leaves goods to the value of ten marks and under 30*l.*, 3*s.* 4*d.*; if above 30*l.* and under 40*l.*, 6*s.* 8*d.*; if above 40*l.*, of what value

soever they may be, 10*s.* and no more. And no mortuary shall, throughout the kingdom, be paid for the death of any *feme covert*, or child, or any one of full age, that is not a housekeeper, nor for any wayfaring man, whose mortuary shall be paid in the parish to which he belongs.—2 *Bl. Com.* 427; 4 *Reeves*, 207.

It has been sometimes used in a civil as well as in an ecclesiastical sense, and applied to a payment to the lord of the fee.—*Paroch. Antiq.* 470.

Mortuum vadium, a dead pledge or mortgage. See MORTGAGE.

Mortuus est [Lat.] (*he is dead*).

Mos retinendus est fidelissimæ vetustatis.—4 *Co.* 78.—(A custom of the truest antiquity is to be retained.)

Mote, a meeting, an assembly, used in composition as *burgmote*, *folkmote*, &c. See GEMOT.

Mote-bell, the bell which was used by the Saxons to summon people to the court.

Moteer, a customary service or payment at the mote or court of the lord, from which some were exempted by charter or privilege.

Mother-church [*primaria ecclesia*, Lat.], the parish church.

Mothering, a custom of visiting parents on Midlent Sunday.

Mother-in-law, the mother of one's wife or husband.

Motibilis, one that may be moved or displaced; also, a vagrant.—*Fleta*, l. 5, c. vi.

Motion, an occasional application to a court of law or equity, by the parties or their counsel, in order to obtain some rule or order, which becomes necessary either in the progress of a cause, or summarily and wholly unconnected with plenary proceedings. As to motions in Chancery, see *Smi. Ch. Pr.* 140; and as to motions at Common Law, see 2 *Chit. Arch. Prac. by Pren.* 1564.

There are three kinds of motions in Chancery: (1) *As of course*, which seek an order grantable without hearing both sides; (2) *Special*, for an order grantable only upon discretion, subdivided into (*a*) *ex parte* and (*b*) upon notice duly served upon the other litigants; and (3) *Appeal*, which is made to the Court of Appeal when a dissatisfied party seeks to discharge or vary an order pronounced upon motion by the Master of the Rolls, or one of the three Vice-Chancellors.

In Parliament and other public assemblies, the proposing of any matter for consideration.

Movables [some write this word *moveable*, but there is no necessity for retaining the *e* any more than in *immovable*, where Dr. Johnson himself omits it], goods, furniture, personalty.

Moult, a mow of corn or hay.

Mulatto, a person born of one white and one black parent.

Mulct, a fine of money or a penalty.

Mulier (1) a woman; (2) a virgin; (3) a wife.—1 *Inst.* 243.

Mulier puisné, when a man has a bastard son, and afterwards marries the mother, and by her has also a legitimate son, the elder son is *bastard eigné*, and the younger son is *mulier puisné*.

Mulieratus, a legitimate son.—*Glanv.*

Mulieres ad probationem statûs hominis admitti non debent.—*Co. Litt.* 6.—(Women ought not to be admitted to proof of the state of a man.)

Mulierty, lawful issue, because begotten *e muliere* (of a wife) and not *ex concubinâ*.

Mullones fœni, cocks or ricks of hay.

Mulmutin laws. See MOLMUTIAN LAWS.

Mulneda, a place to build a water-mill.—*Mon.* ii. 284.

Multa, or **Multura, Episcopi,** a fine or final satisfaction, anciently given to the king by the bishops; that they might have power to make their wills; and that they might have the probate of other men's wills, and the granting of administrations.—2 *Inst.* 291.

Multa conceduntur per obliquum, quæ non conceduntur de directo.—6 *Co.* 47.—(Many things are obliquely conceded which are not conceded directly.)

Multa ignoramus quæ nobis non laterent si veterum lectio nobis fuit familiaris.—10 *Co.* 73. (We are ignorant of many things which would not be hidden from us if the reading of old authors was familiar to us.)

Multa in jure communi contra rationem disputandi, pro communi utilitate, introducta sunt. Co. Litt. 70.—(Many things contrary to the rule of argument are introduced into the common law for common utility.)

Multa multo exercitatione facilius quam regulis percipies.—4 *Inst.* 50.—(You will perceive many things more easily by practice than by rules.)

Multa non vetat lex, quæ tamen tacitè damnavit.—(The law forbids not many things which yet it has silently condemned.)

Multa transeunt cum universitate quæ non per se transeunt.—*Co. Litt.* 12.—(Many things pass in the whole, which do not pass by themselves.)

Multifarious, having different respects or great diversity in itself.

Multifariousness in a bill in equity, is improperly joining in one bill distinct and independent matters, and thereby confounding them; as, for example, the uniting in one bill of several matters perfectly distinct and unconnected, against one defendant, or the demand of several matters of a distinct and independent nature against several defendants in the same bill. In strictness of language, it would be more correct to call it a misjoinder where different and distinct claims are mixed in the

same bill against the same defendant. Multifariousness as to one defendant constitutes no necessary ground of objection by the other defendants; for a bill may be multifarious as to one defendant, and not as to the rest. What is more familiarly understood by the term multifariousness, as applied to a bill, is where a party is able to say he is made a defendant upon a record, with a large portion of which, and of the case made by which, he has no connection whatever. But to lay down any rule, applicable universally, or to say what constitutes multifariousness as an abstract proposition, is, upon the authorities, utterly impossible.

Although a bill is ordinarily open to objection for multifariousness which contains two distinct subjects, wholly disconnected with each other; yet, if one of them be clearly without the jurisdiction of a court of equity for redress, it seems that the court will treat the bill as if it were single, and proceed with the other matter, over which it has jurisdiction, as if it constituted the whole and sole object of the bill. And a bill is not to be treated as multifarious because it joins two good causes of complaint, growing out of the same transaction, where all the defendants are interested in the same claim of right, and where the relief asked for, in relation to each, is of the same general character.

The objection to multifariousness is usually taken by demurrer, and if not so taken, and the cause goes on to hearing, the objection will not then always be fatal to the suit. But should the bill be artfully framed, so that from that, or from some other cause, the objection does not appear on the face of the bill, the defendant may take advantage thereof by setting forth the special matter by a plea.—*Story's Eq. Plead.* 224.

At common law, it has been laid down in numerous modern cases, that a replication cannot be objected to as multifarious, if the facts stated in the plea, though they are several, constitute one ground of defence; for that the rule of pleading is not that the issue must be joined on a single fact, but on a single point of defence. But it is a matter of no little difficulty to ascertain whether several facts which go towards the constituting of a defence are so connected as to form one complete point of defence, so as to admit of the application of this rule. See the cases collected in 2 *Saund. Rep. by Williams*, 295 *c.*

Multi multa, nemo omnia novit.—4 *Inst.* 348. (Many men have known many things; no one has known everything.)

Multipartite [fr. *multus*, Lat., many, and *pars*, a part], divided into several parts.

Multiple poinding, a double distress, in Scotch law, which gives name to an action that may be brought by a person possessed of money or effects liable to claims from different claimants. Thus, where the rents of an estate are claimed by different persons, the tenant may raise an action of multiple poinding, calling the different parties to dispute their preferences, and to have it proved that the tenant is liable once, and in a single payment only.—*Scotch term.*

Multiplex et indistinctum parit confusionem; et quæstiones quo simpliciores, eo lucidiores.—*Hob.* 335.—(Multiplicity and indistinctness produce confusion; and questions, the more simple they are, the more lucid.)

Multiplicatâ transgressione crescat pœnæ inflictio.—2 *Inst.* 479.—(Let infliction of punishment increase with multiplied crime.)

Multiplicity, more than one of the same kind.

A bill in equity may be objectionable for an undue divisibility or splitting up of a single cause of suit, and thus multiplying subjects of litigation. Equity discourages unreasonable litigation; it will not, therefore, permit a bill to be brought for a part of a matter only, where the whole is the proper subject of one suit. Upon a somewhat analogous ground, if an ancestor have made two mortgages, the heir will not be allowed to redeem one without the other; for in such a case, the equity of the heir, like that of the ancestor, is to redeem the whole or neither. The objection may be taken by way of plea; for it is against the whole policy of courts of equity to encourage multiplicity of suits.—*Story's Eq. Plead.* 234.

It is a rule of pleading, at common law, that where a subject comprehends multiplicity of matter, there, in order to avoid prolixity, general pleading is allowable.—2 *Saund. Rep.* 410.

Multitude, an assembly of ten or more persons.

Multitudinem decem faciunt.—*Co. Litt.* 247. (Ten make a multitude.)

Multitudo errantium non parit errori patrocinium.—11 *Co.* 75.—(The multitude of those who err gives no excuse to error.)

Multitudo imperitorum perdit curiam.—2 *Inst.* 219.—(A multitude of ignorant persons destroys a court.)

Multo, a wether sheep.—*Old Records.*

Multo fortiori. See A FORTIORI.

Multo utilius est pauca idonea effundere, quam multis inutilibus homines gravari.—4 *Co.* 20.—(It is more useful to pour forth a few useful things than to oppress men with many useless things.)

Multure [fr. *moulture*, Fr.; fr. *molo*, Lat., to grind], a grist or grinding; the corn ground; also the toll or fee due for grinding.

In Scotch law, a certain stipulated quantity of meal given as payment to the proprietor or tackman of a mill for grinding the corn.—*Encyc. Lond.*

Mund, peace, whence *mundbryc*, a breach of the peace.

Mundbyrd, a receiving into favor and protection.

Munera, portions of lands distributed to tenants, and revocable at the lord's will under our early feudal system.

Municipal [fr. *municipalis*, Lat. of *munus*, office, and *capio*, I take, or hold], belonging to a corporation.

Municipal Corporation Act, 5 & 6 Wm. IV. c. 76, by which the corporate towns or boroughs enumerated in the schedules A and B annexed thereto (comprising, with the exception of London, and a few other places, the whole of those in England and Wales), are placed under one uniform plan of constitution thereby newly devised.

The definition of a burgess in the boroughs comprised in the act (that is, a burgess entitled to such new rights as the act for the first time confers upon these boroughs) is a male person of full age, not an alien, nor having received, within the last twelvemonths, parochial relief, or alms or pension, or charitable allowance from the charitable trustees of the borough, who, on the last day of August in any year, shall have occupied any house, warehouse, counting-house, or shop, within the borough during that year, and the whole of the two preceding years; and during such occupation shall also have been an inhabitant householder within the borough, or within seven miles thereof, and shall, during such time, have been rated in respect of such premises to all rates for relief of the poor, and have paid all such rates, and all borough rates, in respect of the same premises, except those payable for the last six calendar months; and shall be duly enrolled in that year as a burgess on the burgess-roll. But when the premises come to the party by descent, marriage, marriage settlement, devise, or promotion to any benefice or office, he is entitled to reckon the occupancy and rating of the person from whom they were so derived.

It is further provided, that in every borough there shall be elected, annually, a mayor, and periodically, a certain number of aldermen, and of councillors, who, together, shall constitute the council of the borough; that they shall be respectively chosen from among persons on, or entitled to be on, the burgess list, and otherwise qualified as in the act described; that the councillors shall be elected by the burgesses, and the mayor and aldermen by the council; that the council shall meet once a quarter (and oftener, if due notice be given) for transaction of the general business of the borough, and make their decisions according to the majority of the members present (if those present amount to one-third of the whole), and that the mayor or other member presiding in his absence, shall have a casting vote; that at any meeting at which two-thirds at least of the whole shall attend, the council may make bye-laws for the good rule and government of the borough, for the prevention and suppression of nuisances, and for the imposition of fines on persons in that behalf offending; that the burgesses shall annually elect from among those qualified to be councillors, two auditors and two assessors; the former to audit the accounts of the borough, the latter to assist in revising the burgess list; and that the council also may appoint a town clerk and a treasurer (neither of whom is to be a member of the council), and such other officers as have been usual, or shall be necessary, and shall be empowered to fix their salaries; and if the borough have a separate court of quarter sessions, shall also appoint a coroner and a clerk of the peace.

The council of any borough which is desirous that a separate court of quarter sessions should be holden there, may petition the Crown for that purpose, and if the application be granted, the Crown shall appoint a recorder, who shall be sole judge of such court of quarter sessions, as also of the court of record for civil actions, if there be any, and if it be not regulated by any local Act of Parliament, and no barrister of five years' standing sat therein when the act passed.

To certain boroughs, and to such others as may petition for it, the Crown may also grant a commission of the peace, and nominate such persons to be justices as it shall think proper; and the mayor and recorder are respectively justices of the peace, *ex officio*.

It is provided, subject however to certain exceptions, that the council shall not sell or mortgage the land or public stock of the borough, or demise them for more than a certain term; and that the rents, profits, and interest of all corporate property shall be paid to the treasurer, and carried to the account of the borough fund, which, after discharging debts, shall be applied to the payment of salaries, the expenses connected with the corporate elections, prosecutions, gaols, and maintenance of offenders, and other public purposes; that the surplus (if any) shall be expended for the public benefit of the inhabitants, and the deficiency (if any) made up by a rate; and that the accounts shall be at all times open to inspection and regularly audited and printed for the use of the rate-payers, and submitted to the Secretary of State, and laid before both Houses of Parliament.

This act distinguishes between the rights newly conferred by it and the former rights of the corporators, with regard to the corporate property, and as to voting at parliamentary elections; both which former rights are expressly reserved; it being provided that every

inhabitant, and every person admitted a freeman or burgess, and the wife, or widow, or son, or daughter of any freeman or burgess; and every apprentice, shall enjoy the same share and benefit of the lands and public stock of the borough as he might have enjoyed in case the act had not been passed; subject to the limitation, however, that the total amount to be divided among such persons shall not exceed the surplus which shall remain after payment of the expenses, by the act charged upon the borough fund. And that every person who, if the act had not been passed, would have enjoyed as a burgess or freeman, or might thereafter have acquired in respect of birth or servitude, the right of voting in the election of members of Parliament, shall be entitled to enjoy or acquire such right of voting as fully as he might in that case have done. And the town clerk of every borough is to make out a list (to be called the freeman's list) of all persons admitted burgesses or freemen, for the purpose of such reserved rights as aforesaid, as distinguished from the burgesses newly created by the act, and entitled to the rights which it newly confers.

No person shall in future be a burgess or freeman by gift or purchase; the effect of which is to leave no other title in force, as regards the right to be placed on the freeman's roll, but those of birth, marriage, and servitude as an apprentice. It abolishes (though with a reservation of the rights of the then existing claimants) the exemptions that had been ordinarily claimed by burgesses, inhabitants, or the like, for such tolls or dues as are levied to the use of the body corporate.

In divers boroughs a custom had prevailed, and bye-laws had been made, that no person not being free of the borough or of certain guilds, mysteries, or trading companies therein, should keep a shop for merchandise, or use certain trades or occupations for gain within the same, and the act provides that every person may in future keep any shop, and use any lawful trade and occupation therein, any such custom or bye-laws notwithstanding. See 20 & 21 *Vict.* c. 50; 22 *Vict.* c. 35; and 23 *Vict.* c. 16.

Municipal law, that which pertains solely to the citizens and inhabitants of a state, and is thus distinguished from political law, commercial law, and the law of nations.

It is now, however, more usually applied to the customary laws that obtain in any particular city or province, and which have no authority in neighboring places.

Muniment [fr. *munio,* Lat., to fortify], support, defence, record; writing upon which claims and rights are founded and depend; evidences, charters.

Muniment-house, or **Muniment-room,** a house or room of strength, in cathedrals, collegiate churches, castles, colleges, public buildings, &c., purposely made for keeping deeds, charters, writings, &c.

Munitions of war. As to patents for their inventions to be kept secret, see 22 *Vict.* c. 13.

Murage [fr. *murus,* Lat., a wall], money paid to keep walls in repair.

Muratio, a town or borough surrounded with walls.

Murder [fr. *morthor, morthen,* Sax.; *murdrum,* law Lat. The etymology requires that it should be written, as it anciently often was, *murther*; but of late the word itself has commonly, and its derivatives have universally, been written with *d.*—*Dr. Johnson.* The etymology of the Saxon *morth,* whence *morthor,* and of the M. Gothic *maurthr,* require *murther*; but *murder* has the authority of the Su. Gothic *mord,* the Teutonic *moord,* and the old French *murdre.*—*Todd*], the act of killing a man unlawfully or criminally.

The legal definition of murder is when a person of sound memory and discretion unlawfully kills any reasonable creature with malice aforethought, either express or implied.

(1) The person committing the offence must be of sound memory and discretion, for infants and insane people are incapable of committing any crime, unless they evince a consciousness of doing wrong, and a discernment between good and evil. See MENTAL ALIENATION.

(2) It must be an unlawful killing by any means which superinduces death within a year and a day after the cause of death administered.

(3) The person killed must be a reasonable creature in being, and under the Queen's peace.

(4) The killing must be with malice aforethought.

Every person convicted of murder shall suffer death as a felon.—24 & 25 *Vict.* c. 100, s. 1.

Murderment, murder. Obsolete.

Murdre, any kind of concealment, or stifling.

Murdrum, the secret killing of another, also the amerciament to which the vill wherein it was committed, or, if that were too poor, the whole hundred was liable.

As to the rates of compensation for murder amongst the Anglo-Saxons, see 2 *Hall. M. A.* p. 275.

Murorum operatio, the service of work and labor done by inhabitants and adjoining tenants in building or repairing the walls of a city or castle; their personal service was commuted into *murage.*

Murthlach. See MORTLAGE.

Mussa, a moss or marsh ground; or a place where sedges grow; a place overrun with moss. *Cowel.*

Muster-book, a book in which the forces are registered.

Muster-master, one who superintends the muster to prevent frauds.

Muster-roll, a register of forces.

Muta-canum, a kennel of hounds, one of the mortuaries to which the Crown was entitled at a bishop's or abbot's decease.—2 *Bl. Com.* 426.

Mutilation, deprivation of a limb or any essential part. See MAYHEM.

Mutiny Act, a statute annually passed 'to punish mutiny and desertion, and for the better payment of the army and their quarters.' It regulates the manner in which they are to be dispersed among the several innkeepers and victuallers through the kingdom, and establishes a law martial for their government. By it, besides other things comprised in the articles of war, enumerated and enforced in this act, it is enacted that if any officer or soldier shall excite or form any mutiny, or, knowing of it, shall not give notice to the commanding officer, or shall desert or enlist in any other regiment, or sleep upon his post, or leave it before he is relieved, or hold correspondence with a rebel or an enemy, or strike or use violence to his superior officer, or shall disobey his lawful commands, such offender shall suffer such punishment as a court-martial shall inflict, though it extend to death itself.

The first of these acts was passed on the 12th April, 1689. See 26 & 27 *Vict.* c. 8.

Mutseddey, Mutseddee, intent upon; also writer, accountant, or secretary.—*Indian.*

Mutual, reciprocal, each acting in return, or in correspondence to the other.

Mutual debts, money due on both sides between two persons.

Mutual promises, concurrent considerations, which will support each other, unless one or the other be void; in which case, there being no consideration on the one side, no contract can arise. But if the promise on one side be only voidable, as in consideration of money given, or of a promise by an infant, it is sufficient.

Mutual promises, however, to be obligatory, must be made simultaneously. If they be made at different times on the same day, they will not be a good consideration for each other, because of the want of reciprocity of obligation at the moment the contract is made.—*Story on Contracts*, 81.

Mutual testament, wills made by two persons who leave their effects reciprocally to the survivor.

Mutuality, reciprocation; an acting in return.

Mutuation, the act of borrowing.

Mutuatus, having borrowed.

Mutuo, to borrow or lend.

Mutus, silent, not having anything to say.

Standing mute is when a person, being arraigned, either cannot speak, or refuses to answer or plead. Regularly, a prisoner is said to stand mute when, being arraigned, he either (1) makes no answer at all, or (2) answers foreign to the purpose, or with such matter as is not allowable, and will not answer otherwise, or (3) having pleaded not guilty, refuses to put himself upon the country.—2 *Hale, P. C.* 316. By 7 & 8 Geo. IV. c. 28, s. 1, he shall by the plea of not guilty, without any farther form, be deemed to have put himself upon the country for trial, and the court shall order a jury for the trial of such person accordingly.

By 7 & 8 Geo. IV. c. 28, s. 2, it is enacted, that if any person, being arraigned upon or charged with any indictment or information for treason, felony, piracy, or misdemeanor, shall stand mute of malice, or will not answer directly to the indictment or information, in every such case it shall be lawful for the court, if it shall so think fit, to order the proper officer to enter a plea of 'not guilty' on behalf of such person; and the plea so entered shall have the same force and effect as if such person had actually pleaded the same. When there is reason to doubt whether the prisoner is sane, a jury should be charged to inquire whether he be sane or not; which jury may consist of any twelve persons who may happen to be present, and upon this issue the question will be whether he has intellect enough to plead, and to comprehend the course of the proceedings. If they find the affirmative, the plea of 'not guilty' may be entered, and the trial will proceed; but if the negative, the 39 & 40 Geo. III. c. 94, s. 2, provides that insane persons indicted for any offence, and on their arraignment found to be insane by a jury lawfully impanelled for that purpose, so that they cannot be tried upon the indictment, shall be ordered by the court to be kept in strict custody till the royal pleasure be known.

To advise a prisoner to stand mute is a high misprision, a contempt of the court, and punishable by fine and imprisonment.

Mutus et surdus (*dumb and deaf*).

Mutuum, a loan, whereby the absolute property in the thing lent passes to the borrower, it being for consumption, and he being bound to restore, not the same thing, but other things of the same kind. Thus, if corn, wine, money, or any other thing which is not intended to be returned, but only an equivalent in kind, is lost or destroyed by accident, it is the loss of the borrower; for it is his property, and he must restore the equivalent in kind; the maxim —*ejus est periculum, cujus est dominium*— applying to such cases.

In a *mutuum* the property passes immediately from the *mutuant* or lender to the *mutuary* or borrower, and the identical thing lent can-

not be recovered or redemanded.—*Jones on Bailm.* 64.

Mynster-ham [*ecclesiæ mansio*, Lat.], monastic habitation; perhaps the part of a monastery set apart for purposes of hospitality, or as a sanctuary for criminals.—*Anc. Inst. Eng.*

Mystery, an art, trade, or occupation.

Mytacism [fr. *μυτακισμός*, Gk.], in rhetoric, the too frequent use of the letter M.—*Encyc. Lond.*

N.

Naam [fr. *nam*, Sax., to take], the attaching or taking of one's movable goods.—*Termes de la Ley.*

Nab [fr. *nappa*, Swed.], to catch unexpectedly; to seize without warning.—*Encyc. Lond.*

Nabob, Nawab, very great deputy, vicegerent, the governor of a province under the Mogul government.—*Indian.*

Naib, a deputy.—*Ibid.*

Naib, Nazum, deputy of the governor.

Nail, a measure of two inches and a quarter.

Nam, distress; seizure.—*Anc. Inst. Eng.*

Namation, the act of distraining or taking a distress. In Scotland it is particularly used for impounding.

Name [fr. *namo*, Goth.; *nama*, Sax.; *naem*, Dut.], the discriminative appellation of an individual.

Proper names are either *christian-names*, as being given at baptism, or *surnames*, from the sire or father.—4 *Rep.* 170.

Namium, a distress.

Namium vetitum, an unjust taking of the cattle of another and driving them to an unlawful place, pretending damage done by them.

Nantes, *Edict of*, made by Hen. IV. of France, and revoked by Louis XIV., Oct. 2, 1685.

Narr [abbrev. of *narratio*, Lat.], a declaration in an action.

Narratio, a count.

Narrator, a pleader or reporter.

Narrow seas, those running between two coasts not far apart. The term is usually applied to the English Channel.

Natale, the state and condition of a man.

Nathwyte. See LAIRWITE.

Nation, a people distinguished from another people, generally by their language, origin, or government; an assembly of men of free condition, as distinguished from a family of slaves.

National Church, the Protestant church of England, of which the sovereign is the head and supreme governor.—26 *Hen. VIII.* c. 1; 1 *Eliz.* c. 1.

National Debt, the money owing by government to some of the public, the interest of which is paid out of the taxes raised by the whole of the public. See FUNDS.

Nations, *Law of.* See INTERNATIONAL LAW. The principal offences against the law of nations are: (1) Violations of safe conducts. (2) Infringement of the rights of ambassadors; and (3) Piracy.

Nativi conventionarii, villeins or bondmen by contract or agreement.

Nativi de stipite, villeins or bondmen by birth or stock.

Nativitas [fr. *neifty*], the servitude, bondage, or villeinage of women.—*Leg. Wm.* 1.

Nativo habendo, a writ that lay to a sheriff from a lord who claimed inheritance in any villein, when his villein had absconded, for the apprehending and restoring him to such lord. It was in the nature of a writ of right to recover inheritance in a villein; upon which the lord pursued his plaint, and declared thereupon, and the villein made his defence, so that the question of freedom was tried and determined.—*F. N. B.* 77.

Nativus, a servant born.—*Spelm.*

Natura appetit perfectum; ita et lex.—*Hob.* 144.—(Nature desires perfection; so also law.)

Natura non facit saltum; ita, nec lex.—*Co. Litt.* 238.—(Nature takes no leap; so neither does law.)

Natura non facit vacuum, nec lex supervacuum.—*Co. Litt.* 79.—(Nature makes no vacuum; law no supervacuum.)

Naturæ vis maxima; natura bis maxima.—2 *Inst.* 564.—(The force of nature is greatest; nature is doubly greatest.)

Natural affection, that love which one has for his kindred. It is held to be a good consideration. See CONSIDERATION; COVENANT TO STAND SEISED.

Natural allegiance, that perpetual attachment which is due from all natural-born subjects to their sovereign; it differs from *local* allegiance, which is temporary only, being due from an alien or stranger born for so long a time as he continues within the sovereign's dominions and protection.—*Fost.* 184.

Natural-born subjects, those that are born within the dominions of the Crown of England, i. e. within the allegiance of the sovereign.

Natural children. A natural or illegitimate child is one who comes under any of the five following categories: (1) A child born of a woman, not actually married at the time of its birth; or (2) of a wife under such circumstances that her husband cannot be its father;

or (3) of a husband and wife, whose marriage has been judicially declared null and void, which illegitimatises their previously lawful issue (*Co. Litt.* 335); or (4) of a widow so long after her husband's decease, as to render it absolutely impossible for it to be a child begotten by him; or (5) of a man and woman who have gone through the ceremony of marriage, although one or both of them is incapable of contracting it, whose pretended marriage is utterly void.

The only natural obligation which the law imposes upon the parents of natural children is their maintenance. See 7 & 8 *Vict.* c. 101, and 8 *Vict.* c. 10.

Natural equity. See EQUITY.

Natural infancy, a period of non-responsible life, which ends with the seventh year of a person's age.

Natural liberty. See LIBERTY.

Natural obligations, duties which have a definite object, but are not subject to any legal necessity.

Natural persons, such as we are formed by the Deity, as distinguished from *artificial* persons or corporations, formed by human laws, for purposes of society and government.

Natural rights, those relating to life and liberty.

Naturale est quidlibet dissolvi eo modo quo ligatur.—Jenk. Cent. 66.—(It is natural for a thing to be unbound in the same way in which it was bound.)

Naturalization, the act of investing aliens with the privileges of native subjects, which can only be effected either (1) by Act of Parliament, or (2) by certificate of a Secretary of State, by virtue of 7 & 8 Vict. c. 66. The act of naturalization has a retrospective effect, in which it differs from mere denization. Thus, if a man be naturalized by Act of Parliament, his son born previously may inherit. No naturalization bill can be received in either house of Parliament without a clause disabling the person from obtaining any immunity in trade thereby in any foreign country, unless he shall have resided in Britain for seven years next after the commencement of the session in which he is naturalized. See 7 & 8 Vict. c. 66, s. 2. These provisions, however, have been usually dispensed with by special Acts of Parliament previous to bills of naturalization of foreign princes and persons distinguished for their rank or services.

As for naturalization by certificate of the Secretary of State, it may be obtained by any alien coming to reside in any part of Great Britain or Ireland, with intent to settle therein. He is to present a memorial for the purpose to one of the Secretaries of State, who may, after receiving the necessary evidence of the truth of the allegations contained in the memorial, issue, if he shall so think fit, a certificate granting to the memorialist, upon his taking the oath of allegiance and abjuration in the act set forth, within sixty days from the day of the date of such certificate, all the rights and capacities of a natural-born British subject, except the capacity of being a member of the Privy Council, or a member of either House of Parliament; and except the rights and capacities (if any) specially excepted in and by such certificate.

As to naturalization in a British colony or possession, see 10 & 11 Vict. c. 83.

Nature, *guardianship by.* See GUARDIAN.

Nature, *law of,* certain rules of conduct supposed to be so just that they are binding upon all mankind.

Naufrage, shipwreck.

Naulage [fr. *naulum,* Lat.], the freight of passengers in a ship.

Nautæ [Lat.], sailors, carriers by water.

Navagium, a duty on certain tenants to carry their lord's goods in a ship.

Naval and Mercantile Savings Banks, established for sailors and mariners by 17 & 18 Vict. c. 104, 18 & 19 Vict. c. 91, and 19 & 20 Vict. c. 41.

Naval Coast Volunteers. See 16 & 17 Vict. c. 73.

Naval Discipline Act, 1861, 24 & 25 Vict. c. 115, and 26 Vict. c. 5.

Naval Forces, the royal navy.

Naval Medical Supplemental Fund Society, *for regulating the,* 11 & 12 Vict. c. 58, continued by 22 Vict. c. 28, and amended by 26 & 27 Vict. c. 111.

Naval and Victualling Stores Act, 1862, 25 & 26 Vict. c. 64.

Navicularis [Lat.], a sea captain.

Navigation Acts, 16 & 17 Vict. c. 107, and 17 & 18 Vict. c. 120.

Navy [fr. *navis,* Lat., a ship], an assemblage of ships, commonly ships of war; a fleet.

The discipline of the navy was formerly regulated by certain express rules, articles, and orders, first enacted by the authority of Parliament soon after the Restoration, but is now regulated by 'The Naval Discipline Act, 1861,' 24 & 25 Vict. c. 115. As to the enlistment of seamen, see 5 & 6 Wm. IV. c. 24; and 16 & 17 Vict. c. 69; and 26 & 27 Vict. c. 9.

Navy bills, bills drawn by officers of the royal navy for their pay, &c. It is a felony to forge them.—11 *Geo. IV.* & 1 *W. IV.* c. 20, s. 83.

Navy Prize Agents Acts, 1863, 26 & 27 Vict. c. 116.

Nazeranna, a sum paid to government as an acknowledgment for a grant of lands, or any public office.—*Encyc. Lond.*

Nazim, composer, arranger, adjuster. The first officer of a province, and minister of the department of criminal justice.—*Indian.*

Ne admittas (*that you admit not*), a prohibitory writ directed to the bishop at the request of the plaintiff or defendant, where a *quare impedit* is depending, when either party fears that the bishop will admit the other's clerk during the suit between them; it ought to be issued within six calendar months after the avoidance, before the bishop may present by lapse; for it is in vain to sue out this writ when the title to present has devolved upon the bishop.—*F. N. B.* 37.

Neat, or **Net,** the weight of a pure commodity alone, without the cask, bag, dross, &c. *Comm. term.*

Neat-land, land let out to the yeomanry.

Ne baila pas (*he did not deliver*).

Necation [fr. *neco*, Lat.], the act of killing.

Necessaries, a relative term, not strictly limited to such things as are absolutely requisite for support and subsistence, but to be construed liberally, and varying with the state and decree, the rank, fortune, and age of the infant to whom they are supplied. It has always been held that an infant is bound to pay a reasonable price for such necessary things as relate to his maintenance and education—as for food, lodging, apparel, medical attendance, and schooling—unless credit be given solely to the parent, which is presumed to be the fact, if it appear that the infant was placed at school, or is supported by him.—*Story on Contracts*, 39.

While a husband and wife live together, and the goods supplied to the wife are necessaries, both in quality and quantity, the law raises an uncontrollable presumption of assent on the part of the husband to the contract, and renders him liable therefor. If he omit to furnish her with necessaries, he makes her impliedly his agent to purchase them. A general prohibition, therefore, to all persons not to supply the wife with necessaries is void.—*Ibid.* 46. See *Chitty* or *Addison on Contracts.*

Necessarium est quod non potest aliter se habere.—Bacon.—(That is necessary which cannot otherwise be dispensed with.)

Necessary intromission, when a husband or wife continues in possession of the other's goods, after the decease of the other, for their preservation.—*Scotch phrase.*

Necessitas culpabilis (*a blameable necessity*).

Necessitas est lex temporis et loci.—H.H.P.C. 54.—(Necessity is the law of time and place.)

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus. Bacon.—(Necessity excuses or extenuates delinquency in capital, which has not the same operation in civil cases.)

Necessitas facit licitum quod alias non est licitum.—10 *Co.* 61.—(Necessity makes that lawful which otherwise is not lawful.)

Necessitas inducit privilegium quoad jura privata.—Bac. Max. 25.—(Necessity gives a privilege with reference to private rights.)

The necessity involved in this maxim has been considered under three different heads, viz:—1st, Necessity of self-preservation; 2nd, of obedience; and 3rd, necessity resulting from the act of God, or of a stranger.—*Noy's Max.* 32.

Necessitas non habet legem.—Plow. 18.—(Necessity has not any law.)

Necessitas publica major est quam privata.—Bacon.—(Public necessity is greater than private.)

Death, it has been observed, is the last and furthest point of particular necessity, and the law imposes it upon every subject, that he prefer the urgent service of his king and country to the safety of his life.—*Noy's Max.* 34.

Necessitas, quod cogit, defendit.—H.H.P.C. 54.—(Necessity defends what it compels.)

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum.—2 *Inst.* 326.—(Necessity is not restrained by law; since what otherwise is not lawful, necessity makes lawful.)

Necessitas vincit legem; legum vincula irridet. Hob. 144.—(Necessity overcomes law; it derides the fetters of laws.)

Necessity, a constraint upon the will, whereby a person is urged to do that which his judgment disapproves, and which it is to be presumed, his will (if left to itself) would reject. A man, therefore, is excused for those acts which are done through unavoidable force and compulsion.

Compulsion or necessity may arise:—

(1) From civil subjection;

(2) From duress *per minas*;

(3) From the choice of the less pernicious of two evils, one of which is unavoidable; or,

(4) From want or hunger, which is, however, no legitimate excuse.—4 *Blackstone's Com.* 27.

Necessity, *homicide by,* a species of justifiable homicide, because it arises from some unavoidable necessity, without any will, intention, or desire, and without any inadvertence, or negligence in the party killing, and therefore without any shadow of blame. As, for instance, by virtue of such an office as obliges one, in the execution of public justice, to put a malefactor to death, who has forfeited his life to the laws of his country. But the law must require it, otherwise it is not justifiable.—4 *Bl. Com.* 178.

Neck-verse, the Latin sentence *miserere mei Deus,* Ps. li. 1, because the reading of it was made a test by which to distinguish those who, in presumption of law, were qualified, in point of learning, and admissible to benefit of clergy.

If a monk had been taken
For stealing of bacon,
For burglary, murder, or rape;
If he could but rehearse
(Well prompt) his *neck-verse*,
He never could fail to escape.
Brit. Apollo, 1710.

Nec curia deficerit in justitiâ exhibendâ.—4 *Inst.* 63.—(Lest the court should be deficient in showing justice.)

Nec tempus nec locus occurrit regi.—*Jenk. Cent.* 190.—(Neither time nor place affects the king.)

Nec veniam, effuso sanguine, casus habet.—3 *Inst.* 57.—(Where blood is spilled the case is unpardonable.)

Nec veniam, læso Numine, casus habet.—*Jenk. Cent.*—167.—(Where the Divinity is insulted, the case is unpardonable.)

Ne disturba pas, the general issue in *quare impedit.* It simply denies that the defendant obstructed the presentation, and is adapted to no other ground of defence.—*Step. Plead.* 173.

Ne dona pas, or **non dedit,** the general issue in a formedon, now abolished. It denied the gift in tail to have been made in manner and form as alleged; and was therefore the proper plea, if the tenant meant to dispute the fact of the gift, but did not apply to any other case.—5 *East.* 289.

Ne exeat regno, sometimes ungrammatically termed *ne exeat regnum*, when a person who owes an actually due equitable debt, or fails to pay alimony decreed to a wife by the Court for Divorce and Matrimonial Causes, meditates a departure from the realm, the creditor or wife may file a bill, and pray for a writ of *ne exeat regno* in order to prevent his flight; the object of the writ being, to use the sonorous phrase of Bentham, 'the stopping of expatriation for the avoidance of justiciability.'

This writ was framed originally for purposes of state, and was used to deter the clergy from leaving the country without the royal license, on account of the national jealousy of any intercourse between the English ecclesiastics and the Papal See; but it has now been applied for a long time to private complaints, as being admirably adapted to prohibitory purposes. It will not be granted at the instance of a plaintiff resident abroad.

This writ must generally be prayed for by bill, but it frequently happens that a defendant's intention to go abroad arises, or is first discovered in the course of a suit, and then there is no doubt that the writ would be granted, though not so prayed. A defendant may also obtain the writ without filing a bill, against a plaintiff ordered to pay a certain sum of money to deter him from going abroad before its liquidation. It is obtained upon a motion *ex parte*, supported by an affidavit, which must be positive as to the debt, except in the case of an account, when the plaintiff may swear that, to the best of his belief, such a sum will be due to him on the balance. The affidavit must also be positive as to the defendant's intention to go abroad, or as to his threats or declarations to that effect, or as to facts evincing it; and it must state expressly that the debt or property would be endangered by the defendant's quitting the kingdom.

An affidavit will be dispensed with where the demand has been established by a chief clerk's certificate duly confirmed, and perhaps where all the facts are admitted by a defendant's answer. See the cases 3 *Mac. Chit. Dig.* 2141.

This affidavit should not be sworn before the plaintiff's solicitor in the cause, as it would be a ground to move to discharge the writ with costs, and the defendant would not be put under terms, not to bring an action. It is doubtful whether in this case a second writ would be granted.—*Hopkin* v. *Hopkin*, 1 *Eq. Rep.* 20 (1853).

If the court grant an order, it must be passed and entered, and then delivered to the clerk of records and writs, who will seal the writ, which must be endorsed with the amount of the sum for which the defendant is to give security in words at length.

The writ is delivered to the sheriff in whose county the defendant is sojourning; and he causes the party to be arrested, in effecting which outer doors shall not be broken open.

Upon the party being arrested, he may obtain his enlargement out of custody, either by depositing the amount indorsed upon the writ with the sheriff, or by executing a bond with two sufficient sureties, to the sheriff, in double the sum marked on the writ, conditioned not to go or to attempt to go into parts beyond the seas, or into Scotland, without the leave of the court.

The sheriff, after he has executed the writ, returns it either by saying that he has taken a deposit of the amount indorsed on the writ, or that he has caused the defendant personally to come before him, and that he has found bail in the penalty of £—, according to the exigency of the writ.

An application to discharge the writ for irregularity, or that it was improperly granted, may be made before answer, but must be supported by affidavit; after answer, it is usually on the merits therein disclosed, unless the writ was granted upon matter subsequent to answer, when the application may be supported by affidavit. The court will discharge the writ upon the defendant paying into court the amount indorsed upon the writ, and the writ will be discharged upon the merits, should the plaintiff have no case, or the defendant be not going

abroad, either absolutely or conditionally, i. e. by giving security to submit to the decree of the court. A subsequent amendment of the bill will not be a ground to discharge the writ, unless it materially varies the case, as originally framed. After a defendant has been taken in contempt for disobeying the decree of the court, his sureties may apply that they may be discharged and that the bond as to them may be cancelled. See 15 & 16 *Vict.* c. 86, s. 6; *Consol. Ord.* 1860, i., r. 38; xxxvi., r. 9; *Beames' Brief View of the Writ*; and 3 *Mac. Chit. Dig.* 2555–2559.

Negatio conclusionis est error in lege.—*Wing.* 268.—(The negative of a conclusion is error in law.)

Negatio destruit negationem, et ambæ faciunt affirmativum.—*Co. Litt.* 146.—(A negative destroys a negative, and both make an affirmative.)

Negatio duplex est affirmatio.—(A double negative is an affirmative.)

Negative, a particle of denial.

A negative cannot be proved or testified by witnesses, only an affirmative.—2 *Inst.* 662. But this rule does not apply where one party charges another with a culpable omission or breach of duty; in such a case, the person who makes the charge is bound to prove it, though it may involve a negative, for it is one of the first principles of justice, not to presume that a person has acted illegally till the contrary is proved. Where the presumption of law is in favor of a defendant's plea, then the plaintiff must disprove the plea, though he may have to prove a negative.—1 *Phil. Evid.* c. vii., s. 4.

It is a pleading rule that two negatives do not make a good issue.—*Step. Plead.* 481.

It was formerly a question of no inconsiderable difficulty, and from the apparent contrariety of the authorities, subject to much discussion and vexatious controversy in courts of equity, whether a purely negative plea to a bill was a legitimate mode of defence, as it unquestionably is at law. It was a question whether a defendant could allege in opposition to the claims of the plaintiff as heir-at-law, that the plaintiff was not heir-at-law. But that doubt has been dissipated, and it is now firmly established that such a plea is good.—*Story's Eq. Plead.* 507.

Negative pregnant, a form of denial which implies or carries with it an affirmative.

This is considered as a fault in pleading, because the meaning of such a form of expression is ambiguous. The rule against a negative pregnant has been very much relaxed, for many cases have occurred in which, upon various grounds of distinction from the general rule, such form of expression has been held free from objection.—*Step. Plead.* 419.

Neggildare, to claim kindred.

Negligence, acting carelessly. There are three degrees of negligence: (1) ordinary, which is the want of ordinary diligence; (2) slight, the want of great diligence; and (3) gross, the want of slight diligence.

So in the civil law there are three degrees of negligence: (1) *lata culpa*, gross neglect; (2) *levis culpa*, ordinary neglect; and (3) *levissima culpa*, slight neglect.—*Hallifax, C. L.* 61.

The question of negligence is usually one of fact for a jury. The question may be either one of law, where the case falls within any general and settled rule or principle; or of fact, where no such rule or principle is applicable to the particular circumstances, and where, therefore, the conclusion of negligence must be found or excluded by the jury. See DILIGENCE. By 14 Geo. III. c. 78, s. 84, a servant who, through negligence, sets fire to a house or building, upon conviction before two justices shall pay to the churchwardens or overseers of the parish where the fire happens 100*l.* to be distributed among the sufferers by such fire, in such proportions as to the said churchwardens shall seem just; and in default of payment shall be imprisoned for eighteen months with hard labour. By the common law if a servant keeps his master's fire negligently, so that his neighbour's house is burnt down, an action lies against the master. The statement in 1 *Bl. Com.* 431, that the right of action is taken away by statute is incorrect. See *Filliter* v. *Phippard*, 11 *Q. B.* 347.

Negligence, *homicide by.* See MISADVENTURE.

Negligent escape, where a person gets out of the custody of the sheriff or other officer, without consent.

Negligentia semper habet infortuniam comitem. Co. Litt. 246.—(Negligence always has misfortune for a companion.)

Negoce [fr. *negotium*, Lat.], business, trade, management of affairs.

Negotiable instruments, those, the right of action upon which is, by exception from the common rule, freely assignable from one to another, such as bills of exchange and promissory notes.

It is not essential, however, to the character of a bill of exchange or promissory note that it should be negotiable, but it is essential to the negotiability of a bill between all persons, except the government, that it should be payable to order or to bearer, or that some other equivalent words should be used, authorizing the payee to assign or transfer the same to third persons, such, for example, as payable 'to A. or his agent.' Still, however, although not transferable by endorsement, without such words, so as to give an action to the indorsee against other parties to the bill; yet, the

indorsement will give an action against the payee himself; because, in legal effect, it amounts to the drawing of a bill in favor of the indorsee against the drawer.

The mode of transfer depends upon the manner in which the bill is originally made negotiable. If it is payable to the bearer, then it may be transferred by mere delivery, the person delivering it ceasing to be deemed a party thereto. But if the bill be originally payable to a person, or his order, there it is properly transferable by indorsement, because, in no other way will the transfer convey the legal title to the holder, so that he can, at law, hold the other parties liable to him, *ex directo*, whatever may be his remedy in equity. If there be an assignment thereof, without indorsement, the holder will thereby acquire the same rights only as he would acquire upon an assignment of a bill not negotiable. But there is a period when bills cease altogether to be negotiable, in whose hands soever they may then be, so far as respects the antecedent parties thereto, who would be discharged therefrom by the payment thereof. As if a bill be once paid by the acceptor, *after* it has become due, it loses all its vitality, and can no longer be negotiable. So if it be dishonored by the acceptor. But bills remain negotiable even after payment, so far as respects the parties, who shall knowingly negotiate the same afterwards; for, in such a case, the negotiation cannot prejudice any other persons, and can only prejudice themselves.—*Story on Bills*, 220.

Promissory notes were made negotiable by 3 & 4 Anne, c. 9, and 7 Anne, c. 25, and placed in all respects upon the same footing with inland bills of exchange.

By the common law, though the indorsement of a bill of lading transferred the property in the goods to which it related, the indorsee could not sue upon it in his own name; but by 18 & 19 Vict. c. 111, s. 1, 'every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods mentioned in it passes upon or by reason of the consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities, as if the contract contained in the bill of lading had been made with himself.'

By 26 & 27 Vict. c. 105, the restrictions on the negotiation of bills of exchange and promissory notes for the payment of 20*s*. and less than 5*l*.; or upon which 20*s*. and less than 5*l*. is undischarged, are repealed.

Negotiation, treaty of business, whether public or private.

Negotiorum gestor, a person who, spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, &c.

In cases of this sort, as he acts wholly without authority, there can, strictly speaking, be no contract. But the Roman law raises a *quasi* mandate, by implication, for the benefit of the owner in many of such cases. Nor is an implication of this sort wholly unknown to the common law, where there has been a subsequent ratification of the acts by the owner; and sometimes where unauthorised acts are done, positive presumptions are made by law for the benefit of particular parties. Thus, if a stranger enter upon a minor's lands, and take the profits, the law will, in many cases, oblige him to account to the minor for the profits as his bailiff; for it will be presumed that he entered to take them in trust for the infant.

As the *negotiorum gestor* interferes without any actual mandate, there is good reason for requiring him to exert the requisite skill and knowledge to accomplish the object or business which he undertakes; to do everything which is incident to or dependent upon that object or business, and to finish whatever he has begun. Without such an obligation, every person in the community would be at the mercy of ignorant and officious friends.—*Story's Bailment*, 204.

Neife, a woman born in villenage.

Neifty. See NATIVITAS.

Ne injuste vexes, a writ founded on Magna Charta that lay for a tenant distrained by his lord, for more services than he ought to perform; and it was a prohibition to the lord not unjustly to distrain or vex his tenant; in a special use it was where the tenant had prejudiced himself by doing greater services or paying more rent without constraint, than he needed; for, in that case, by reason of the lord's seisin, the tenant could not avoid it by avowry, but was driven to his writ for remedy.—*F. N. B.* 10. Abolished by 3 & 4 Wm. IV. c. 27, s. 35.

Ne luminibus officiatur, a servitude restraining the owner of a house from obstructing the light of his neighbor.

Nembda [Teut.], a jury.

Nemine contradicente, abbrev. *nem. con.* [Lat.], the phrase to signify the unanimous consent of the members of the House of Commons to a vote or resolution; it is analogous to the term *nemine dissentiente* (*nem. dis.*) in the House of Peers.

Neminem oportet esse sapientiorem legibus.—*Co. Litt.* 97.—(Nobody need be wiser than the laws.)

Nemo admittendus est inhabilitare seipsum.—*Jenk. Cent.* 40.—(Nobody is to be admitted to incapacitate himself.)

Nemo agit in seipsum.—*Jenk. Cent.* 40.—(No one acts against himself.)

Nemo aliquam partem recte intelligere potest, antequam totum iterum atque iterum perlegit.—3 *Co.* 59.—(No one can properly understand any part of a thing till he has read through the whole again and again.)

Nemo allegans suam turpitudinem est audiendus.—*Civil Law Maxim.*—(No one alleging his own baseness is to be heard.)

The courts of law have properly rejected it as a rule of evidence.—7 *T. R.* 601.

Nemo cogi potest præcise ad factum, sed in id tantum quod interesse.—(No person can be compelled precisely to the act, but to that only which interests him.)

Nemo cogitur rem suam vendere, etiam justo pretio.—4 *Inst.* 275.—(No person is obliged to sell his own property, even for the full value.)

Nemo contra factum suum venire potest.—2 *Inst.* 66.—(No one can come against his own deed.)

Nemo dat qui non habet.—*Jenk. Cent.* 250. (No one gives who possesses not.)

Nemo debet bis puniri pro uno delicto: et Deus non agit bis in ipsum.—4 *Co.* 43.—(No one should be punished twice for one offence; and God punishes not twice for an offence against himself.)

Nemo debet bis vexari, si constat curiæ quod sit pro unâ et eâdem causâ.—5 *Co.* 61.—(No man ought to be twice put to trouble, if it appear to the court that it is for one and the same cause.)

Nemo debet ex alienâ jacturâ lucrari.—(No one ought to gain by another's loss.)

Nemo debet esse judex in propriâ causâ.—12 *Co.* 113—(No one should be judge in his own cause.)

In civil actions, the general rule is, that the judgment of a court of concurrent jurisdiction, directly upon the point is, as a plea, a bar, or as evidence, conclusive between the same parties upon the same matter directly in question in another court. The exception to this rule is in the action of ejectment.—2 *Selw. N. P.* 763.

It is also well established in the criminal law, that when a man is indicted for an offence, and acquitted, he cannot afterwards be indicted for the same offence, provided the first indictment were such that he could have been lawfully convicted upon it by proof of the facts contained in the second indictment.—*Arch. Cr. Plead.* 88.

Nemo debet immiscere se rei alienæ—ad se nihil pertinenti.—*Jenk. Cent.* 18.—(Nobody should interfere in another's business—in what does not relate to himself.)

Nemo debet rem suam sine facto aut defectu suo amittere.—*Co. Litt.* 263.—(No one should lose his property without his own act or negligence.)

Nemo duobus utatur officiis.—4 *Inst.* 109.—(Let no one fill two offices.)

Nemo est hæres viventis.—*Co. Litt.* 8.—(No one is the heir of a living man.)

Nemo ex alterius detrimento fieri debet locupletari.—*Jenk. Cent.* 4.—(No man ought to be made rich out of another's injury.)

Nemo ex dolo suo proprio relevetur, aut auxilium capiat.—*Jur. Civ.*—(Let no one be relieved or gain an advantage by his own fraud.)

Nemo inauditus nec summonitus condemnari debet, si non sit contumax.—*Jenk. Cent.* 8.—(No man should be condemned unheard and unsummoned, unless for contumacy.)

Nemo militans Deo implicetur secularibus negotiis.—*Co. Litt.* 70.—(No man warring for God should be troubled by secular business.)

Nemo nascitur artifex.—*Co. Litt.* 97.—(No one is born an artificer.)

Nemo patriam in quâ natus est exuere nec ligeantiæ debitum ejurare possit.—*Co. Litt.* 129. (No man can disclaim the country in which he was born, nor abjure the bond of allegiance.)

Nemo potest contra recordum verificare per patriam.—2 *Inst.* 380.—(No one can verify by jury against a record.)

Nemo potest esse tenens et dominus.—*Gilb. Ten.* 142.—(No man can be tenant and lord.)

Nemo potest facere per alium, quod per se non potest.—*Jenk.* 237.—(No one can do through another what he cannot do through himself.)

Nemo potest habere duas militias nec duas dignitates, quia difficile est ut unus homo vices duorum sustineat.—4 *Co.* 118.—(No one can fill two offices, or two dignities, because it is difficult for one man to fill the places of two.)

Nemo potest plus juris ad alium transferre quam ipse habet.—*Co. Litt.* 309; *Wing.* 56.—(No one can transfer a greater right to another than he himself has.)

Nemo præsumitur alienam posteritatem suæ prætulisse.—*Wing.* 285.—(No one is presumed to have preferred another's prosperity to his own.)

Nemo præsumitur donare.—(No one is presumed to give.)

Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis.—6 *Co.* 76. (No one is presumed to be forgetful of his own eternal welfare; and particularly in the act of death.)

Nemo præsumitur malus.—(No one is presumed bad.)

Nemo præsumitur ludere in extremis.—(No one is presumed to trifle at the point of death.)

Nemo prohibetur plures negotiationes sive artes exercere.—11 *Co.* 54.—(No one is restrained from exercising several businesses or arts.)

Nemo prohibetur pluribus defensionibus uti. Co. Litt. 304.—(No one is restrained from using several defences.)

Nemo prudens punit ut præterita revocentur, sed ut futura præveniantur.—3 *Buls.* 179.—

(No wise man punishes, that things done may be revoked, but that future wrongs may be prevented.)

Nemo punitur pro alieno delicto.—*Wing.* 336. (No one is punished for the crime of another.)

Nemo punitur sine injuriâ, facto, seu defalto. 2 *Inst.* 287.—(No one is punished unless for some injury, deed, or default.)

Nemo redditum invito domino percipere, et possidere potest.—*Co. Litt.* 323.—(No one can take and enjoy the rent, against the will of the lord.)

Nemo tenetur ad impossibile.—*Jenk. Cent.* 7. (No one is bound to an impossibility.)

Nemo tenetur armare adversarium contra se. Wing. 665.—(No one is bound to arm his adversary against himself.)

Nemo tenetur divinare.—3 *Co.* 28.—(No one is bound to foretell.)

Nemo tenetur informare qui nescit, sed quisquis scire quod informat.—*Lane,* 110.—(No one who is ignorant is bound to inform, but every one ought to know what he states.)

Nemo tenetur jurare in suam turpitudinem.—(No one is bound to testify to his own baseness.)

Nemo tenetur seipsum infortuniis et periculis exponere.—*Co. Litt.* 253.—(No one is bound to expose himself to misfortunes and dangers.)

Nemo tenetur seipsum accusare.—*Wing.* 486. (No one is bound to accuse himself.)

Nemo unquam vir magnus fuit, sine aliquo divino afflatu.—*Cic.*—(No one was ever a great man without some divine inspiration.)

Nephew [fr. *nepos*, Lat.], the son of a brother or sister.

A nephew, according to the civil law, is in the third degree of consanguinity; but, according to the canon law, in the second.

Nepos, a grandson.

Neptis, a granddaughter.

Ne recipiatur, a caveat entered by a defendant to prevent a plaintiff from trying his cause at a certain sittings, where the cause is not entered in due time.—*R.* 43, H. T. 1853.

Ne relessa par (*he did not release*).

Net profits, clear profits beyond all deductions.

Nether House of Parliament. The House of Commons was so called in the time of Henry VIII.—*Div. of Purl.* 221.

Ne unques accouple in loyal matrimonie, a plea whereby a tenant in the real action of dower *unde nihil*, controverts the validity of the demandant's marriage with the person out of whose estate she claims dower. To this plea, the demandant must reply that she was accoupled in lawful matrimony at A. in such a diocese, upon which a writ issues to the bishop of such diocese, requiring him to certify the fact to the court.—*Co. Ent.* 180.

Ne unques Executor or Administrator, a plea whereby a defendant denies that he is executor or administrator. It does not deny the cause of action, but only that the defendant is the personal representative of the testator or intestate.—1 *Saund.* 207 *a.*

Ne unques seisie que dower, a plea in dower, which is often called the general issue, but it does not seem to fall strictly within the definition of that term. It does not, properly speaking, contain any denial or traverse of the count, and must therefore be considered as an anomaly or exception in the system of pleading. The reason is perhaps to be found in the great antiquity of the action of dower, which was in full use, at least as early as the time of Glanville, a period considerably anterior to the complete establishment of the doctrine of issue, and of the rules by which it is produced.—*Step. Plead.* 54.

Never indebted, *plea of,* a species of traverse which occurs in actions of debt on simple contract, and is resorted to when the defendant means to deny in point of fact the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied.

New Assignment, a form of pleading which sometimes arises from the generality of the declaration, when the complaint not having been set out with sufficient precision, it becomes necessary, from the evasiveness of the plea, to re-assign the cause of action with fresh particulars. It is used when a defendant has pleaded to a different matter from that which constitutes the real subject of complaint; and should be framed so as to distinguish the true ground of action from that which is covered by the plea. It most frequently occurs in an action of trespass, as where two assaults have been committed, one of which is justifiable and the other indefensible; or in trespass *quare clausum fregit*, when the defendant claims a right of way. The obligation occasionally imposed upon a defendant, to plead payment in discharge of the whole or a part of the plaintiff's demand, sometimes renders a new assignment necessary, when a defendant supposes, or affects to suppose, that a debt which has been partially satisfied by payment, is that for which the action is brought; but it seems the judges have come to a resolution of not allowing new assignments to a general plea of payment.

As the object of a new assignment is to correct a mistake occasioned by the generality of a declaration, it always occurs in answer to a plea, and is, therefore, in the nature of a replication.

The new assignment is delivered to the defendant's attorney or agent, after which the defendant may be compelled within four days to plead to it, in the same manner as upon the

original declaration. The Common Law Procedure Act, 1852 (15 & 16 Vict. c. 73), enacts that one new assignment only shall be pleaded to any number of pleas to the same cause of action; and such new assignment shall be consistent with and confirmed by the particulars delivered in the action, if any, and shall state that the plaintiff proceeds for causes of action different from all those which the pleas profess to justify, or for an excess over and above what all the defences set up in such pleas justify, or both (s. 87). No plea which has already been pleaded to the declaration shall be pleaded to such new assignment, except a plea in denial, unless by leave of the court or a judge, and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial on the merits (s. 88).—1 *Saund.* 229; *Step. Plead.* 253.

New Brunswick. See 20 & 21 *Vict.* c. 34.

New Forest, a royal forest in Hampshire, founded by William the Conqueror. See 12 & 13 *Vict.* c. 81; 14 & 15 *Vict.* c. 76; 16 & 17 *Vict.* c. 19; and 17 & 18 *Vict.* c. 49.

Newfoundland. See 5 & 6 *Vict.* c. 120; 9 & 10 *Vict.* cc. 3, 45; 10 & 11 *Vict.* cc. 1, 44; and 12 & 13 *Vict.* c. 21.

New Natura Brevium. See FITZHERBERT.

New South Wales and **Van Diemen's Land,** or **Tasmania.** See 9 *Geo. IV.* c. 83; 6 & 7 *Wm. IV.* c. 46; 7 *Wm. IV.* & 1 *Vict.* c. 42; 1 & 2 *Vict.* c. 50; 2 & 3 *Vict.* c. 70; 3 & 4 *Vict.* c. 62; 4 & 5 *Vict.* c. 44; 5 & 6 *Vict.* c. 76; 7 & 8 *Vict.* c. 74; 12 & 13 *Vict.* cc. 22 & 52; 18 & 19 *Vict.* cc. 54 & 55, s. 3, and c. 56.

New Style. The modern system of computing time was introduced into Great Britain A.D. 1752, the 3rd of September of that year being reckoned as the 14th. See NEW YEAR'S DAY.

New Trial. If any defect of judgment happen from causes wholly extrinsic, i. e. arising from matters foreign to or *dehors* the record, the only remedy the party injured by it has (except error *coram nobis* or *vobis* in some few cases), is by applying to the court for a new trial, which is in substitution of a bill of exceptions. But the court must be satisfied that there are strong probable grounds to suppose that the merits have not been fairly and fully discussed, and that the decision is not agreeable to the justice and truth of the case, before they will grant a new trial.

The following is a summary of the cases in which a new trial will or will not be granted:

(1) Mistake, &c., of the judge. If a judge misdirect a jury, even in a penal action, it is, generally, a good ground for a new trial. So if a judge improperly nonsuit a plaintiff. So if a judge admit improper evidence, or reject evidence which ought to be admitted, by which means the result of the trial or inquiry has been different from what it otherwise would have been. An objection to the admissibility of evidence should be made when the evidence is tendered. Where a bill of exceptions has been tendered, the court will never grant a new trial upon the same point of law, unless the party consent to waive his bill of exceptions.

(2) Default or misconduct of the officer of the court. As where a cause is, by mistake, entered in a wrong list, and the cause is tried as undefended in the defendant's absence.

(3) Default or misconduct of the jury. If a juror has been sworn by a wrong *surname,* and it has been productive of some injustice. If a jury find a verdict contrary to evidence. For excessive damages, but not for the smallness of the damages, unless it has arisen from some mistake or unfair practice. For the misconduct of the jury, as if they had eaten or drunk at the expense of the party for whom they had afterwards found a verdict; or if they determined their verdict by lots, or if any of them had declared that the plaintiff should never have a verdict. But if the information of such misconduct come from any of the jurors, or from the unsuccessful party, the court will not receive it, although in some degree confirmed by evidence *aliunde.*

(4) Absence, &c. of counsel or attorney. The instances are very rare in which the court has granted a new trial where a verdict has been obtained against a party on account of the absence of his counsel, &c.

(5) Default or misconduct of the opposite party. If a party for whom a verdict is afterwards given, deliver to the jury, after they have left the bar, evidence which had not been adduced in court, a new trial will be granted. So if he have labored the jury, or used improper influence with them. So misleading or taking by surprise the opposite party. So where no notice of trial had been given; but if the defendant appear to defend, this irregularity is waived.

(6) Default or misconduct of witnesses. The general rule is, that a new trial will not be granted on the ground that evidence has not been given that might have been given at the trial, for the plaintiff ought, if unprepared with his evidence, either to make application to postpone the trial before the jury are sworn, or should withdraw his record and not take the chance of a verdict. The court has granted a new trial where it appeared clearly that the plaintiff's case was a mere fiction supported by perjury, which the defendant could not at the time of the trial be prepared to answer.

(7) Discovery of new evidence after the trial. A new trial will seldom be granted where a verdict has been given against a party, or a plaintiff has been nonsuited for want of

evidence which might have been produced at the trial, because it would tend to introduce perjury. But if new evidence have been discovered after the trial, the court will grant a new trial upon payment of costs, if it be necessary, in order to do justice between the parties, but the discovery of witnesses who can contradict those produced on the former trial, seems to be no ground for a new trial, nor will the court grant a new trial to let a party into a defence of which he was apprised at the first trial.

(8) Error in pleadings, variance, &c. This will form no ground for a new trial, for a judge might amend, as a general rule, at the trial.

(9) Where one of several issues, &c. has been wrongly decided. If the court grant a new trial upon this ground, it must extend to all the issues.

(10) Where the action or defence is trifling or vexatious. The value or amount must be 20*l.* at least, to induce the court to interfere; unless on trials before the sheriff in which the limited sum is 5*l.* or the verdict involve some particular right independent of the damages.

(11) Where there has been a previous new trial. If the jury on the second trial find for the party against whom the former verdict was given, the court, if the case be doubtful, or the second verdict do not accord with the justice of the case, may be induced to grant a third trial, but this is entirely in the discretion of the court, even after two concurring verdicts.

(12) Where leave has been reserved to enter a nonsuit or verdict. The court may, instead of allowing a verdict or nonsuit to be entered, send down the cause for a new trial, if it be more in accordance with the justice of the case.

(13) Where a party has been taken by surprise.

A new trial may be awarded for the same causes, after writ of trial and inquiry before the sheriff, as after a verdict. And so in penal actions. Also, in actions of ejectment, if verdict found for the plaintiff; but where the verdict is for the defendant, the court will seldom grant a new trial, because the plaintiff may, if he will, bring a new action. In replevin, where the verdict is for the plaintiff, the court will be more cautious in granting a new trial than in other actions, and will not grant it unless upon very clear grounds; for the landlord has other remedies for his rent, and a new trial will renew the liability of the sureties.

The motion for a rule to show cause why a verdict should not be set aside, and a new trial granted, is made in the court in which the action is pending, unless in the case of an issue out of Chancery, when it is made to the court directing it. The motion is made by the party aggrieved by the first trial. One or more of several defendants may move. The motion for the rule *nisi* must be made within four days from the day of trial, if the cause be tried in term; but if the cause be tried in vacation, then within the four first days of the term next after the trial, unless entered in a list of postponed motions by leave of the court.

A new trial cannot, in general, be moved for after a motion in arrest of judgment, nor after error brought.

When the case is called on for argument, and it is necessary to do so, the judge who tried the cause, or, if it were tried by a judge of another court, the junior *puisnè* judge, will read his report of the trial; after which the counsel on the opposite side show cause against the rule; the counsel for the party who moved for the rule *nisi* speak in support of it, and the court then state their opinion, either discharging or making absolute the rule.

If the court make the rule absolute, they may do so upon terms, if necessary; such as that witnesses infirm or going beyond sea may be examined upon interrogatories, or that their evidence may be read from the judge's notes of the first trial; that certain deeds, books, papers, &c. may be produced at the trial, that certain facts, not intended to be litigated, may be admitted, or that the party may make discovery of certain facts upon oath, in order to prevent the necessity of having recourse to a bill of discovery in equity for it.

The party obtaining the rule is not bound to proceed to the new trial in any limited time, but if the plaintiff do not proceed to the second trial, the defendant may carry down the record by proviso, after the next term or assizes from that in which the new trial was granted.

It is entirely in the discretion of the court whether they will oblige the party applying for a new trial to pay costs as a condition precedent to his proceeding to a second trial. If a new trial be granted upon a ground not opened upon the first trial, it will be upon payment of costs. If a new trial be granted without any mention of costs in the rule, the costs of the first trial shall not be allowed to the successful party, though he succeed on the second. Where the costs are ordered to abide the event of the second trial, if the same party succeed on both trials, he shall have the costs of the first as well as the second. By 'the event of the second trial,' is meant the ultimate event of the cause; and, therefore, if the verdict at the second trial be set aside, and on the third trial the ultimate event be the same as on the first trial, the party will be entitled to the costs of the first trial. In all cases of motion for a new trial upon the ground that the judge has not ruled according to law, if the rule to show cause be refused, or if granted be then discharged or made absolute, the party decided against may appeal, provided any one of the judges dissent from the rule being refused, or

when granted, being discharged or made absolute, as the case may be, or provided the court in its discretion think fit that an appeal should be allowed; provided, that where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence, or otherwise, no such appeal should be allowed.—*C. L. P. A.* 1854, s. 35; and see s. 44; 2 *Chit. Arch. Prac. by Pren.* 1505, *et seq.*

Applications for new trials of causes tried before juries in the Court of Probate must be made to the court within fourteen days from the day on which the cause was tried, or on the first motion day on which the court shall sit after the expiration of the fourteen days (Rule 59 of 1862). The same time is limited for applications for the rehearing of causes heard before the judge without a jury, in which the evidence has been given *vivâ voce* (Rule 60 of 1863).

In divorce causes the judge ordinary has power to grant or refuse applications for new trials. If either party is dissatisfied with his decision an appeal lies within fourteen days of the pronouncing of the decision to the full court, whose decision is final.—23 & 24 *Vict.* c. 144, s. 2.

New Year's Day, the first of January, and the day on which is commemorated the circumcision of the Saviour, as being the eighth from the 25th of December, his supposed day of nativity. The 25th of March was the civil and legal New Year's Day, till the alteration of the style in 1752, when it was permanently fixed to the 1st January.

In Scotland the year was, by a proclamation, which bears date 27th November, 1599, ordered thenceforth to commence in that kingdom on the 1st January instead of the 25th March.—*Encyc. Lond.*

Newgate, *Delivery of.* See CENTRAL CRIMINAL COURT.

News, something not heard before.

Spreading false news to make discord between the sovereign and nobility, or concerning any great man of the realm, is a misdemeanor punishable at common law with fine and imprisonment; which is confirmed by stat. West. I. 3 Edw. I. c. 34; 2 Ric. II. st. 1, c. 5; and 12 Ric. II. c. 11.

Newspapers, periodicals in numbers, consisting commonly of single sheets, and published at short and stated intervals, and conveying intelligence of passing events. The Acts regulating them are 60 Geo. III. and 1 Geo. IV. c. 9; 11 Geo. IV. and 1 Wm. IV. c. 73; and 6 & 7 Wm. IV. c. 76. By 18 & 19 Vict. c. 27, it is not compulsory to print newspapers on paper stamped with the duty imposed by 13 & 14 Vict. c. 97, except for the purpose of their transmission by post, free of charge.

New Zealand, *Bishopric of,* constituted by 15 & 16 Vict. c. 88.

New Zealand Islands. See 3 & 4 *Vict.* c. 62; 9 & 10 *Vict.* c. 103; 10 & 11 *Vict.* c. 112; 11 & 12 *Vict.* c. 5; 12 & 13 *Vict.* c. 79; 13 & 14 *Vict.* c. 70; 14 & 15 *Vict.* cc. 84, 86; 15 & 16 *Vict.* c. 72; 20 & 21 *Vict.* cc. 51, 52, 53; 24 & 25 *Vict.* cc. 30, 52; 25 & 26 *Vict.* c. 48. By 26 Vict. c. 23, the boundaries of New Zealand are altered.

Nexi, among the Romans, persons free-born, who, for debt, were delivered bound to their creditors, and obliged to serve them until they could pay their debts.

Next friend. At law, an infant having a guardian, may sue by his guardian, as such, or by his next friend, though he must always defend by his guardian. In equity, he sues by next friend, and not by guardian, and defends by guardian *ad litem.*

A *feme covert,* if her husband is banished, or has abjured the realm, or has been transported for felony, may, both at law and in equity, maintain a suit in her own name, as a *feme sole,* but generally she cannot sue, either at law or in equity, unless her husband be joined. But in equity, if her husband's interest be adverse to her, or where the suit relates exclusively to her separate estate, then she sues by her next friend. But in this respect she is differently placed from an infant; for no person can exhibit a bill as her next friend without her consent; whereas an infant's consent to a bill filed in his name is not necessary. The next friend of an infant is *primâ facie* liable to the costs, which are however reimbursed to him out of the infant's estate, provided he have acted properly, but the next friend of a *feme covert* does not incur the like responsibility.

Idiots and lunatics, found such by inquisition, sue by the committee of their estate.

Next of kin. See KINDRED.

Nexum, the transfer of ownership of a thing or the mortgage of it.—*Civ. Law.*

Nicole, an ancient name for Lincoln.—*Cowel.*

Niderling, Nidering, or **Nithing,** a vile, base person, or sluggard; chicken-hearted.—*Spelm.*

Niece [fr. *neptis,* Lat.], the daughter of a brother or sister. See NEPHEW, as to the degree of consanguinity.

Nief. See NEIFE.

Nient comprise (*not contained*), an exception taken to a petition, because the thing desired is not contained in the deed or proceeding upon which the petition is founded.

Nient culpable (*not guilty*), a plea in criminal prosecutions.

Nient dedire (*to disown nothing*), to suffer judgment by not denying or opposing it, i. e. by default.

Nient le fait (*not his deed*).

Niger Liber, the black book or register in the Exchequer; chartularies of abbeys, cathedrals, &c.

Night, the time of darkness between sunrise and sunset.

Housebreaking by night is burglary, which see.

Under the Act against poaching by night, 9 Geo. IV. c. 69, s. 12, the night is to be considered to commence at the expiration of the first hour after sunset, and to conclude at the beginning of the last hour before sunrise.

An arrest may be made on a *capias* on mesne process in the night; and also on a *ca. sa.*; and a writ of summons may be served during the night.

Night magistrate, a constable of the night; the head of a watch-house.—*Scott.*

Night-walkers, vagrants, pilferers, disturbers of the peace. They may be arrested by the police, and committed to custody till the morning.—2 *Hale, P. C.* 90.

Nihil [Lat.] (*nothing*), a return made by a sheriff, &c., when the circumstances warrant it.

Nihil aliud potest rex in terris, cum sit Dei minister et vicarius, quam quod de jure potest. Itaque potestas juris sua est non injuriæ; cum sit auctor juris, non debet inde injuriarum nasci occasio unde jura nascuntur.—11 *Co.* 74.—(The king being the minister and Vicar of God, can do nothing else on earth but what is founded in justice. His own power, therefore, partakes of justice, not of wrong; since he is the author of justice, it beseems not that an opportunity of doing injury should arise from the source of rights.)

Nihil capiat per breve (*that he take nothing by his writ*), where an issue, arising upon a declaration or peremptory plea, is decided for the defendant, the judgment is, generally, that the plaintiff take nothing, &c., and that the defendant go thereof without day, &c., which is a judgment of *nihil capiat, &c.*

Nihil dat qui non habet.—Jur. Civ.—(He gives nothing who has nothing.)

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet.—Co. Litt. 188.—(Nothing of a matter accrues to him who, when the right accrues, has nothing in that matter.)

Nihil est ad conciliandum gratius verecundiâ. (There is nothing more favourable to conciliation than modesty.)

Nihil facit error nominis cum de corpore constat.—11 *Co.* 21.—(An error as to a name is nothing when there is certainty as to the person.)

Nihil habet forum ex scenâ.—Bacon.—(The court has nothing to do with what is not before it.)

Nihil infra regnum subditos magis conservat in tranquillitate et concordiâ quam debita legum administratio.—2 *Inst.* 158.—(Nothing more preserves in tranquillity and concord those subjected to the government than a due administration of the laws.)

Nihil in lege intolerabilius est eandem rem diverso jure censeri.—4 *Co.* 93.—(Nothing in law is more intolerable than to rule a similar case by a diverse law.)

Nihil magis justum est quam quod necessarium est.—Dav. 12.—(Nothing is more just than what is necessary.)

Nihil perfectum est dum aliquid restat agendum.—9 *Co.* 9.—(Nothing is perfect while something remains to be done.)

Nihil possumus contra veritatem.—Doct. and Stud. D. 2, c. vi.—(We can prevail nought against truth.)

Nihil quod est contra rationem est licitum.—Co. Litt. 97.—(Nothing is permitted which is contrary to reason.)

Nihil quod inconveniens est licitum est.—Ibid. (Nothing is permitted which is inconvenient.)

Nihil simul inventum est et perfectum.—Co. Litt. 230.—(Nothing is invented and perfected at the same moment.)

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est.—2 *Inst.* 359.—(Nothing is so consonant to natural equity as that a thing should be dissolved by the same means by which it was bound.)

Nihil tam conveniens est naturali æquitati quam voluntatem domini rem suam in alium transferre ratam habere.—1 *Co.* 100.—(Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.)

Nihil tam proprium est imperii quam legibus vivere.—2 *Inst.* 63.—(Nothing is so much the property of sovereignty as to live according to the laws.)

Nihil temere novandum.—Jenk. Cent. 163.—(Let nothing be rashly changed.)

Nihils, or **Nichils,** issues which a sheriff, apposed in the Exchequer, said were nothing worth and illeviable, for the insufficiency of the parties from whom due. Sheriffs' accounts are now passed by the commissioners for auditing the public accounts.—3 & 4 *Wm. IV.* c. 99.

Nil debet (*he owes nothing*), the form of the general issue, not only in debt or simple contract, but in all other actions of debt not founded on a specialty. It is not now allowed in any action.—*H. T.* 1853, r. 11. But this does not do away with the plea in penal actions under 21 Jac. I. c. 4.—1 *Saund.* 38 *a*, note *o*.

Nil dicit, *Judgment by.* See JUDGMENT BY DEFAULT.

Nil habuit in tenementis, a plea to be pleaded in an action of debt only, brought by a lessor against lessee for years, or at will, without deed.

If both lessee and lessor execute a lease, the former is estopped from pleading this plea to an action of debt for rent by the lessor. It has, however, been held to be a good plea on a demise by deed poll, because, as to the lessee, it is no estoppel. It cannot be pleaded by a lessee in any case where occupation is enjoyed, for the court will not permit a tenant to impeach his landlord's title. In debt on bond, conditioned for the payment of rent reserved upon a demise according to certain articles, the defendant is estopped from saying that he had not anything in the land demised by the articles. In debt for rent by husband and wife, upon a lease by her and her first husband, it is a good plea that her husband was solely seised, and that she had nothing in the land. In assumpsit, for use and occupation, this is a bad plea. It is also no plea in bar of an avowry under 11 Geo. II. c. 19.—*Woodf. Land. and Ten.* 593; 1 *Selw. Nisi Prius*, 557, 629.

Nil sine prudenti fecit ratione vetustas.—*Co. Litt.* 65.—(Antiquity did nothing without a good reason.)

Nimia subtilitas in jure reprobatur.—*Wing.* 26.—(Too much subtlety in law is blamed.)

Nimium altercando veritas amittitur.—*Hob.* 344.—(By too much altercation truth is lost.)

Nimmer, a thief; a pilferer.

Nisan. See ABIB.

Nisi prius, a common law phrase, which originated thus:—

An action was formerly triable only in the court where it was brought. But it was provided by Magna Charta, in ease of the subject, that assizes of novel disseisin and mort-ancestor (which were the most common remedies of that day) should thenceforward, instead of being tried at Westminster, in the superior court, be taken in their proper counties, and for this purpose justices were to be sent into every county once a year to take these assizes there.—1 *Reeves*, 246. These local trials being found convenient, were soon applied not only to assizes, but to other actions; for, by the statute of *Nisi Prius*, 13 Edw. I. st. 1, c. 30, it is provided, as the general course of proceeding, that writs of *venire* for summoning juries to the superior courts shall be in the following form: *Præcipimus tibi quod venire facias coram justiciariis nostris apud Westm. in Octavis Sancti Michaelis NISI talis et talis, tali die et loco, ad partes illas venerint, duodecim, &c.* Thus the trial was to be had at Westminster only in the event of its not previously taking place in the county before the justices appointed to take the assizes. This clause of *nisi* or *nisi prius* is not now retained in the *venire*, but it occurs in the record and the judgment roll. And it is enforced by a subsequent statute of 14 Edw. III. c. 16, which authorizes, at the present day, a trial before the justices of assize, in lieu of the superior court, and gives it the name of a trial at *nisi prius*.—2 *Inst.* 424. As to sittings at *nisi prius*, see 1 *Chit. Arch. Prac. by Pren.* 171 & 379, *et seq.*

Nisi prius record, an instrument in the nature of a commission to the judges at *nisi prius* for the trial of a cause. It is written on parchment and delivered to the proper officer of the court in which the cause is to be tried, and by him duly entered. Any variance between the record and the issue should be objected to at the time of trial, but the judges have power to amend variances.—9 *Geo. IV.* c. 15; 3 & 4 *Wm. IV.* c. 42, s. 23; *C. L. P. Act*, 1852, s. 222; and 1 *Chit. Arch. Prac. by Pren.* 361.

Nivicollini Britones, Welshmen, because they live near high mountains covered with snow.—*Du Cange.*

Nizam, order, arrangement, an arranger.—*Indian.*

Nizam-ul-mulk, the administrator of the empire.—*Ibid.*

Nizamut, arrangement, government, the office of the Nazam or Nizam.—*Ibid.*

Nizamut Adawlut, the Court of Criminal Justice.—*Ibid.*

Nobile officium, the equitable jurisdiction of the Court of Session in Scotland.

N. L. See A. and NON LIQUET.

Nobiles magis plectuntur pecuniâ; plebes vero in corpore.—3 *Inst.* 220.—(The higher classes are more punished in money; but the lower in person.)

Nobiles sunt qui arma gentilitia antecessorum suorum proferre possunt.—2 *Inst.* 595.—(The gentry are those who are able to produce armorial bearings derived by descent from their own ancestors.)

Nobiliores et benigniores præsumptiones in dubiis sunt præferendæ.—*Reg. Jur. Civ.*—(In cases of doubt, the more generous and more benign presumptions are to be preferred.)

Nobilitas est duplex, superior et inferior.—2 *Inst.* 583.—(There are two sorts of nobility, the higher and the lower.)

Nobility, a division of the lay people in our civil state, comprehending dukes, marquesses, earls, viscounts, and barons. These had anciently duties annexed to their respective honors; they are created either by writ, i. e. by royal summons to attend the house of peers, or by letters-patent, i. e. by royal grant of any dignity and degree of peerage; and they enjoy many privileges, exclusive of their senatorial capacity.—1 *Bl. Com.* 396.

Nocent, guilty; criminal.

Noctanter (*by night*), an abolished writ which issued out of Chancery, and returned to

the Queen's Bench, for the prostration of enclosures, &c.—7 & 8 *Geo. IV.* c. 27.

Noctes and **Noctem de Firmâ**, entertainment of meat and drink for so many nights.—*Domesday.*

Nodfyrs, or **Nedfri** [fr. *neb*, Sax., necessary], necessary fire.

Noes. When a question is put from the Chair in the House of Commons, those members who give their voices and votes in the negative are called the Noes, as distinguished from the Ayes, those who give their voices and votes in the affirmative.

Nolle prosequi (*to be unwilling to prosecute*), a proceeding in the nature of an acknowledgment or undertaking by the plaintiff when he has misconceived the nature of the action, or mistaken the proper party to be sued, to forbear to proceed any further either in a suit altogether, or as to some part of it, or as to some of the defendants; but if it is entered as to part of a suit only, or as to some of the defendants, he is at liberty to proceed as to the rest. It differs from a *non pros*, which puts a plaintiff out of court with respect to all the defendants. If it be entered *before* judgment, the plaintiff may bring another action for the same cause, but if *after* judgment, it operates as a *retraxit*, and bars any future action for the same cause.

In actions upon contracts against several defendants, whether they join or sever in their pleas, the plaintiff cannot enter a *nolle prosequi* as to any one of them without releasing the others; but this is not the case in actions upon tort.

Where a *nolle prosequi* is entered as to the whole declaration, the defendant is entitled to his costs. By 3 & 4 Wm. IV. c. 42, s. 32, it is enacted, that where several persons shall be made defendants in any personal action, and any one or more of them shall have a *nolle prosequi* entered as to him or them, every such person shall have judgment for and recover his reasonable costs. And where any *nolle prosequi* shall have been entered upon any count, or as to part of any declaration, the defendant shall be entitled to and have judgment for and recover his reasonable costs in that behalf (s. 33).

Nomen collectivum, a singular noun of multitude.

Nomen generalissimum, a most universal term, as land.

Nomen dicitur à noscendo, quia notitiam facit.—6 *Co.* 65.—(A name is called from the word to know, because it makes recognition.)

Nomen ducis mergitur nomine regis.—*Jenk. Cent.* 225.—(The name of the duke is merged in the name of king.)

Nomen est quasi rei notamen.—11 *Co.* 20.—(A name is, as it were, the note of a thing.)

Nomen non sufficit si res non sit de jure aut de facto.—4 *Co.* 107.—(The name is not sufficient if the thing be not by law or by fact.)

Nomenclator, one who calls things or persons by their proper names; one who opens the etymologies of names, interpreted.—*Thesaurarius; Spelm.*

Nomina Villarum, an account of the names of all the villages and the possessors thereof, in each county, drawn up by several sheriffs, 9 Edward II., and returned by them into the Exchequer, where it is still preserved.

Nomina si nescis perit cognitio rerum. Et nomina si perdas, certè distinctio rerum perditur. Co. Litt. 86.—(If you know not the names of things, the knowledge of things themselves perishes. And if you lose the names, the distinction of the things is certainly lost).

Nomina sunt notæ rerum.—11 *Co.* 20.—(Names are the notes of things).

Nomina sunt mutabilia, res autem immobiles. 6 *Co.* 66.—(Names are mutable, but things immutable).

Nomina sunt symbola rerum. — *Godb.* — (Names are the symbols of things).

Nominal partner, one who has not any actual interest in the trade or business, or its profits; but, by allowing his name to be used, holds himself out to the world as apparently having an interest.

'If a person will lend his name as a partner,' said Lord Chief Justice Eyre (*Waugh* v. *Carver*, 2 *H. Bl.* 235), 'he becomes, as against all the rest of the world, a partner, not upon the grounds of the real transaction between them, but upon principles of general policy, to prevent the frauds to which others would be liable, if they were to suppose they lent their money upon the apparent credit of three or four persons, when in fact they lent it only to two of them, to whom, without the others, they would have lent nothing.'

However, to render a person responsible as a nominal partner, positive consent, or at least a knowledge by him of the assumption of his name, from which his acquiescence will be inferred, must be shown.—*Gow on Partnership*, 12, 24, 25, 80, 129; *Story on Partnership*, 96, 112, 351.

Nominate contracts, those distinguished by particular names.

Nomination, the act of mentioning by name; especially the power of appointing, by virtue of some manor or otherwise, a clerk to a patron of a benefice, by him to be presented to the ordinary. A nominator must appoint his clerk within six months after avoidance; if he do not, and the patron presents his clerk before the bishop has taken any benefit of the lapse, he is obliged to admit such clerk.—*Plowd.* 529.

Nomine pœnæ, a penalty incurred for not

paying rent, &c. at the day appointed in the lease or agreement for payment thereof.

Strictly speaking, no forfeiture can be called *nomine pœnæ*, unless it be for the non-payment of rent; but it is not unusual to mention stipulated penalties for other things, as for the non-payment of a collateral sum, for ploughing up ancient meadow, or above a certain number of acres in one year, for changing the character of particular premises, or the like, by the general name of *nomine pœnæ*.

Where a penalty is annexed to the non-payment of rent, and distress given for it, a demand must be made, and the penalty is waived by an acceptance of the rent.—*Cowp.* 247; *Woodf. Land. and Ten.* 327.

Nominee, a person nominated or appointed to any place or office; a surrenderee.

Nomocanon [fr. *νόμος*, Gk., law, and *κανών*, a rule], a collection of canons and imperial laws relative or conformable thereto.

The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. Balsamon wrote a commentary upon it in 1180.

Also, a collection of the ancient canons of the apostles, councils, and fathers, without any regard to imperial constitutions. Such is the nomocanon by M. Cotelier.—*Encyc. Lond.*

Nomographer [fr. *νόμος*, Gk., law, and *γράφω*, to write], one who writes on the subject of laws.

Nomography, a treatise or description of laws.

Nomothesy [fr. *νόμος*, Gk., law, and *τίθημι*, to put], the institution of laws; the publication of laws.

Nomotheta [Gk.], a lawgiver, or law-commissioner.

Nomothetical, legislative.

Non, not. It is never used separately, but sometimes prefixed to words with a negative power.

Non-ability, inability; an exception against a person.

Non accipi debent verba in demonstrationem falsam quæ competunt in limitationem veram.—*Bacon.*—(Words which agree in a true meaning, ought not to be received in a false sense).

Non alio modo puniatur aliquis quam secundum quod se habet condemnatio.—3 *Inst.* 217. (A person may not be punished differently than according to what the sentence enjoins).

Nonæ et decimæ, payments made to the church, by those who were tenants of church-farms. The first was a rent or duty for things belonging to husbandry, the second was claimed in right of the church.

Non-acceptance, the refusal of acceptance.

Non acceptavit [Lat.] (*he did not accept*). This plea puts in issue the fact of the bill being due at the time of action brought, being a denial of a defendant having accepted such a bill as was described in the declaration.—*Hinton* v. *Duff*, 10 *W. & M.* 295.

Non-access, when a husband could not, in the course of nature, by reason of his absence, have been the father of his wife's child, the child is by law a bastard.

Access, or sexual intercourse, is certainly to be presumed during lawful wedlock; but this presumption may be encountered by proof of any circumstances which satisfactorily show that this sexual intercourse did not take place within such a time that the husband could, according to the laws of nature, be the fatheer and the proof of these circumstances must be regulated by the same principles as are applicable to the establishment of any other fact. The mother of the child whose legitimacy is questioned will not be allowed to prove the non-access of her husband, not even after her husband's death.—2 *Phil. on Evid.* 248.

Non-act, a forbearance from action; the contrary to act.

Non-admission, the refusal of admission.

Non-age, minority.

Nonagium, or **Non-age,** a ninth part of movables which was paid to the clergy on the death of persons in their parish, and claimed on pretence of being distributed to pious uses. *Blount.*

Non-appearance, the omission of timely and proper appearance; a failure of appearance.

Non assumpsit (*he has not promised*), a plea by way of traverse, which occurs in the action of *assumpsit* or promises.

The plea of *non assumpsit* operates as a denial in point of fact of the existence of any express promise to the effect alleged in the declaration, or of the matters of fact from which the promise alleged would be implied by law. But under this plea the defendant cannot insist that, though a contract was made as alleged, it is invalid in point of law, for this must form the subject of a special allegation, showing the circumstances out of which the illegality is supposed to arise.—*Step. Plead.* 183.

In *assumpsit*, the rules of Hilary Term, 1853, order that, 'In all actions of simple contract (except as thereinafter excepted) the plea of *non assumpsit* (which by the way is no longer properly called the general issue) or a plea traversing the contract or agreement alleged in the declaration, shall operate only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the contract, promise, or agreement alleged may be implied by law, e. g. in an action on a warranty, such pleas will operate as a denial of the fact of the sale and warranty having been given, and not of the breach; and in an action on a policy of insurance,

of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties. In actions against carriers and other bailees for not delivering or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, such pleas will operate as a denial of any express or implied contract to the effect alleged in the declaration, but not of the breach. To causes of action to which the plea of "never was indebted" is applicable as provided in Schedule B (36) of the Common Law Procedure Act, 1852, and to those of a like nature, the plea of *non assumpsit* shall be inadmissible, and the plea of "never was indebted" will operate as a denial of those matters of fact from which the liability of the defendant arises; e. g. in actions for goods bargained and sold, or sold and delivered, the plea will operate as a denial of the bargain and sale, or sale and delivery in point of fact; in the like action for money had and received, it will operate as a denial both of the receipt of the money and the existence of those facts which makes such receipt by the defendant a receipt for the use of the plaintiff' (r. 6).

'In all actions upon bills of exchange and promissory notes, the plea of *non assumpsit* and never indebted shall be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact, e. g. the drawing, or making, or indorsing, or accepting, or presenting a notice of the dishonor of the bill or note' (r. 7).

'In every species of action on contracts, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law, on the ground of fraud or otherwise, shall be specially pleaded, e. g. infancy, coverture, release, payment, performance, illegality of consideration, either by statute or common law, drawing, indorsing, accepting, &c. bills or notes by way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other defences must be pleaded' (r. 8).

Non assumpsit infra sex annos (*he has not promised within six years*). The form of pleading the Statute of Limitations.

Non-attendance, the not giving personal attendance.

Non-attention, the want of proper and timely attention.

Non bis in idem (*not twice tried for the same offence*).

Non cepit (*he took not*), a plea by way of traverse, which occurs in the action of replevin.

This plea applies to the case where the defendant has not, in fact, taken the cattle or goods, or where he did not take them or have them, in the place mentioned in the declaration; the place being a material point in this action.

Non-claim, the omission or neglect of him that ought to challenge his right within a time limited, as within a year and day, but now no continual or other claim shall preserve any right of making an entry or distress, or of bringing an action.—3 & 4 *Wm. IV.* c. 27, s. 11.

Non compos mentis, said of a person who is not of sound memory and understanding. See IDIOTS and MENTAL ALIENATION.

Non con, an abbreviation of nonconformist, which see; or of non-content.

Non concedantur citationes priusquam exprimatur super quâ re fieri debet citatio.—12 *Co.* 47.—(Summonses should not be granted before it is expressed on what matter the summons ought to be made).

Non concessit (*he did not grant*), a plea resorted to by a stranger to a deed, because estoppels do not hold with respect to strangers.

This plea brings into issue the title of the grantor as well as the operation of the deed.

Nonconformist, one who refuses to comply with others; one who refuses to join in the established worship.

Nonconformists are of two sorts: (1) such as absent themselves from divine worship in the established church through total irreligion, and attend the service of no other persuasion; (2) such as attend the religious service of another persuasion. See DISSENTER.

Nonconformity, refusal of compliance.

Non constat (*it is not plain*).

Non culpabilis, sometimes abbreviated **Non cul.** (*not guilty.*)

Non damnificatus (*not injured*), a plea in an action of debt on an indemnity bond, or bond conditioned 'to keep the plaintiff harmless and indemnified, &c.'

This is in the nature of a plea of performance; being used where the defendant means to allege that the plaintiff has been kept harmless and indemnified, according to the tenor of the condition; and it is pleaded in general terms without showing the particular manner of the indemnification.—*Step. Plead.* 378.

Non debent mulieribus assignari castra in dotem quæ fuerunt virorum suorum et quæ de guerra existunt, vel etiam homagia et servicia aliquorum de guerra existentia.—*Co. Litt.* 31. (Castles which belonged to their husbands, and which are for war, ought not to be assigned to widows as dower, or even homage or services of things belonging to war.)

Non debet adduci exceptio ejus rei cujus petitur dissolutio.—*Jenk. Cent.* 37.—(An exception of the thing, whose abolition is sought, ought not to be adduced.)

Non debet dici tendere in præjudicium ecclesi-

asticæ libertatis quod pro rege et republicâ necessarium videtur.—2 *Inst.* 625.—(That which seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty.)

Non decimando, a custom or prescription to be discharged of all tithes, &c.

Non decipitur qui scit se decipi.—5 *Co.* 60. (He is not deceived who knows himself to be deceived.)

Non definitur in jure quid sit conatus.—6 *Co.* 41.—(What an attempt is, is not defined in law.)

Non detinet, a plea by way of traverse, which occurs in the action of detinue.

This plea alleges that the defendant does not detain 'the said goods in the said declaration specified, &c.' It operates accordingly as a denial of the detention of the goods in question by the defendant. But, under this form of plea, the defendant cannot deny that the goods were the plaintiff's property.—*Step. Plead.* 177.

Non differunt quæ concordant re, tametsi non in verbis iisdem.—*Jenk. Cent.* 70.—(Those things that agree in substance, though not in the same words, do not differ.)

Non dimisit (*he demised not*), a plea resorted to where a plaintiff declares upon a demise without stating the indenture in an action of debt for rent.

Also, a plea in bar, in replevin to an avowry for arrears of rent, that the avowant did not demise.

Non distringendo, a writ not to distrain.—Obsolete.

Non effecit affectus nisi sequatur. Sed in atrocioribus delictis punitur affectus, licet non sequatur effectus.—2 *Rol. Rep.* 89.—(The intention fulfils nothing unless an effect follow. But in the deeper delinquencies, the intention is punished, although an effect follow not.)

Nones, days so called because they reckoned nine days from them to the Ides.

The seventh day of March, May, July, and October, and the fifth day of all other months. *Kenn. Antiq.* 92.

Non est arctius vinculum inter homines quam jusjurandum.—*Jenk. Cent.* 126.—(There is no tighter link among mankind than an oath.)

Non est consonum rationi, quod cognitio accessorii in curiâ christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere.—12 *Co.* 65.—(It is unreasonable that the cognizance of an accessory matter should be impeded in an ecclesiastical court, when the cognizance of the principal cause is admitted to appertain to an ecclesiastical court.)

Non est disputandum contra principia negantem.—*Co. Litt.* 343.—(We cannot dispute against a man denying principles.)

Non est factum, a plea by way of traverse, which occurs in debt on bond or other specialty, and also in covenant.

This plea denies that the deed mentioned in the declaration is the defendant's deed; under this the defendant may contend at the trial that the deed was never executed in point of fact. But he cannot, under this plea, deny its validity in point of law, for this should form the subject of a special allegation, showing the circumstance out of which the illegality is supposed to arise. None but the party, his heirs, executors, &c. can plead *non est factum*, for a stranger to a deed cannot; he must say nothing passed by the deed.

By the rules of Hilary Term, 1853, 'In actions on specialties or covenants, the plea of *non est factum* shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable' (r. 10).

Non est inventus, a sheriff's return to a writ when the defendant is not to be found in his bailiwick.

Non est juri consonum quod quis super iis quorum cognitio ad nos pertinet, curiâ christianitatis trahatur in placitum.—12. *Co.* 44.—(It is unreasonable that any one should be drawn to plead in an ecclesiastical court to those things the cognizance of which belongs to us.)

Non est justum aliquem antenatum post mortem facere bastardum, qui toto tempore vitæ suæ pro legitimo habebatur.—*Co. Litt.* 244.—(It is not just to make an elder born a bastard after his death, who, during his lifetime, was accounted legitimate.)

Non est recedendum a communi observantiâ. 2 *Co.* 74.—(There is no departing from common observance.)

Non est regula quin fallat.—*Office of Executor*, 212.—(There is no rule which may not fail.)

Non facias malum, ut inde veniat bonum.—11 *Co.* 74.—(You are not to do evil that thence good may arise.)

Non-feasance, an offence of omission of what ought to be done.

Non impedit clausula derogatoria quo minus ab eâdem potestate res dissolvantur a quâ constituuntur.—*Bacon.*—(A derogatory clause does not impede things from being dissolved by the same power by which they are created.)

Non in legendo sed in intelligendo leges consistunt.—8 *Co.* 167.—(The laws consist not in being read, but in being understood.)

Non jus sed seisina facit stipitem.—*Fleta*, l. vi.—(Not right, but seisin, makes a stock.)

Non licet quod dispendio licet.—*Co. Litt.* 127.—(That which is permitted at a loss is not permitted.)

Non implacitando aliquem de libero tenemento sine brevi, a writ to prohibit bailiffs, &c. from distraining or impleading any man touching his freehold without the king's writ.—*Reg. Orig.* 171. Obsolete.

Non infregit conventionem, a plea which raises a substantial issue in an action for non-repair according to covenant, whether there was a want of repairs or not.—1 *Selw. Nisi Prius,* 561.

Non intromittant clause, a clause exempting a smaller jurisdiction from being included in a larger.

Non intromittendo, quando breve præcipe in capite subdole impetratur, a writ addressed to the justices of the bench, or in eyre, commanding them not to give one who under color of entitling the king to land, &c. as holding of him, *in capite,* had deceitfully obtained the writ called *præcipe in capite,* any benefit thereof, but to put him to his writ of right.—*Reg. Orig.* 4. Obsolete.

Non-issuable pleas, those upon which a decision would not determine the action upon the merits, as a plea in abatement.

Non-joinder, a plea in abatement for the non joinder of a person as co-defendant; it must state that the person who is the subject of the plea resides within the jurisdiction, and his residence must be stated with convenient certainty in an affidavit verifying the plea.

No action or suit commenced to recover damages for loss or injury to any parcel, package, or person, shall abate, for the want of joining any co-proprietor, in any mail, stage coach, or other public conveyance, by land, for hire.—1 *Wm. IV.* c. 68, s. 5. See 7 *Geo. IV.* c. 46.

Non-joinder of plaintiffs and defendants is amendable by C. L. P. A. 1852, ss. 34–46. See *Chit. Arch. Prac. by Pren.* 403, 897, 1550.

Non-juring [fr. *non* and *juro,* Lat., to swear], applied to those who would not swear allegiance to the Hanoverian family.—*Encyc. Lond.*

Non-juror, one who, conceiving the Stuart family unjustly deposed, refused to swear allegiance to those who succeeded them.

Non liquet (*it does not appear clear*), a verdict given by a jury, when a matter was to be deferred to another day of trial.

The same phrase was used by the Romans; after hearing a cause, such of the judges as thought it not sufficiently clear to pronounce upon, cast a ballot into the urn with the two letters N. L. for *non liquet.*

Non merchandizando victualia, an ancient writ addressed to justices of assize, to inquire whether the magistrates of a town sold victuals in gross or by retail, during the time of their being in office, which was contrary to an obsolete statute; and to punish them if they did. *Reg. Orig.* 184. Obsolete.

Non molestando, a writ that lay for a person who was molested contrary to the king's protection granted to him.—*Reg. Orig.* 184.

Non observatâ formâ infertur adnullatio actûs.—5 *Co. Ecc. L.* 98.—(When form is not observed, a failure of the action ensues.)

Non obstante (*notwithstanding*), a license from the Crown to do that which could not be lawfully done without it. Also, a clause frequent in statutes and letters-patent, importing a license from the Crown to do a thing, which by common law might be done, but being restrained by Act of Parliament could not be done without such license.—*Plowd.* 501; 2 *Reeves,* c. viii., p. 83.

But the doctrine of *non obstantes,* which sets the prerogative above the laws, was effectually demolished by the Bill of Rights at the Revolution; for it is enacted by 1 W. & M. 2, c. 2, that no dispensation, by *non obstante* of or to any statute, or any part thereof, shall be allowed, but that the same shall be held void and of none effect, except a dispensation be allowed in such statute.

Non obstante veredicto, *judgment.* See JUDGMENT NON OBSTANTE VEREDICTO.

Non officit conatus nisi sequatur effectus.—11 *Co.* 98.—(An attempt does not hinder unless a consequence follow.)

Non omittas, the clause 'that you omit not by reason of any liberty in your bailiwick,' which is usually inserted in all processes addressed to sheriffs, which makes the liberty *pro hâc vice,* parcel of the sheriff's bailiwick, and the sheriff must enter and execute the writ within the liberty.

If a writ do not contain a *non omittas* clause, the sheriff directs his mandate either to the lord or the bailiff of the liberty, by whom the writ is executed and returned.

Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest.—4 *Co.* 78.—(The reason of all the things which were instituted by our ancestors cannot be given.)

Non pertinet ad judicem secularem cognoscere de iis quæ sunt merè spiritualia annexa.—2 *Inst.* 488.—(It belongs not to the secular judge to take cognizance of things which are merely spiritual.)

Non-plevin, default in not replevying land in due time.

Non ponendis in assisis et juratis, a writ formerly granted for freeing and discharging persons from serving on assizes and juries.—*F. N. B.* 165.

Non potest adduci exceptio ejus rei cujus petitur dissolutio.—*Bac. Max.* 22.—(An exception of the same thing whose avoidance is sought, cannot be made.)

Where the legality of some proceeding is the subject in dispute between two parties, he who maintains its legality, and seeks to take

advantage of it, cannot rely upon the proceeding itself as a bar to the adverse party; for otherwise the person aggrieved would be clearly without redress.

Non potest rex gratiam facere cum injuriâ et damno aliorum; quod autem alienum est dare non potest per suam gratiam.—3 *Inst.* 236.—(The king cannot confer a favor at the expense or to the injury of others; for what is the property of another, he cannot give as his own favor.)

Non potest rex subditum renitentem onerare impositionibus.—2 *Inst.* 61.—(The king cannot load a subject with impositions against his consent.)

Non præstat impedimentum quod de jure non sortitur effectum.— *Jenk. Cent.* 162.—(An impediment which does not by law produce a consequence, avails not.)

Non procedendo ad assisam rege inconsulto, a writ to stop the trial of a cause appertaining to one who is in the royal service, &c. until the sovereign's pleasure be further known.—*Reg. Orig.* 220.

Non pros, abbrev. for *non prosequitur.* See JUDGMENT OF NON PROS.

Non quod dictum est, sed quod factum est inspicitur.—*Co. Litt.* 36.—(Not what is said but what is done is to be regarded.)

Non refert an quis assensum suum præfert verbis, an rebus ipsis et factis.—10 *Co.* 52.—(It matters not whether a man gives his assent by his words, or by his acts and deeds.)

Non refert quid ex æquipollentibus fiat.—5 *Co.* 122.—(It matters not which of [two] equivalents happen.)

Non refert quid notum sit judici, si notum non sit in formâ judicii.—3 *Buls.* 115.—(It matters not what is known to the judge, if it be not known in a judicial form.)

Non refert verbis an factis fit revocatio.—*Cro. Car.* 49.—(It matters not whether a revocation is made by words or deeds.)

Non-residence, failure of residence.

Non-residentia pro clerico regis, a writ addressed to the bishop, charging him not to molest a clerk employed in the royal service, by reason of his non-residence; in which case he is to be discharged.—*Reg. Orig.* 58.

Non respondebit minor; nisi in causâ dotis, et hoc pro favore doti.—4 *Co.* 71.—(A minor shall not answer unless in a case of dower, and this in favor of dower.)

Non-sane memory, a person laboring under mental alienation, which see.

Nonsense. Where a matter set forth is grammatically right, but absurd in the sense and unintelligible, some words cannot be rejected to make sense of the rest, but they must be taken as they are; for there is nothing so absurd but what, by rejecting, may be made sense; but where a matter is nonsense, by being contradictory and repugnant to somewhat precedent, there the precedent matter which is sense shall not be defeated by the repugnancy which follows; but that which is contradictory shall be rejected.

Non sequitur (*it does not follow*).

Non solum quid licet, sed quid est conveniens considerandum; quia nihil quod inconveniens est licitum.—*Co. Litt.* 66.—(Not only what is permitted, but what is proper, is to be considered; because nothing which is improper is legal.)

Non solvency, inability to pay.

Non solvendo pecuniam ad quam clericus mulctatur pro non-residentia, a writ prohibiting an ordinary to take a pecuniary mulct imposed on a clerk of the sovereign for non-residence.—*Reg. Writ,* 59.

Nonsuit [*non est prosecutus,* Lat.] See JUDGMENT AS IN CASE OF A NONSUIT.

Non sum informatus, a formal answer made of course by an attorney, that he is not informed to say anything material in defence of his client; by which he is deemed to leave it undefended, and so judgment passes against his client. See JUDGMENT IN DEFAULT.

Non-summons, *wager of law of,* the mode in which a tenant or defendant in a real action pleaded, when the summons which followed the original was not served within the proper time.—31 *Eliz.* c. 3, s. 2; 2 *Saund.* 45 *c.*

Non sunt longa ubi nihil est quod demere possit.—*Vaugh.* 138.—(There is no prolixity where there is nothing which can be taken away.)

Non temerè credere, est nervus sapientiæ:—5 *Co.* 114.—(Not to believe rashly is the nerve of wisdom.)

Non tenuit, a plea in bar, in replevin, to avowry for arrears of rent, that the plaintiff did not hold in manner and form, as the avowry alleges.

Non-tenure, a plea in bar to a real action, by saying that he (the defendant) held not the land mentioned in the plaintiff's count or declaration, or at least some part thereof. It is either general, where one denied ever to have been tenant of the land in question, or special, where it is alleged he was not tenant on the day whereon the writ was purchased.—1 *Mod.* 181.

The form of pleading a special non-tenure is to be found in *Co. Eccl.* 620 *a.*

Non-terminus, the vacation between term and term, formerly called the time or days of the king's peace.

Non-user, neglect of official duty.

Non valebit felonis generatio, nec ad hæreditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis generatio succedit in hæreditate patris vel matris à quo non fuerit felonia perpetrata.—3 *Co.* 41.—

(The offspring of a felon cannot succeed either to a maternal or paternal inheritance; but if he had offspring before the felony, such offspring may succeed to the inheritance of the father or mother by whom the felony was not committed.)

This is not now the rule, for descendants can trace through a felon-ancestor.

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit, sit in possessione.—*Co. Litt.* 295.—(Confirmation is not valid unless he who confirms is either in possession of the thing itself, or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.)

Non valet impedimentum quod de jure non sortitur effectum.—4 *Co.* 31.—(An impediment is of no avail which by law has no effect.)

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit.—*Bacon.* (He does not appear to have retained consent, who has changed anything through menaces.)

Nook of land [*nocata terræ*, Lat.], twelve acres and a half, *sed qu.*

Norfolk Island. See 6 & 7 *Vict.* c. 35.

Norroy [fr. *nord* and *roy*, Fr.], the title of the third of the three Kings at arms, or provincial heralds. See HERALD.

Northampton, *Statutes made at*, 2 Edw. III. A.D. 1328.—*Barr on Stat.* 229.

Noscitur ex socio, qui non cognoscitur ex se. Moor. 817.—(He who cannot be known from himself may be known from his associate.)

Nosocomi, managers of pauper-hospitals.—*Civ. Law.*

Notarial, taken by a notary.

Notary, or **Notary public** [fr. *notaire*, Fr.; fr. *notarius*, Lat.], an officer whose business it is to take notes of anything which may concern the public; he publicly attests deeds or writings to make them authentic in another country; but principally in mercantile affairs, as to make protests of bills of exchange, &c. He must serve an apprenticeship of seven years, and be admitted in the civil law courts. He cannot permit another to act in his name, and in London he must be free of the Scriveners' Company. See 41 *Geo. III.* c. 79; 3 & 4 *Wm. IV.* c. 70; 6 & 7 *Vict.* c. 90; 2 *Chit. Gen. Prac.* 36.

Note a bill. When a bill has been dishonored, it is usual for a notary public to present it again on the same day, and if it be not then paid, to make a minute consisting of his initials, the day, month, and year, and reason, if assigned, of non-payment. The making of this minute is called *noting the bill.* See *Smith's Merc. Law.* See NOTING.

Note of a fine, a brief of a fine made by the chirographer before it was engrossed. Abolished by 3 & 4 Wm. IV. c. 74.

Note of allowance. Either party alleging error in law may deliver to one of the masters of the court a memorandum in writing in the form contained in the Schedule (A) to the C. L. P. A. 1852, annexed, marked No. 10, or to the like effect, entitled in the court and cause, and signed by the party or his attorney, alleging that there is error in law in the record and proceedings; whereupon the master shall file such memorandum, and deliver to the party lodging the same a note of the receipt thereof; and a copy of such note, together with a statement of the grounds of error intended to be argued, may be served on the opposite party or his attorney.—*C. L. P. A.* 1852, s. 149.

Proceedings in error in law shall be deemed a *supersedeas* of execution from the time of the service of the copy of such note, together with the statement of the grounds of error intended to be argued, until default in putting in bail, or an affirmance of the judgment or discontinuance of the proceedings in error, or until the proceedings in error shall be otherwise disposed of without a reversal of the judgment; provided always, that if the grounds of error shall appear to be frivolous, the court or a judge upon summons may order execution to issue (s. 150).

Note of hand, a promissory note.

Note promissory. See PROMISSORY NOTE.

Notes, memoranda made by a judge on a trial, as to the evidence adduced, and the points reserved, &c. A copy of the judge's notes, to be used on the motion for a new trial, is obtained from his clerk.

Not found, no true bill. See IGNORAMUS.

Not guilty, a plea by way of traverse which occurs in actions *ex delicto*, and amounts to a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant.—*H. T.* 1853, r. 16.

The plea of not guilty, in criminal proceedings, is the proper form wherever a prisoner means either to deny or justify the charge in the indictment, in which case a special plea is generally improper.

Thus on an indictment for murder, a man cannot plead that it was his own defence against a robber on the highway, or a burglar, but he must plead the general issue, not guilty, and give this special matter in evidence. For, besides that these pleas do in effect amount to the general issue, since, if true, the prisoner is most clearly not guilty, as the facts in treason are laid to be done *proditorie et contra ligeantiæ suæ delictum*, and in felony, that the killing was done *felonice*, these charges of a traitorous or felonious intent are the points and very gist of the indictment, and must be answered directly by the general negative, not guilty; the effect of which is, that on the one hand it puts the prosecutor to the proof of every material fact

alleged in the indictment or information, and on the other it entitles the defendant to avail himself of any defensive circumstances as amply as if he had pleaded them in a specific form. So that this is, upon all accounts, the most advantageous plea for a prisoner.

By the plea of not guilty, the prisoner puts himself upon the trial by jury; and when the record is afterwards made up (for the proceedings ought regularly to be recorded, according to the analogy of the practice in civil cases), the prosecutor on the part of the Crown adds the *similiter* (as it is called), by the words that he 'doth the like.' But even before this formal entry, the *similiter* is supposed to be added by the prosecutor, immediately on the plea of not guilty being pleaded by the defendant, which brings the parties to issue, so that a trial may ensue.—4 *Step. Com.* 478, 490.

Not guilty by statute. See GENERAL ISSUE.

Nothus [fr. *νόθος*, Gk.], a natural child or a person of spurious birth.

Notice, the making something known to a person of which he was or might be ignorant. Notice is either (1) statutory, i. e. made so by legislative enactment; (2) actual, which brings the knowledge of a fact directly home to the party; or, (3) constructive or implied, which is no more than evidence of facts which raise such a strong presumption of notice that equity will not allow the presumption to be rebutted. Constructive notice may be subdivided into: (*a*) where there exists actual notice of matter, to which equity has added constructive notice of facts, which an inquiry after such matter would have elicited; and (*b*) where there has been a designed abstinence from inquiry for the very purpose of escaping notice. The rules of constructive notice have been already carried to an inconvenient length, and they should not be extended.—Per L. C. Cranworth, *Ware* v. *Earl of Egmont*, 3 *Eq. Rep.* 6, 13 (1854). Notice, whether actual or constructive, in order to be binding, must be received during the transaction (*in re gestâ*) sought to be effected by it. Where judgments have been registered, the fact that searches have been made in the judgment book of the court, where such judgments were entered up, will fix the party searching with notice.—*Procter* v. *Cooper*, 2 *Eq. Rep.* 450 (1853). Whatever is sufficient to put a person upon inquiry (provided there is a reasonable certainty as to time, place, circumstances, and persons), is in equity held to be good notice to bind him. The mere registration of a conveyance is not deemed constructive notice to subsequent purchasers; and actual notice must be established against them. To constitute constructive notice, it is sufficient to affect the conscience of the agent, attorney, or counsel of the party; for in such cases the law presumes notice in the principal, since it would be a breach of trust in the former not to communicate the fact to the latter. A clerk who searches the register for judgments against A. B. will, in the absence of proof to the contrary, be presumed to have seen a judgment which was at the time registered against A. B. Whether this is notice to his principal, if it be proved or could be inferred that the clerk did not communicate to him the result of his search, *quære.*—*Procter* v. *Cooper*, 3 *Eq. Rep.* 364 (1855), *on App.* A public act of parliament binds all mankind; but a private act of parliament is not, of itself, notice to a purchaser. A *lis pendens*, of which a purchaser has not express notice, will not bind him, unless the title of the case with other particulars be registered. 2 *Vict.* c. 11, s. 7. *Bonâ fide* purchases for valuable consideration are not to be impeached by notice of an act of bankruptcy, unless a petition for adjudication be filed within twelve calendar months after such an act of bankruptcy.—12 & 13 *Vict.* c. 106, s. 134. The mere fact of attesting the execution of a deed is not of itself notice of that deed, for a witness is not as such privy to its contents.

A purchaser with notice may protect himself by purchasing the title of another *bonâ fide* purchaser for a valuable consideration, without notice; for, otherwise, such *bonâ fide* purchaser would not enjoy the full benefit of his own unexceptionable title. If a person, who has notice (except in the case of a charity), sell to another, who has no notice, and is a *bonâ fide* purchaser for valuable consideration, the latter may protect his title, although it was affected with the equity arising from notice, in the hands of the person from whom he derived it; for, otherwise, no man would be safe in any purchase, but would be liable to have his own title defeated by secret equities, of which he could have no possible means of making a discovery.—*Le Neve* v. *Le Neve*, *Amb.* 436 (1747); 2 *Tud. Lead. Cas.* 21–48.

A purchaser for valuable consideration, without notice of a prior equitable right, who obtains the legal estate at the time of his purchase, is entitled to priority in equity, as well as at law, according to the well-known maxim—where the conflicting equities are equal, the law shall prevail. Nor will equity prevent a *bonâ fide* purchaser, without notice, from protecting himself against a person claiming under a prior equitable title, by getting in the outstanding legal estate, because, as the equities of both parties are equal, there is no reason why the purchaser should be deprived of the advantage he may obtain at law by his superior activity or diligence. And not only where the purchaser has actually obtained, but where he has the best right to call for the legal estate, he will be entitled to the protection of equity.—

Basset v. *Nosworthy*, *Rep. Temp. Finch*, 102 (1673); 2 *Tudor's Lead. Cas.* 1–20; and *Lord St. Leonards' V. and P.* c. xxiv., pp. 620–640.

Notice of action. See 2 *Chit. Arch. Prac. by Pren.* 1288.

Notice to admit. The parties to a suit frequently, by their attornies, agree to admit at the trial documents and other facts; and such agreement is often desirable, to save trouble and expense, where there is no real ground for disputing them.

Either party may call on the other party by notice to admit any document, saving all just exceptions; and in case of refusal, or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is in the opinion of the master a saving of expense.—*C. L. P. A.* (1852), s. 117.

An affidavit of the attorney in the cause, or his clerk, of the due signature of any admissions made in pursuance of such notice, and annexed to the affidavit, shall be in all cases sufficient evidence of such admissions (s. 118).

It is not compulsory in any case, on the party intending to produce documents in evidence, to adopt the above course, and when it is deemed disadvantageous to inform the opposite party of the nature or contents of the documents proposed to be offered at the trial, the premature disclosure may be avoided; but, in that event, the costs of proving the document fall inevitably on the party producing it in evidence.—1 *Chit. Arch. Prac. by Pren.* 319.

Notice of filing declaration. It is not necessary to give notice to a defendant of the filing of a declaration, unless ordered by the court or a judge.—*Ibid.* 212.

Notice of dishonor. If the drawer of a bill of exchange have not reasonable notice of the drawee's refusal to accept or pay, he is exonerated, unless he have no effects in the hands of the drawee at the time of drawing, or while the bill is running or when it becomes due, for then he is not entitled to notice. In the case of non-payment of a bill of exchange, the holder must give notice thereof within the next day to the drawer and all the endorsers, from whom he means to require payment of the bill, otherwise they will be discharged.

Notice of inquiry. The plaintiff must give a written notice of executing a writ of inquiry to the defendant or his attorney. Notice of trial or inquiry, and of continuance of trial or inquiry, shall be given in town; but countermand of notice of trial or inquiry may be given either in town or country, unless otherwise ordered by the court or a judge. Ten days' notice shall be given, unless it is to be a short notice, and then four days are sufficient.

Notice to plead. This is necessary in all cases before the plaintiff can sign judgment for want of a plea. It is usually endorsed on the declaration when delivered, but may be given on a separate paper; when the declaration is filed, it is given in the notice of declaration.

The notice must generally be to plead within eight days, but see 1 *Chit. Arch. Prac. by Pren.* 230, 244, 245, 571, 574.

Notice to produce. If the adverse party be in possession of any written instrument which would be evidence for him if produced, a notice to produce it at the trial may be served either upon him, his attorney, or agent. The notice must specify the instrument with a particularity sufficient to inform the opposite party what he is called upon to produce. It must be served a reasonable time before trial, so as to enable the party served to make an effectual search, and produce the same at the proper time.

It is optional with the party upon whom the notice has been served to produce the instrument required or not. If he do not, then, upon proving the service of the notice, which is done by affidavit pursuant to C. L. P. A. 1852, s. 119, it will be permitted to prove the contents of the instrument by a copy or other secondary evidence, in the same manner as if it had been destroyed or lost.—1 *Chit. Arch. Prac. by Pren.* 323.

Notice to quit. Where there is a tenancy from year to year subsisting, it can only be put an end to by a notice to quit, which may be given by either party, and must be given six months previously to the expiration of the current year of tenancy, so as to expire at the same period of the year in which the tenant entered upon the premises. This rule is to be invariably followed in all cases, except where there is some special agreement between the parties to a different effect, or it would seem where a particular local custom intervenes.

Where the relation of landlord and tenant does not exist, a notice to quit is out of the question. Where the term of a lease is to end on a precise day, there is no occasion for a notice to quit previously to bringing an action of ejectment, because both parties are equally apprised of the determination of the term. If a tenant continue in possession for a year after his lease has expired, or rent has been received, a notice must be given before he can be ejected; for where, by consent of both parties, a tenant continues in possession after the expiration of his term, the law implies a tacit renovation of the contract, and in such cases the tenant holds

upon the former terms. No fresh notice, however, is necessary where a tenant, after having given a notice, holds over for a year, and pays double rent according to 11 Geo. II. c. 19, s. 18. Where a lessee holds under a void demise, no notice is necessary; but where a lease granted by a tenant for life under a limited power of leasing, which exceeded his power, was void, and not capable of being confirmed by the remainder-man, yet the remainder-man received money as rent after the death of the tenant for life, it was held to be an admission of a tenancy from year to year, and that a notice to quit must be given before any ejectment could be brought. And though a lease be void by the Statute of Frauds as to the duration of the term, it is considered that the tenant holds under the terms of the lease in other respects, and therefore that the landlord can only put an end to the tenancy at the expiration of the year. In the case of a tenancy from year to year, so long as both parties please, if the tenant die, his personal representatives have the same interest in the land which their testator or intestate had, and are therefore entitled to the same notice to quit; for such tenancy is a chattel interest, and whatever chattel the deceased had must vest in them as his legal representatives. Where the reversion has been conveyed by the lessor during the existence of the tenancy from year to year, the tenant is entitled to a notice to quit before he can be ejected by the grantee of the reversion. Where an infant becomes entitled to the reversion of an estate, leased from year to year, he cannot eject the tenant without giving the same notice as the original lessor must have given. No notice to quit is necessary where the tenant does an act which amounts to a disavowal of the title of the lessor; as where the tenant has attorned to some other person, or answered an application for rent, by saying that his connection as tenant with the party applying has ceased. It is not necessary for a mortgagee to give a notice previously to bringing an ejectment either to the mortgagor or to a tenant who claims under a lease from the mortgagor, granted after the mortgage, without the privity of the mortgagee. And a mortgagee need not give notice to a tenant to quit, before bringing his ejectment, if he mean only to get into the receipt of the rents and profits of the estate, though the mortgage be made subsequently to the tenant's lease; but in such case he shall not be suffered to turn the tenant out of possession by the execution. A tenant from year to year, whose tenancy commenced before a mortgage or grant of the reversion, is entitled to a notice to quit, before he can be ejected by the mortgagee or grantee.

A parol notice to quit by a tenant under a parol lease is sufficient, but where a power is given to determine a lease on giving a notice in writing, it cannot be determined on giving a parol notice. The notice should, however, in all cases be in writing, as being more susceptible of proof, and it may be attested by a witness, who, however, need not be called to prove it.—*C. L. P. A.* (1854), s. 26.

A notice to quit, signed by one of several joint-tenants on behalf of the others, is sufficient to determine a tenancy from year to year, as to all. A notice given by a mortgagor before default, was held a good notice to determine the tenancy; and a notice given by a steward of a corporation is sufficient, without evidence that he had an authority under seal from the corporation for such purpose. A receiver appointed by the Court of Chancery, with a general authority to let the lands to tenants from year to year, has authority to determine such tenancies by a regular notice to quit. A mere agent to receive rents has no implied authority to give a notice to quit; but an agent to receive rents and let has authority to determine a tenancy. An agent ought to have authority to give such notice at the time when it begins to operate; for a subsequent recognition of the authority will not make the notice good. And a notice to quit by an agent of an agent is not sufficient without a recognition. A notice on an under-tenant, given by the original lessor, is not good.

The notice should be clear and certain, neither ambiguous nor optional. The merely leaving a notice to quit at the tenant's house with a servant, without further proof of its having been explained to the servant, or that it came to the tenant's hands, is not sufficient.

In the ordinary case of a tenancy from year to year, there must be half a year's notice to quit, ending at that period of the year at which the tenancy commenced; and where the rent is reserved quarterly, it does not dispense with the regular half-year's notice to quit required by law. Where the time of the commencement of the tenancy is doubtful, it is always safest to give a general notice to quit at the end of the year of tenancy; which shall expire after one half-year from the time of service of the notice. Where premises are let from year to year, upon an agreement that either party may determine the tenancy by a quarter's notice, the notice must expire at the period of the year when the tenancy commenced.

If a landlord receive or distrain for rent due after the expiration of a notice to quit, it is a waiver of that notice, and giving a second notice to quit amounts to waiver of a notice previously given. If a landlord have given a notice to quit, and the tenant holds over, the landlord cannot waive his notice and distrain for rent subsequently accruing. If, at the end of the year (where there has been a tenancy from

year to year), the landlord accept another person as his tenant in the room of the former tenant, without any surrender in writing, such acceptance shall be a dispensation of a notice to quit.—*Woodf. L. and T.* 286, *et seq.*

Notice of trial at Common Law. Notice of trial must be given in all cases where there is an issue to be tried by a jury, except where a cause is made a *remanet* from one sittings to another, or put off by order of *Nisi Prius.*

It is usual to indorse it on the issue.

Ten days' notice of trial or inquiry shall be given, and shall be sufficient in all cases, whether at bar or *Nisi Prius*, in town or country, unless otherwise ordered by the court or a judge.—*C. L. P. A.* (1852), s. 97.

A countermand of notice of trial shall be given four days before the time mentioned in the notice of trial, unless short notice of trial has been given, and then two days before the time mentioned in the notice of trial, unless otherwise ordered by the court or a judge, or by consent (s. 98).

A rule for costs of the day for not proceeding to trial pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit without motion (s. 99).

The expression 'Short notice of trial,' or, 'Short notice of inquiry,' shall in all cases be taken to mean four days.

Notice of trial or inquiry may be continued to any sitting in or after term, on giving a notice of continuance four days before the time mentioned in the notice of trial or inquiry, unless short notice of trial or inquiry has been given, in which cases two days' previous notice shall be sufficient, unless otherwise ordered by the court or a judge, or by consent.—*H. T.* 1853, rr. 35 & 36.

A defendant is not bound to return an irregular notice of trial, and therefore does not waive the irregularity by retaining it.—1 *Chit. Arch. Prac. by Pren.* 312.

Noting. It is usual in cases of non-payment of bills of exchange, for London bankers, after six o'clock on the day upon which the bill falls due, to cause inland bills to be noted, which is merely the first part of the duty required by law of a notary in protesting a bill. This duty consists of three parts: (1) noting; (2) demanding; and (3) protesting. In the case of inland bills, a protest being totally useless, it follows that noting is almost equally so; and the expense usually charged stands merely upon the custom, there being no law or decision in its favor.

Although, in the case of inland bills of exchange, neither noting nor protesting is necessary, the case is widely different in the case of a dishonored foreign bill, which should certainly be taken to a notary the day it is refused acceptance or payment, and it is his business to note, demand, and protest it; and notice of this must be sent the same day to the drawer and indorsers, with a copy of the bill, if the drawer and indorsers are abroad, but mere notice is sufficient if they are in England. See *Chitty on Bills.*

Notitia dicitur à noscendo; et notitia non debet claudicare.—6 *Co.* 29.—(Notice is called from a knowledge being had; and notice ought not to halt.)

Nova constitutio futuris formam imponere debet, non præteritis.—2 *Inst.* 292.—(A new institution ought to impose form on the future, not on the past.)

Nova customa, an imposition or duty. See ANTIQUA CUSTOMA.

Nova oblata. See OBLATA.

Nova Statuta, the statutes beginning with Edward III. See VETERA STATUTA.

Novæ Narrationes (*new counts*). The collection called *Novæ Narrationes* contains pleadings in actions during the reign of Edward III. It consists principally of declarations, as the title imports; but there are sometimes pleas and the subsequent pleadings. The *Articuli ad Novas Narrationes* is usually subjoined to this little book, and is a small treatise on the method of pleading. It first treats of actions and courts, then goes through each particular writ, and the declaration upon it, accompanied with directions, and illustrated by precedents.—3 *Reeves*, c. xvi., p. 152.

Novale, land newly ploughed and converted into tillage; and which had not been tilled before within the memory of man; also, fallow land.—*Chambers.*

Novation, the substitution of a new debt for an old one.—*Pothier on Oblig. by Evans*, n. 546; *Sand. Just.* 495.

Novatio non præsumitur.—(A novation is not presumed.)

Novel assignment. See NEW ASSIGNMENT.

Novel disseisin (*recent disseisin*). See ASSISE OF NOVEL DISSEISIN.

Novellæ, those constitutions of the Civil Law which were made after the publication of the Theodosian code; but sometimes the Julian edition only is meant.

Novellæ or *Novellæ Constitutiones* form a part of the *Corpus Juris.* Most of them were published in Greek, and their Greek title is Αὐτοκράτορος Ἰουστινιανοῦ Αὐγούστου Νεαραὶ Διατάξεις. Some of them were published in Latin, and some in both languages.

The first of these Novellæ of Justinian belongs to the year A.D. 535 (Nov. 1), and the latest to the year A.D. 565 (Nov. 137), but most of them were published between the years 535 and 539. These Constitutiones were published after the completion of the second edition of the Code, for the purpose of supplying what

was deficient in that work. Indeed it appears that on the completion of his second edition of the Code, the emperor designed to form any new constitutions which he might publish into a body by themselves, so as to render a third revision of the Code unnecessary, and that he contemplated giving to this body of law the name of *Novellæ Constitutiones.*—*Const. Cordi*, s. 4.

It does not, however, appear that any official compilation of these new constitutions appeared in the lifetime of Justinian.

The Greek text of the Novellæ, as we now have them, consists of 168 Novellæ, of which 159 belong to Justinian, and the rest to Justin the Second and to Tiberius; they are generally divided into chapters.

There is a Latin epitome of these Novellæ by Julian, a teacher of the law at Constantinople, which contains 125 Novellæ. The Epitome was probably made in the time of Justinian, and the author was probably Antecessor at Constantinople.

There is also another collection of 134 Novellæ, in a Latin version made from the Greek text. This collection is generally called *Liber Authenticorum*; the compiler and the time of the compilation are unknown.

This collection has been made independently of the Greek compilation. It is divided into nine *collationes*, and the *collationes* are divided into *tituli*.

The most complete work on the history of the Novellæ is by Biener, *Geschichte der Novellen.* See also *Beytrag zu Litterar-Geschichte des Novellen Auszugs von Julian, Von Haubold, Zeitschrift*, &c. iv.; *Smith's Dict. of Antiq.*

Novitas non tam utilitate prodest quam novitate perturbat.—*Jenk. Cent.* 167.—(Novelty benefits not so much by its utility as it disturbs by its novelty.)

Noviter ad notitiam perventa (*matters newly come to the knowledge of a party*).

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum.—10 *Co.* 42.—(A new adjudication does not make a new law, but declares the old; because adjudication is the dictum of the law, and by adjudication the law is newly revealed which was for a long time hidden.)

Novus homo, a pardoned criminal, or discharged insolvent.

Noxa sequitur caput.—*Jur. Civ.*—(Guilt follows the person.)

Noxal action, an action for damage done by irrational animals.—*Sand. Just.* 568.

Nuces colligere (*to collect nuts*).

This was formerly one of the works or services imposed by lords upon their inferior tenants.—*Par. Antiq.* 495.

Nude contract, one made without any consideration, upon which no action will lie, in conformity with the maxim *ex nudo pacto non oritur actio.*

Nude matter, a bare allegation of a thing done.

Nudum pactum. See NUDE CONTRACT.

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem—*Plow.* 309.—(A naked contract is where there is no consideration except the agreement; but where there is a consideration, it becomes an obligation, and gives a right of action.)

Nuisance, or **Nusance** [fr. *nuire*, Fr., to hurt], something noxious or offensive.

It is of two kinds: (1) private; (2) public.

(1) *Private.* It is a principle that every man should so use his own property as not to injure another; and if he act otherwise he subjects himself to an action. An action lies as well against him who continues a nuisance as against him who originally erected it.

(a) *Watercourses.* An action is maintainable for any diversion or obstruction of a watercourse to which the party complaining has a right.

(b) *Commons.* The most usual acts of nuisance to commons are by injury to the soil, by digging turf, or injuring the pasture, or by surcharging the common by overstocking it with cattle. In any of these cases an action is maintainable either by the lord or by the commoners.

(c) *Lights.* An action may be maintained, even by a reversioner, for obstructing the lights of an ancient messuage, or for continuing the obstruction by erecting buildings so near that the light and air cannot have access to the rooms.

The proper form of remedy for an injury sustained by a private nuisance is an action on the case. Besides the remedy by action, the party injured may, in a very clear case, take the law into his own hands and abate the nuisance, but it is never advisable to pursue this course. An action does not lie against an agent for damage done by the negligence of those he employs; for the principal, or those actually employed, are liable. The plaintiff must show himself entitled to the thing to which the nuisance was done, at the time of the nuisance; but a seisin in law, however, is sufficient to sustain such an action.

(2) *Public* or *common*, which are classed amongst crimes and misdemeanors, and are annoyances to all the Queen's subjects, whether by act of commission or omission; and when they annoy private individuals only, they form the subject of a civil action. But they are generally indictable only, and not actionable, for it would be unreasonable to multiply suits, by giving every man a separate right of action for what damnifies him in common only with the rest of his fellow subjects.

Public nuisances are:—

(a) Annoyances in the highways, bridges, and the public rivers, by rendering the same inconvenient or dangerous to pass, either positively, by actual obstructions, or negatively, by want of reparations.

(b) All those kinds of nuisances (such as offensive trades and manufactures), which, when injurious to a private person, are actionable, are, when detrimental to the public, punishable by public prosecution, and subject to a fine according to the nature of the offence.

(c) All disorderly inns, alehouses, bawdy-houses, gaming-houses, stage-plays unlicensed, booths, and stages for rope-dancers, mountebanks, and the like.

(d) All lotteries.

(e) The making and selling of fireworks in unlicensed places, or throwing them about in any street, on account of the danger that might ensue to thatched or timber buildings.

(f) Eaves-droppers.

(g) Common scolds.

As to the equitable jurisdiction in granting injunctions:—An information lies, in cases of public nuisances, at the suit of the Attorney-General, to redress the grievance by way of injunction; but the interposition of the court is principally confined to informations seeking preventive relief. In regard to private nuisances, the interference of equity, by way of injunction, goes upon the ground of restraining irreparable mischief, or of suppressing oppressive and interminable litigation, or of preventing multiplicity of suits. There must be such an injury as from its nature is not susceptible of being adequately compensated by damages at law, or such as from its continuance or permanent mischief, must occasion a constantly recurring grievance, which cannot be prevented otherwise than by an injunction. When the injury is irreparable, as where loss of health, loss of trade, destruction of the means of subsistence, or permanent ruin to property, may or will ensue, from the wrongful act or erection; in every such case courts of equity will interfere by injunction, in furtherance of justice and the violated rights of the party.—2 *Story's Eq. Jurisp.* 180. See 18 & 19 *Vict.* c. 121; and 23 & 24 *Vict.* c. 77, as to the removal of nuisances.

Nul charter, nul vende, ne nul done vault perpetualment, si le donor n'est seisie al temps de contracts de 2 droits, sc. del droit de possession et del droit de propertie.—Co. Litt. 266.—(No grant, no sale, no gift, is valid for ever, unless the donor, at the time of the contract, is seised of two rights; namely, the right of possession, and the right of property.)

Nul disseisin, *Plea of,* a traverse in real actions, that there was no disseisin; it was a species of the general issue.

Nul grand seignior ou chivalier de nostre realm ne doit prender chemin (d'aler hors de realm) sans nostre conge, car issint purroit le realm remain disgarne de fort gents.—3 *Inst.* 179.—(No great lord or knight of our realm ought to leave the realm without our leave, for thus the realm would remain unprovided with strong men.)

Nul prendra advantage de son tort demesne.—2 *Inst.* 713.—(No one shall take advantage of his own wrong.)

Nul sans damage avera error ou attaint.—*Jenk. Cent.* 323.—(No one shall have error or attaint unless he has sustained damage.)

Nul-tiel agard (*no such award*), a plea traversing an award. Under this plea a defendant cannot object to the award in point of law. 1 *Salk.* 72; 1 *Saund.* 327 *a.*

Nul-tiel record, *Issue of,* a traverse that there is no such record. This is the proper form of issue whenever a question arises as to what has judicially taken place in a superior court of record; for the law presumes, that, if it took place, there will remain a record of the proceeding. But if the court be not of record, the issue should be directly upon the fact whether any such proceeding took place, and not upon the existence of any judicial memorial.—3 *Barn. and Cres.* 449; 2 *Chit. Arch. Prac. by Pren.* 924.

Nul tort, *Plea of,* a traverse in a real action that no wrong was done; it was a species of the general issue.

Nulla bona (*no goods*), a return made by a sheriff to a *fi. fa.* attachment, &c. when there is no property to distrain upon.

Nulla curia quæ recordum non habet potest imponere finem, neque aliquem mandare carceri; quia ista spectant tantummodo ad curias de recordo.—8 *Co.* 60.—(No court which has not a record can impose a fine, or commit any person to prison; because those powers belong only to courts of record.)

Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia.—*Co. Litt.* 78.—(Impossibilities or dishonesty are not to be presumed; but honesty and truth and possibility.)

Nulla virtus, nulla scientia, locum suum et dignitatem conservare potest sine modestiâ.—*Co. Litt.* 394.—(Without modesty, no virtue, no knowledge, can preserve its place and dignity.)

Nullity, want of force or efficacy; an error in litigation which is incurable, and thus differs from an irregularity which is amendable.

Nullity of Marriage, a matrimonial suit instituted for the purpose of obtaining a decree from the Court for Divorce and Matrimonial Causes, declaring that a supposed marriage is null and void. See MARRIAGE.

Nullius filius (*a son of nobody*, i. e. *a natural child*).

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit.—*Co. Litt.* 383.—(The authority of no man ought to prevail with us, so that we should not adopt better things, if another bring them.)

Nullum crimen majus est inobedientiâ.—*Jenk. Cent.* 77.—(No crime is greater than disobedience.)

Nullum exemplum est idem omnibus.—*Co. Litt.* 212. — (No example is the same to all.)

Nullum iniquum est præsumendum in jure.—7 *Co.* 71.—(No iniquity is to be presumed in law.)

Nullum medicamentum est idem omnibus.—*Co. Litt.* 317.—(No medicine is the same to all.)

Nullum simile est idem nisi quatuor pedibus currit.—*Co. Litt.* 3.—(No like is identical, unless it run on all fours.)

Nullum tempus aut locus occurrit regi.—2 *Inst.* 273; *Jenk. Cent.* 83.—(No time or place affects the king.) But see 9 *Geo. III.* c. 16; 32 *Geo. III.* c. 58; and 7 *Wm. III.* c. 3, which bind the Crown.

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam.—*Co. Litt.* 134.—(No other than the king can command the bishop to make an inquisition.)

Nullus capiatur aut imprisonetur propter appellam fœminæ de morte alterius quam viri sui.—*M. C.* 2 *Inst.* 68.—(Let no one be taken or imprisoned on the appeal of a woman, for the death of any other than her own husband.)

Nullus commodum capere potest de injuriâ suâ propriâ.—*Co. Litt.* 148.—(No one can obtain an advantage by his own wrong.)

Nullus debet agere de dolo, ubi alia actio subest.—7 *Co.* 92.—(Where another form of action is given, no one ought to sue in the action *de dolo*.)

Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse, et illum receptavit et comfortavit.—3 *Inst.* 138.—(No one is called an accessory after the fact but he who knew the principal to have comitted a felony, and received and comforted him.)

Nullus dicitur felo principalis nisi actor, aut qui præsens est, abettans aut auxilians ad feloniam faciendam.—(No one is called a principal felon except the party actually committing the felony, or the party present aiding and abetting in its commission.)

Nullus recedat e curiâ cancellariâ sine remedio.—4 *H.* 7, 4.—(Let no one depart from the Court of Chancery without a remedy.)

Nummata, the price of anything in money, as *denariata* is the price of a thing by computation of pence, and *librata* of pounds.

Nummata terræ, an acre of land.—*Spelm.*

Nummus [*ἀπὸ τοῦ νόμου*] *quia lege fit non naturâ.*—*Co. Litt.* 207.—(Money, [from the Greek *νόμος*,] because created by law, not by nature.)

Nummus est mensura rerum commutandarum. (Money is the measure of things that are to be exchanged.)

Nunc pro tunc, a proceeding taken *now* for *then*, i. e. the proper time when it should have been taken.

Nuncio, a messenger, servant, &c.; a spiritual envoy from the pope.

Nuncupate, to declare publicly and solemnly.

Nuncupative Will, an oral or word-of-mouth testament, declared by a testator *in extremis* before a sufficient number of witnesses, and afterwards reduced to writing.

The 29 Car. II. c. 3, abolished nuncupative wills, except when made by mariners at sea and soldiers in actual service. See 1 *Wm. Exors.* 101.

Nuncupative wills are abolished by 1 Vict. c. 26, s. 9, but with a provision by s. 11, that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate, as he might have done before the making of this act. See 11 *Geo. IV.* and 1 *Wm. IV.* c. 20.

Nundination, traffic at fairs and markets; any buying and selling.

Nunquam indebitatus. See NEVER INDEBTED.

Nunquam concluditur in falso.—(We never conclude with a fiction.)

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium.—4 *Inst.* 84.—(Recourse is never had to what is extraordinary, till what is ordinary fails.)

Nunquam nimis dicitur quod nunquam satis dicitur.—*Co. Litt.* 375.—(What is never sufficiently said is never said too much.)

Nunquam res humanæ prosperè succedunt ubi negliguntur divinæ.—*Co. Litt.* 15.—(Human things never prosper where divine things are neglected.)

Nuper obiit (*she lately died*), an abolished writ that lay for a sister and co-heir, deforced by her coparcener of lands or tenements, whereof their father, brother, or any other common ancestor died seised of an estate in fee-simple.—*F. N. B.* 197.

Nuptial, pertaining to marriage; constituting marriage; used or done in marriage.

Nuptias non concubitus sed consensus facit.—*Co. Litt.* 33.—(Not cohabitation but consent makes the marriage.)

Nurture, *Guardianship for.* See GUARDIAN.

Nurus [Lat.], a daughter-in-law.

Nuzzer, a vow, an offering, a present made to a superior.—*Indian.*

Nycthemeron [Gk.], the whole natural day,

or day and night, consisting of twenty-four hours.—*Encyc. Lond.*

Nymphomania. See EROTOMANIA.

O

Oath [fr. *aith*, Goth.; *ath*, Sax.; *eid*, Iceland; *ehe*, *eid*, Germ.], an appeal to God to witness the truth of a statement. It is called *sacramentum*, a holy band or tie, and also *corporal oath*, because a witness, when he swears, places his right hand on the holy evangelists.

The laws of all civilised states require the security of an oath for evidence given in a court of justice, and on other occasions of high importance; and the Christian religion utterly prohibits swearing, except when oaths are required by legal authority (*Art. Ch. of Engl.* xxxix.) All who believe in a God, the avenger of falsehood, are admitted to give evidence. All witnesses, unless they be *in extremis*, must take an oath before giving testimony, even the Queen (*Willes' Rep.* 550). The 7 & 8 Wm. III. c. 34, made a Quaker's affirmation, in civil cases, admissible; and by 9 Geo. IV. c. 32, Quakers and Moravians are admitted to give evidence upon their solemn affirmation in all cases, criminal as well as civil. And their affirmation has the same force and effect as an oath in the usual form (3 & 4 Wm. IV. c. 49). The 3 & 4 Wm. IV. c. 82, extends similar provisions to Separatists. See 1 & 2 *Vict.* c. 77; 6 & 7 *Vict.* c. 85, s. 2; and 22 *Vict.* c. 10. The 5 & 6 Wm. IV. c. 62, abolishes unnecessary and extra-judicial oaths, and provides, that any justice of the peace, notary-public, or other officer authorized to administer an oath, is empowered to take voluntary declarations in the form specified in the act. And any person wilfully making such declaration false in any material particular, shall be guilty of a misdemeanor.

Witnesses are allowed to swear in that particular form which they consider binding on their conscience.

The 17 & 18 Vict. c. 125, s. 20, allows any person called as a witness in civil proceedings, or required or desiring to make an affidavit or deposition, who shall refuse or be unwilling from alleged conscientious motives to be sworn, to obtain from the court (on its being satisfied of the sincerity of the objection) permission to make a solemn affirmation or declaration instead, and 24 & 25 Vict. c. 66, allows a similar affirmation or declaration to be made by a witness in criminal proceedings.

As to the power of committees of both Houses of Parliament to administer oaths, see 21 & 22 *Vict.* c. 78.

There are many kinds of oaths in our laws, the principal of which will be found under their distinctive names.

The administering of unlawful oaths is an offence against the government, and punishable by transportation. The following statutes relate to this offence: 37 Geo. III. c. 123; 39 Geo. III. c. 79; 52 Geo. III. c. 104; 57 Geo. III. c. 19; 1 Geo. IV. c. 1; 1 Vict. c. 91; and 2 & 3 Vict. c. 12.

Oath-breaking, perjury.

Oath against bribery, one which could have been administered to a voter at an election for members of Parliament. Abolished by 17 & 18 Vict. c. 102.

Oath-rite, form used at the taking of an oath.

Obedientia, an office, or the administration of it.—*Canon Law.*

Obedientia est legis essentia.—11 *Co.* 100.—(Obedience is the essence of law.)

Obedientiarius, a monastic officer.—*Du Cange.*

Ob infamiam non solet juxta legem terræ aliquis per legem apparentem se purgare, nisi prius convictus fuerit vel confessus in curia.—*Glanv. lib.* 14, c. ii.—(On account of evil report, it is not usual, according to the law of the land, for any person to purge himself, unless he have been previously convicted, or confessed in court.)

Obit [a corruption of the Latin *obiit* or *obivit*, he died], a funeral solemnity or office for the dead; the anniversary office.

The tenure of obit, or obituary, or chantry lands is taken away by 1 Edw. VI. c. 14; and 15 Car. II. c. 9.

Obiter dictum (*an incidental opinion*), an opinion of a judge not necessary to the judgment given of record, in contradistinction to a *judicial dictum*, which is necessary to the judgment.

This last is of much greater authority than the former, because delivered upon deliberation, under sanction of the judge's oath, while an extra-judicial opinion is no more than the *prolatum* or saying of him who gives it, a *gratis dictum*.

Objurgatrices, scolds, or unquiet women, punished with the cucking-stool. See CASTIGATORY.

Oblata, gifts or offerings made to the king by any of his subjects; old debts, brought as it were together from preceding years, and put on the present sheriff's charge.

Oblata terræ, half an acre, or, as some say, half a perch of land.—*Spelm.*

Oblationes dicuntur quæcunque a piis fidelibusque Christianis offeruntur Deo et ecclesiæ, sive res solidas sive mobiles.—2 *Inst.* 389.—(Those things are called oblations which are offered to God and to the church by pious

and faithful Christians, whether they are movable or immovable.)

Oblations, offerings to God and the church; fees payable for christening, marrying, burying, and the like.

Obligation, an act which binds a person to some performance; also a bond containing a penalty, with a condition annexed for payment of money at a certain time; or for the performance of a covenant, &c. As to the divisions of obligations in the Civil Law, see *Sand. Just.* 421; *Rutherf.* 1, 31, 33, 34; and *Notes*, c. ix.

Obligee, the person in whose favor an obligation or bond is entered into; a creditor.

Obligor, he who enters into an obligation or bond, a debtor.

Obreption, surprise, the obtaining a gift of the king by a false suggestion.—*Scotch term.*

Obscene Publication Act, 20 & 21 Vict. c. 83.

Observance of Anniversary Religious Services. See HOLIDAYS.

Obsignatory, ratifying and confirming.

Obstriction, obligation; bond.

Obtemperandum est consuetudini rationabili tanquam legi.—4 *Co.* 38.—(A reasonable custom is to be obeyed as a law.)

Obtest, to protest.

Obventions, offerings; tithes and oblations.

Occasio, a tribute which the lord imposed on his vassals or tenants for his necessity.

Occasionari, to be charged or loaded with payments or occasional penalties.

Occasiones, assaits.

Occision, the act of killing.

Occultatio thesauri inventi fraudulosa.—3 *Inst.* 133.—(The concealment of discovered treasure is fraudulent.)

Occupancy, taking possession of those things which before did not belong to anybody.

The right of occupancy has been confined by the laws of England within a very narrow compass, and was extended only to a single instance; namely, where a person was tenant *pur autre vie*, or had an estate granted to himself only (without mentioning his heirs), for the life of another man, and died without alienation, during the life of *cestui que vie*, or him by whose life it was holden; in this case, he that could first enter on the land might lawfully retain the possession so long as *cestui que vie* lived, by right of occupancy. The title of common occupancy is now, in effect, abolished, for it is enacted by 1 Vict. c. 26, s. 3, that an estate, *pur autre vie*, of whatever tenure, and whether it be an incorporeal or corporeal hereditament, may, in all cases, be devised by last will and testament; and by s. 6, that if no disposition by will be made of an estate *pur autre vie* of a freehold nature, it shall be chargeable in the hands of the heir, if it come to him by reason of special occupancy, as assets by descent (as in the case of freehold land, in fee-simple); and should there be no special occupant of any estate *pur autre vie*, it shall go to the executor or administrator of the party that had the estate by virtue of the grant; and in every case, where it comes to the hands of such personal representative, shall be assets in his hands, to be applied and distributed in the same manner as personal estate.

If an estate *pur autre vie* had been granted to a man and his heirs during the life of *cestui que vie*, and the grantee died without alienation, while the life for which he held continued, there could not be a title by *common* occupancy, but the heir would succeed as *special* occupant, which law is now in force.

A property in goods and chattels may be acquired by occupancy, for

(1) It has been said, that anybody authorized by the Crown may seize to his own use such goods as belong to an alien enemy.

(2) All persons may, on their own lands, or in the seas, generally exercise the right to pursue and take any fowl or insect of the air, any fish or inhabitant of the waters, and any beast or reptile of the field. The exceptions to this right are royal fish, such as whales, sturgeons, &c., animals of forest, chase, or free warren, fish belonging to a free fishery, and game.

(3) Property arising from accession. See ACCESSION, *property by.*

(4) Property arising from confusion. See CONFUSION, *property by.*

Occupant, he who is in possession of a thing.

Occupatile, that which has been left by the right owner, and is now possessed by another.

Occupation, possession; act of taking possession; also, trade or mystery.

Occupative, possessed, used, employed.

Occupavit, a writ that lay for him who was ejected from his freehold in time of war, as the writ of *novel disseisin* lay for one disseised in time of peace.

Occupier, a possessor.

Ochiem, the chief of a branch of a great family.

Ochlocracy [fr. ὄχλος, Gk., a multitude, and κράτος, power or command], a form of government wherein the populace has the whole power and administration in its own hand; a democracy; mob-rule.

Octo tales. See DECEM TALES.

Oderunt peccare boni, virtutis amore; oderunt peccare mali, formidine pœnæ.—(Good men hate sin through love of virtue; bad men through fear of punishment.)

Odhal, alodial, which see.

Odio et atiâ, a writ anciently called *breve de bono et malo*, addressed to the sheriff to inquire whether a man committed to prison upon suspicion of murder, were committed on just cause of suspicion, or only upon malice and ill will; and if, upon the inquisition, it were found that he was not guilty, then there issued another writ to the sheriff to bail him.—*Reg. Orig.* 133. But the practice now is to issue a *habeas corpus*.

Odiosa et inhonesta non sunt in lege præsumenda; et in facto quod se habet ad bonum et malum, magis de bono quam de malo præsumendum est.—*Co. Litt.* 78.—(Odious and dishonest things are not to be presumed in law; and in an act which partakes both of good and bad, the presumption should be more in favor of what is good than what is bad.)

Œconomicus, an executor.

Œconomus, an advocate, or defender.

Œconomy, *Laws of social*, those regulations in a state which relate immediately to the community at large, or to large classes of it, but which are not connected with the subject of government, whether civil or ecclesiastical. Such are the laws relating to corporations, the poor, charities, gaols, highways, trade, and navigation, public health, public conveyances, the press, houses of public reception, &c.

Off-going crop. See AWAY-GOING CROPS.

Offence, crime; act of wickedness. It is used as a *genus*, comprehending every crime and misdemeanor, or as a *species*, signifying a crime not indictable, but punishable summarily, or by the forfeiture of a penalty.

Offences are divided into three classes, viz.: (1) Treasons, which see; (2) Felonies or major offences; and (3) Misdemeanors or minor offences.

Nothing can well be more unsatisfactory than the punishments assigned to different offences, or the distinctions between felony and misdemeanor, as they exist at the present time, and it seems vain to hope that a broad, plain, and rational distinction between felony and misdemeanor can be established.—*Greaves' Introduction to the Criminal Law Acts*, p. 43; 2nd ed. A classification of offences into felonies and misdemeanors would therefore be of little practical value. See FELONY AND MISDEMEANOR.

In 1861, six Acts were passed for the consolidation and amendment of the statute law of England and Ireland relating to certain criminal offences. By 24 & 25 Vict. c. 95, several previous Acts were repealed; c. 96 dealt with larceny and other similar offences; c. 97 with malicious injuries to property; c. 98 with forgery; c. 99 with offences relating to the coin; and c. 100 with offences against the person. It would be impossible to enumerate all the several species of offences, but, with the exception of treason, they are usually divided into the following classes:—

I. Offences against the person:—

Such of these as are dealt with by 24 & 25 Vict. c. 100, are thus classified:—

(1) Homicide (ss. 1–10).
(2) Attempts to murder (ss. 11–15).
(3) Letters threatening to murder (s. 16).
(4) Acts causing or tending to cause danger to life or bodily harm (ss. 17–35).
(5) Assaults (ss. 36–47).
(6) Rape, abduction, and defilement of women (ss. 48–55).
(7) Child-stealing (s. 56).
(8) Bigamy (s. 57).
(9) Attempts to procure abortion (ss. 58 & 59).
(10) Concealing the birth of a child (s. 60).
(11) Unnatural offences (ss. 61–63).
(12) Making gunpowder for the purpose of committing an offence (s. 64).

Besides these, the following may be mentioned:—

(1) Forcing mercantile seamen on shore in a foreign country and leaving them behind by masters of ships (17 & 18 Vict. c. 104, s. 206).
(2) False imprisonment.

II. Offences against property, which are divided into

(A) Larceny and other similar offences (24 & 25 Vict. c. 96). These offences are thus classified:—

(1) Larceny of cattle or other animals (ss. 10–26).
(2) Larceny of written instruments (ss. 27–30).
(3) Larceny of things attached to or growing on land (ss. 31–37).
(4) Larceny from mines (ss. 38 & 39).
(5) Larceny from the person, and other like offences, such as demanding money by threats, or with force, or threatening to accuse of crimes with intent to extort, inducing persons by violence or threats to execute deeds, &c. (ss. 40–49).
(6) Sacrilege, burglary, and housebreaking (ss. 50–59).
(7) Larceny in the house (ss. 60 & 61).
(8) Larceny in manufactories (s. 62).
(9) Larceny in ships, wharves, &c. (ss. 63–66).
(10) Larceny or embezzlement by clerks, servants, or persons in the public service (ss. 67–73).
(11) Larceny by tenants or lodgers (s. 74).
(12) Fraud by agents, bankers, or factors (ss. 75–87).
(13) Obtaining money, &c., by false pretences (ss. 88–90).
(14) Receiving stolen goods (ss. 91–99).
(15) Taking a reward for helping to recover stolen property (s. 106).

(16) Advertising a reward for the return of stolen property (s. 102); and see LARCENY.

(B) Malicious injuries to property (24 & 25 Vict. c. 97), which are thus classified:—

(1) Injuries by fire to buildings and goods therein (ss. 1–8).

(2) Injuries by explosive substances to buildings and goods therein (ss. 9 & 10).

(3) Injuries to buildings by rioters, &c. (ss. 11 & 12).

(4) Injuries to buildings by tenants (s. 13).

(5) Injuries to manufactures, machinery, &c. (ss. 14 & 15).

(6) Injuries to corn, trees, and vegetable productions (ss. 16–24).

(7) Injuries to fences (s. 25).

(8) Injuries to mines (ss. 26–29).

(9) Injuries to sea and river banks, and to works on rivers, canals, &c. (ss. 30 & 31).

(10) Injuries to ponds (s. 32).

(11) Injuries to bridges, viaducts, and toll-bars (ss. 33 & 34).

(12) Injuries to railway carriages and telegraphs (ss. 35–38).

(13) Injuries to works of art (s. 39).

(14) Injuries to cattle and other animals (ss. 40 & 41).

(15) Injuries to ships (ss. 42–49).

(16) Sending letters threatening to burn or destroy (s. 50).

(17) All other malicious injuries to property not before provided for (ss. 51–53).

(18) Making or having gunpowder with intent to commit a felony (s. 54).

(C) Forgery (24 & 25 Vict. c. 98). See FORGERY.

Besides the above offences, the following may be mentioned:—

(1) Stealing letters or money out of letters; opening or delaying letters after delivery by mistake to the wrong person; or stealing printed votes, newspapers, &c. (1 Vict. c. 36, ss. 25, 26, 27, 31, 32).

(2) False personation of soldiers, seamen, and marines. See FALSE PERSONATION.

(3) Offences against the bankruptcy law (24 & 25 Vict. c. 134, s. 221).

(4) Negligently setting fire to houses and buildings by servants (punishable summarily) (14 Geo. III. c. 78, s. 84).

(5) Forcible entry and detainer of property. As well at common law as by 5 Ric. II. st. 1, c. 8; 15 Ric. II. c. 2; 8 Hen. VI. c. 9; 31 Eliz. c. 11; 21 Jac. I. c. 15.

III. Offences against the sovereign or civil government.

(1) Offences relating to the coin (24 & 25 Vict. c. 99).

(2) Embezzling the Queen's stores (4 Geo. IV. c. 53).

(3) Having unlawful possession of naval stores (9 & 10 Wm. III. c. 41).

(4) Serving or procuring others to serve foreign states. Fitting out or arming vessels for the service of foreign states (59 Geo. III. c. 69).

(5) Administering unlawful oaths or being engaged in unlawful societies (37 Geo. III. c. 123). As to regular lodges of freemasons, see 39 *Geo. III.* c. 79; 57 *Geo. III.* c. 19, s. 25; 2 & 3 *Vict.* c. 12.

(6) Discharging fire-arms or missiles, &c. at the Queen (5 & 6 Vict. c. 51, s. 2).

(7) Speaking or writing against the sovereign.

(8) *Præmunire* (*præmoneri*), i. e. introducing a foreign power, and creating *imperium in imperio*.

(9) Contempts against the sovereign's title in common and unadvised discourse.

(10) Contempts against the Crown's ecclesiastical supremacy (10 Geo. IV. c. 7, s. 24, and 14 & 15 Vict. c. 60), or against the royal palaces.

(11) Maladministration in public trusts and employments (50 Geo. III. c. 59, s. 2).

(12) Buying or selling offices in the gift of the Crown (5 & 6 Edw. VI. c. 16, and 49 Geo. III. c. 126).

(13) Offences relating to naval or military stores, ships, &c. (12 Geo. III. c. 24; 25 & 26 Vict. c. 64).

(14) Desertion, or seducing to desert from the army or navy (57 Geo. III. c. 7).

(15) Refusing or neglecting to take the oaths of allegiance, supremacy, and abjuration, within such period as the law requires after admission to any office.

(16) Concealing treasure-trove, which belongs to the Crown.

(17) Preferring the interests of a foreign potentate to those of our own.

(18) Disobeying the sovereign's lawful commands.

(19) Disobedience to any Act of Parliament, where no particular penalty is assigned.

IV. Offences against religion.

(1) Apostasy (9 & 10 Wm. III. c. 32).

(2) Heresy.

(3) Blasphemy.

(4) Reviling the ordinances of the Established Church (1 Edw. VI. c. 1; 1 Eliz. cc. 1, 2).

(5) Swearing and cursing (19 Geo. II. c. 21).

(6) Using pretended witchcraft, conjuration, enchantment, or sorcery (9 Geo. II. c. 5, and 5 Geo. IV. c. 83, s. 4).

(7) Religious imposture.

(8) Simony (31 Eliz. c. 6; 1 Wm. & M. c. 16; and 12 Anne, st. 2, c. 12).

(9) Profanation of the Lord's day (29 Car. II. c. 7; and 17 & 18 Vict. c. 79).

(10) Entry into the realm of unlicensed jesuits and monks (10 Geo. IV. c. 7, ss. 28–36; 23 & 24 Vict. c. 134, s. 7).

(11) Disturbing public worship (52 Geo. III. c. 155, s. 12, and 9 & 10 Vict. c. 59, s. 2).

V. Offences against the law of nations.

(1) Piracy, or robbery and depredation upon the high seas. See 5 *Geo. IV.* c. 113; 7 *Wm. IV.* and 1 *Vict.* c. 88; 9 & 10 *Vict.* c. 24; 16 & 17 *Vict.* c. 99; 20 & 21 *Vict.* c. 3.

(2) Violation of safe-conducts (31 Hen. VI. c. 4).

(3) Infringements of the rights of ambassadors (7 Anne, c. 12).

VI. Offences against public justice.

(1) Falsely certifying a record or counterfeiting official seals and signatures (1 & 2 Vict. c. 94, s. 19; 7 & 8 Vict. c. 19, s. 5; and 24 & 25 Vict. c. 98, ss. 27 & 28).

(2) Striking or other outrage in the superior courts.

(3) Breach of prison, when confined for an offence.

(4) Rescuing a criminal, or aiding a criminal to escape.

(5) Taking reward, under the pretence of helping the owner to his stolen property (24 & 25 Vict. c. 98, s. 101).

(6) Using threatening or reproachful words to a judge.

(7) Intimidation, or improper demeanor towards suitors or witnesses.

(8) Embracery, or an attempt to corrupt or influence a jury by money, promises, letters, threats, or improper persuasions (6 Geo. IV. c. 50, s. 61).

(9) Obstructing a lawful arrest or execution of process.

(10) Escape of a person arrested for crime.

(11) Returning from transportation before the expiration of the punishment (5 Geo. IV. c. 84, s. 22; 4 & 5 Wm. IV. c. 67; 9 & 10 Vict. c. 24; 16 & 17 Vict. c. 99; 20 & 21 Vict. c. 3).

(12) Theft-bote, or compounding a felony.

(13) Misprision, or concealment of felony.

(14) Compounding an information upon penal statutes or misdemeanors, without leave of the court.

(15) Common barratry, i. e. frequently inciting and stirring up quarrels and litigations.

(16) Maintenance, i. e. the officious intermeddling in another person's suit.

(17) Champerty, i. e. a bargain with a suitor for some of the fruits of a judgment, in consideration of finding money to carry on the litigation.

(18) Conspiracy, i. e. a concert and agreement of two or more persons to effect an unlawful object, or a lawful object by unlawful means.

(19) Perjury, and subornation of it.

(20) Bribery. As to bribery at elections, see 17 & 18 *Vict.* c. 102; 21 & 22 *Vict.* c. 8; 25 & 26 *Vict.* c. 109; 26 & 27 *Vict.* c. 29.

(21) Negligence of officers of justice.

(22) Oppression and partiality of judges.

(23) Extortion, oppression, or fraud in office.

(24) Disobeying orders of justices, &c.

(25) Solicitations to commit offences.

VII. Offences against the public peace.

(1) The riotous assembling of twelve persons or more, and not dispersing upon proclamation. The Riot Act is 1 Geo. I. st. 2, c. 5.

(2) Affray, i. e. the fighting of two or more in a public place to the terror of the public.

(3) Riot, i. e. a tumultuous disturbance of the peace by three persons or more, assembling of their own authority, with a common intent to assist one another against any one who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act intended were of itself lawful or unlawful.

(4) Rout, i. e. a disturbance of the peace, by persons assembling with an intention to do a thing, which, if it be executed, will make them rioters; and actually making a motion towards the execution thereof.

(5) Unlawful assembly, i. e. a disturbance of the peace, by persons barely assembling with an intention to do a thing, which, if it were executed, would make them rioters, but neither actually executing it, nor making a motion towards the execution of it.

(6) Tumultuous petitioning (13 Car. II. st. 1, c. 5; 57 Geo. III. c. 19, s. 23).

(7) Riding or going armed with dangerous or unusual weapons (Statute of Northampton, 2 Edw. III. c. 3).

(8) Spreading false news.

(9) False and pretended prophecies, with intent to disturb the peace.

(10) Challenges to fight, either by word or letter, or knowingly bearing them.

(11) Libel (6 & 7 Vict. c. 96, and 8 & 9 Vict. c. 75).

VIII. Offences against public trade.

(1) Smuggling (8 & 9 Vict. c. 87; 16 & 17 Vict. c. 107, s. 248; and 23 & 24 Vict. c. 3).

(2) Cheating, and using false weights and measures (numerous statutes).

(3) Monopoly (21 Jac. I. c. 3).

(4) Conspiracy by illegal means to raise wages.

(5) Interfering with the rights of labor (6 Geo. IV. c. 129, s. 3, and 9 Geo. IV. c. 31, s. 29; 24 & 25 Vict. c. 100, ss. 39 & 40.

IX. Offences against the public health, police, or economy.

(1) Breach of the laws respecting quarantine (6 Geo. IV. c. 78, s. 21), or of the Vaccination Acts (16 & 17 Vict. c. 100; 24 & 25 Vict. c. 59).

(2) Selling adulterated or unwholesome provisions. Several statutes. See 11 & 12 *Vict.* c. 107; 23 & 24 *Vict.* c. 84.

(3) Common nuisances, such as—

(*a*) Omitting to repair public highways or bridges.

(*b*) Obstructing, encroaching on, or annoying the public in using public highways, bridges, or shores.

(*c*) Carrying on unwholesome occupations near to public highways or habitations, keeping disorderly houses, such as gaming-houses and brothels, or keeping dangerous animals, &c. Exposing in a public thoroughfare a person infected with a contagious disease. As to betting-houses, see 16 & 17 *Vict.* c. 119. As to the smoke nuisance in the metropolis, see 16 & 17 *Vict.* c. 128.

(4) Indecency, such as the publication or exhibition of indecent books or pictures, or the indelicate exposure of the person in public places. See 20 & 21 *Vict.* c. 83, as to the sale of obscene books, &c.

(5) Drunkenness (4 Jac. I. c. 5, and 21 Jac. I. c. 7, ss. 1 & 3).

(6) Wanton and furious driving, see 24 & 25 *Vict.* c. 100.

(7) Cruelty to animals (12 & 13 Vict. c. 92, amended by the 17 & 18 Vict. c. 60).

(8) Refusing to bury, or taking up dead bodies. The Anatomy Act is 2 & 3 Wm. IV. c. 75.

(9) Refusing to serve a public office.

(10) Offences against the Game Acts (1) poaching by night, which for this purpose commences at the expiration of the first hour after sunset, and concludes at the beginning of the last hour before sunrise (9 Geo. IV. c. 69). See also 24 & 25 *Vict.* c. 96, s. 17; 25 & 26 *Vict.* c. 114. (2) Poaching by day, which for this purpose commences at the beginning of the last hour before sunrise, and concludes at the expiration of the last hour after sunset (1 & 2 Wm. IV. c. 32.)

(11) Vagrancy. Vagrants are divided into three classes:—(1) Idle and disorderly persons; (2) Rogues and vagabonds; and (3) Incorrigible rogues (5 Geo. IV. c. 83, amended by 1 & 2 Vict. c. 38).

Offerings, personal tithes, payable by custom to the parson or vicar of a parish, either occasionally, as at sacraments, marriages, christenings, churching of women, burials, &c.; or at constant times, as at Easter, Christmas, &c.—2 & 3 *Edw. VI.* cc. 13, 20, 21.

Offertorium, the offerings of the faithful, or the place where they are made or kept; the service at the time of sacrament.

Office, that function by virtue whereof a person has some employment in the affairs of another, whether judicial, ministerial, legislative, municipal, ecclesiastical, &c.—*Cowel.* It is a species of incorporeal hereditament.—2 *Bl. Com.* 36.

Also, a place where business is transacted.

Office, *Inquest of.* See INQUEST OF OFFICE.

Office-copy, a transcript of a proceeding filed in the proper office of a court under the seal of such office.

Office-found, the finding of a jury in an inquest of office of a fact which entitles the Crown to the possession of lands or tenements, goods or chattels. See INQUEST OF OFFICE.

Office-hours. The several offices of the Court of Chancery, except the offices of the accountant-general and taxing masters, are to be opened on every day of the year except Sundays, Good Friday, Monday and Tuesday in Easter week, Christmas day, and all days appointed by proclamation to be observed as days of general fast or thanksgiving.—*Consol. Ord.* 1860, v., r. 1.

The offices of the accountant-general and taxing masters are to be opened on every day of the year, except the days specified in rule 1, and except during vacations (r. 2).

The office of the vacation taxing master is to be opened during the vacations on every day except the days specified in rule 1 (r. 3).

The Lord Chancellor may, from time to time, by special order, direct the offices to be closed on days other than those mentioned in Order v., and direct any of the vacations to commence and terminate on days different from the fixed days mentioned in rules 4 & 5 (r. 6).

At common law, by R. 173, H. T. 1853, 'the masters' offices in the several Courts shall be open in term time from eleven o'clock in the forenoon till five o'clock in the afternoon, and not in the evening; and in the vacation from eleven o'clock in the forenoon till three o'clock in the afternoon, except between the 10th day of August and the 24th day of October, when they are to be open from eleven in the morning till two in the afternoon, and except on Good Friday, Easter eve, Monday and Tuesday in Easter week, Christmas day, and the three following days, and such of the four following days as may not fall in the time of term, but not otherwise, namely, the Queen's birthday, the Queen's accession, Whit Monday, and Whit Tuesday, when the offices shall be closed.' By the directions of the Judges made in H. T. 1853, 'between the first day of September and the 24th day of October in each year, one of the masters of the Courts of Queen's Bench, Common Pleas, or Exchequer, shall have authority to tax bills of costs, take references, and perform other necessary and immediate matters arising in or appertaining to any or either of the said Courts at the office of his own Court; and for such purpose one of the masters shall attend on certain days in each week, as may be found necessary, and of which due notice shall be affixed in the Judges' Chambers, and in the

respective offices of the masters of each Court; and such master shall be considered as the vacation master.' See HOLIDAY; VACATION.

Officer, a man employed to discharge an office.

Officia judicialia non concedantur ante quam vacent.—11 *Co.* 4.—(Judicial offices may not be granted before they are vacant).

Officia magistratûs non debent esse venalia.—*Co. Litt.* 234.—(The offices of magistrate ought not to be sold).

Official, pertaining to a public charge.

In the civil law, he is the minister of, or attendant upon, a magistrate. In the canon law, he is the person to whom a bishop commits the charge of his spiritual jurisdiction; there is one in every diocese, called *officialis principalis*, i. e. chancellor; the rest, if there are more, are *officiales foranei*, i. e. commissaries. In our statutes, he is the person whom the archdeacon appoints as his substitute.—*Wood's Inst.* 30.

Official Assignees, certain persons from the class of merchants or accountants, appointed by the Lord Chancellor, to act in all bankruptcies; one of whom must in all cases be an assignee of the bankrupt's estate and effects, together with the assignee or assignees chosen by the creditors. All the personal estate, the profits of the realty, and the proceeds of all such estates as shall be sold, are received by such official assignee alone, and paid by him into the Bank of England to the credit of the accountant in bankruptcy. Until assignees are chosen by the creditors, he is sole assignee of the bankrupt's estate and effects. He is attached to the proceedings at the sitting to adjudicate.—12 & 13 *Vict.* c. 106, ss. 38–45; and 24 & 25 *Vict.* c. 134, s. 109.

Official Liquidators, officers appointed to conduct the proceedings, and to assist the court in winding up a Joint Stock Company.—25 & 26 *Vict.* c. 89, s. 92.

Official Logbook, a logbook in a certain form, and containing certain specified entries required by 17 & 18 Vict. c. 104, ss. 280–282, to be kept by all British merchant ships, except those exclusively engaged in the coasting trade.

Official Managers, persons formerly appointed, under statutes now repealed, to superintend the winding-up of insolvent companies, under the control of the Court of Chancery.

Official Trustees of Charities, appointed by 16 & 17 Vict. c. 137, amended by 18 & 19 Vict. c. 24.

Official Use, an active use before the Statute of Uses, which imposed some duty on the legal owner or feoffee to uses, as a conveyance to A. with directions for him to sell the estate and distribute the proceeds amongst B, C, and D. To enable A to perform this duty, he had the legal possession of the estate to be sold.

Officiality, the court or jurisdiction of which an official is head.

Officiariis non faciendis vel amovendis, a writ addressed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the office he has, until inquiry is made of his manners, &c.—*Reg. Orig.* 126.

Officina Justitiæ, a department of the Common Law jurisdiction of Chancery, out of which original writs issue.

Officio, ex, *oath of,* an oath whereby a person may be obliged to make any presentment of any crime or offence, or to confess or accuse himself of any criminal matter or thing, whereby he may be liable to any censure, penalty, or punishment.—3 *Bl. Com.* 447.

Officious will, a testament which is consonant with a testator's natural affection and moral duties.

Officit conatus si effectus sequatur.—*Jenk. Cent.* 55.—(The attempt endangers if an effect follow.)

Officium nemini debet esse damnosum.—(An office ought to be injurious to no person.)

Old Bailey Sessions. These were superseded by the Central Criminal Court, which see.

Old Natura Brevium, an old book containing an account of the writs in use in the time of Edward III. It is usually cited *O. N. B.* or *Vet. N. B.* Fitzherbert made it the model of his own treatise on the same subject.—3 *Reeves*, 151.

Old Style. See NEW YEAR'S DAY.

Old Tenures, a treatise, so called to distinguish it from Littleton's book on the same subject, which gives an account of the various tenures by which land was holden, the nature of estates, and some other incidents to landed property in the reign of Edward III. It is a very scanty tract, but has the merit of having led the way to Littleton's famous work.—3 *Reeves*, 151.

Oleron, an island lying in the bay of Acquitain, at the mouth of the river Charente, formerly in the possession of the Crown of England.

The inhabitants of the island of Oleron have been able mariners for seven or eight hundred years past. They are said to have framed and drawn up the laws of the navy or the marine, which are still called the Laws of Oleron. According to the French writers, these maritime laws were digested in this island under the title of *Réole des Jugemens d'Oleron*, by direction of Queen Eleanor, the wife of Henry II., in her quality of Duchess of Guienne, and afterwards enlarged and improved by her son Richard I. But Selden (*de Dom. Mar.* c. xiv.) denies this, and maintains that they were compiled and promulgated by Richard I. as King of England. However, it is proper to add, that more modern writers, as Mons. Boucher, of

Paris, and our countryman, Mr. Luders, consider the whole account as fallacious—M. Boucher calling the story of our Richard I. and Queen Eleanor *une chimère des plus invraisemblables.—Monthly Review*, Dec. 1811. The laws of Oleron were to a great extent the foundation of the maritime laws of most of the states of Europe.

Oligarchy, a form of government wherein the administration of affairs is lodged in the hands of a few persons.

Olympiad, a Grecian epoch; the space of four years.

Omission, neglect to do something. Some omissions render the proceedings void in which they occur, and other omissions are in some circumstances punishable as crimes and offences.

Omissio eorum quæ tacite insunt nihil operatur.—2 *Buls.* 131.—(The omission of those things which are silently understood is of no consequence.)

Omittance, forbearance.

Omne actum ab intentione agentis est judicandum. A voluntate procedit causa vitii atque virtutis.—Jur. Civ.—(Every act is to be estimated by the intention of the doer. The cause of vice and virtue proceeds from the will.)

Omne crimen ebrietas et incendit et detegit.—Co. Litt. 247.—(Drunkenness both kindles and uncovers every crime.)

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius.—Co. Litt. 355.—(Every thing more worthy draws to it the less worthy, although the less worthy be the more ancient.)

Omne magnum exemplum habet aliquid ex iniquo, quod publicâ utilitate compensatur.—Hob. 279.—(Every great example has some portion of evil, which is compensated by its public utility.)

Omne majus continet in se minus: minus in se complectitur.—Jenk. Cent. 208.—(The greater contains the lesser; the minor is embraced by it.)

Omne majus dignum continet in se minus dignum.—Co. Litt. 43.—(The more worthy contains in itself the less worthy.)

Omne sacramentum debet esse de certâ scientiâ.—4 *Inst.* 279.—(Every oath ought to be of certain knowledge.)

Omne testamentum morte consummatum est.—3 *Co.* 29.—(Every will is completed by death.)

Omnes prudentes, illa admittere solent quæ probantur iis qui in arte suâ bene versati sunt.—7 *Co.* 19.—(All prudent men are accustomed to admit those things which are approved by those who are well versed in the art.)

Omnes reges dicuntur clerici.—Dav. 4.—(All kings are called clerical.)

Omnes sorores sunt quasi unus hæres de unâ hæreditate.—Co. Litt. 67.—(All sisters are, as it were, one heir to one inheritance.)

Omnes subditi sunt regis servi.—Jenk. Cent. 126.—(All subjects are the king's servants.)

Omni exceptione majus.—4 *Inst.* 262.—(Above all exception.)

Omnia delicta in aperto leviora sunt.—8 *Co.* 127.—(All crimes done openly are lighter.)

Omnia præsumuntur solemniter esse acta.—Co. Litt. 6.—(All things are presumed to be done rightly.)

Omnia præsumuntur contra spoliatorem.—(All things are presumed against a wrong-doer.)

Omnia præsumuntur legitimè facta donec probetur in contrarium.—Co. Litt. 232.—(All things are presumed legitimately done, until it be proved contrariwise.)

Omnia quæ movent ad mortem sunt deodanda. 3 *Inst.* 57.—(All things which move to death are deodands.)

But deodands are abolished by 9 & 10 Vict. c. 62.

Omnia quæ sunt uxoris sunt ipsius viri; non habet uxor potestatem sui, sed vir.—Co. Litt. 112.—(All things which belong to the wife belong to the husband; the wife has no power of her own, the husband has it all.)

Omnis actio est loquela.—Co. Litt. 292.—(Every action is a complaint.)

Omnis conclusio boni et veri judicii sequitur ex bonis et veris præmissis et dictis juratorum. Co. Litt. 226.—(Every conclusion of a good and true judgment arises from good and true premises, and sayings of juries.)

Omnis consensus tollit errorem.—2 *Inst.* 123. (Every assent removes error.)

Omnis innovatio plus novitate perturbat quam utilitate prodest.—2 *Bulst.* 338.—(Every innovation disturbs more by its novelty than benefits by its utility.)

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur.—Jenk. Cent. 96.—(Every interpretation, if it can be done, is to be so made in instruments, that all contradictions may be removed.)

Omnis nova constitutio futuris temporibus formam imponere debet, non præteritis.—2 *Inst.* 95. (Every new institution should give a form to future times, not to past.)

Omnis privatio præsupponit habitum.—Co. Litt. 339.—(Every privation presupposes former enjoyment.)

Omnis querela et omnis actio injuriarum limitata est infra certa tempora.—Co. Litt. 114.—(Every plaint, and every action for injuries, are limited within certain times.)

Omnis ratihabitio retro trahitur et mandato priori æquiparatur.—Co. Litt. 207.—(Every consent given to what has been already done has a retrospective effect, and is equivalent to a previous request.)

Omnium, the aggregate of certain portions of different stocks in the public funds.—*Com. term.*

Omnium domos regum vigilia defendit, ideo lex vigilat pro rege.—Jenk. Cent. 61.—(The vigilance of kings guards the houses of all, and, therefore, the law guards the king.)

Omnium rerum quarum usus est, potest esse abusus, virtute solo excepta.—Dav. 79.—(There may be an abuse of everything of which there is an use, virtue alone excepted.)

Oncunne, accused.

One hundred thousand pounds clause, a precautionary stipulation inserted in a deed making a good tenant to the *præcipe* in a common recovery. See 1 *Prest. Conv.* 110.

Onerando pro ratâ portionis, a writ that lay for a joint-tenant, or tenant-in-common, who was distrained for more rent than his proportion of the land comes to.—*Reg. Orig.* 182.

Onerari non debet (*he ought not to be burdened*), a form of commencement of a pleading, substituted in some few cases for *actionem non.* But see *H. T.*, 4 *Wm. IV.*; and the *cases* 1 *Saund.* 290, n. *b.*

Onerous cause, a good and legal consideration.—*Scotch term.*

O. Ni. It was the course of the Exchequer, as soon as the sheriff entered into and made up his account for issues, amerciaments, &c., to mark upon each head *O. Ni.*; which denoted *oneratur, nisi habeat sufficientem exonerationem,* and presently he became the king's debtor, and a *debet* was set upon his head; whereupon the parties *paravaile* became debtors to the sheriff, and were discharged against the king, &c.—4 *Inst.* 116.

But sheriffs now account to the commissioners for auditing the public accounts.

Onus episcopale, ancient customary payments from the clergy to their diocesan bishop, of synodals, pentecostals, &c.

Onus importandi, the charge or burden of importing merchandise.

Onus probandi, the burden of proof. See BURDEN OF PROOF.

Opening biddings. Where estates are sold, under the decree of a court of equity, the court considers itself to have a greater power over the contract than it would have were the contract made between party and party; and as the chief aim of the court is to obtain as great a price for the estate as can possibly be got, it is in the habit of opening the biddings after the estate is sold.

When a person is desirous of opening a bidding, he must, at his own expense, apply to the court, by motion for that purpose, stating the advance offered. Notice of the motion must be given to the person who is the purchaser of the lot, and to the parties in the cause. If the court approve of the sum offered, the application will be granted, and on the order being drawn up, entered, and served, a new sale must be had before the chief clerk. The order is made at the expense of the person opening the biddings, and he must bear the expense of paying in his deposit, and pay the costs of the first purchaser, and interest, at the rate of four per cent. on such part of the purchase-money as the chief clerk shall find to have lain dead. The biddings will be opened more than once, even on the application of the same person, if a sufficient advance be offered. Biddings, generally, cannot be opened after the confirmation of the certificate of the highest bidder. Where the biddings are opened, the advance is to be deposited immediately.

The biddings of an estate sold under a bankruptcy have been opened in analogy to the rules upon sales in courts of equity.—*St. Leon. V. and P.* 90.

Opening the case. On a trial before a jury the counsel who upholds the affirmative of the question at issue begins, because he is called upon to give evidence in support of his case, in conformity with the civil law maxim: *ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit.—Cod.* 4.

Opening the pleadings, stating at a trial before a jury the substance of the pleadings. This is generally done by the junior counsel of the plaintiff.

Open law [*lex manifesta,* Lat.], the making or waging of law.

Open policy, one in which the interest of the insured is to be ascertained in case of loss.

Open theft [*open theof,* Sax.], a theft that is manifest.

Open tide, the time after corn is carried out of the fields.

Operarii, such tenants, under feudal tenures, as held some little portions of land by the duty of performing bodily labor and servile works for their lord; they were no other than the *servi* or bondmen.

Operatio, one day's work performed by a tenant for his lord.

Opetide, the ancient time of marriage, from Epiphany to Ash-Wednesday.

Opinio est duplex: scilicet opinio vulgaris, orta inter graves et discretos, et quæ vultum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis.—4 Co. 107.—(Opinion is of two kinds, namely, common opinion, which springs up among grave and discreet men, and which has the appearance of truth; and opinion only which springs up among light and foolish men, without the semblance of truth.)

Oportet quod certæ personæ, terræ, et certi status, comprehendantur in declaratione usuum. 9 *Co.* 9.—(It is right that given persons, lands, and estates, should be comprehended in a declaration of uses.)

Oportet quod certa res deducatur in judicium.

Jenk. Cent. 84.—(A thing certain must be brought to judgment.)

Opposer, an officer formerly belonging to the green-wax in the Exchequer. Abolished.

Opposita juxta se posita magis elucescunt.—*Bacon.*—(Things opposite are more conspicuous when placed together.)

Oppression, the trampling upon or bearing down a person, under pretence of law, which is unjust.

Optima est lex quæ minimum relinquit arbitrio judicis; optimus judex qui minimum sibi.—*Bac. Aphor.* 46.—(That system of law is best which confides as little as possible to the discretion of a judge; that judge the best who relies as little as possible on his own opinion.)

Optima statuti interpretatrix est (*omnibus particulis ejusdem inspectis*) *ipsum statutum.*—8 *Co.* 117.—(The best interpreter of a statute is (all the separate parts being considered) the statute itself.)

Optimacy, nobility; men of the highest rank.

Optimus interpres rerum usus.—2 *Inst.* 282. (Use is the best interpreter of things.)

Optimus interpretandi modus est sic leges interpretare ut leges legibus concordant.—8 *Co.* 169.—(The best mode of interpretation is so to interpret laws that they may accord with each other.)

Optimus legum interpres consuetudo.—4 *Inst.* 75.—(Custom is the best interpreter of the laws.)

Option. When a new suffragan bishop is consecrated by the archbishop of the province, by a customary prerogative, the archbishop claims the collation of the first vacant dignity or benefice in that see, at his own choice, i. e. option.—*Cowel.*

Optional writ, a *præcipe*, so called because it was in the alternative, commanding the defendant to do the thing required, or show the reason wherefore he had not done it.

Or [Fr.], gold, called *sol* by some heralds when it occurs in the arms of princes, and *topaz* or *carbuncle* when borne by peers. Engravers represent it by an indefinite number of small points.—*Heraldic term.*

Ora, a Saxon coin, valued at sixteen pence, and sometimes at twenty pence.—*Domesday.*

Oraculum, a decision by a Roman emperor.

Oral, delivered by the mouth; not written.

Oral pleading, pleading by word of mouth in presence of the judges. This was the original mode of pleading; it was, however, superseded by written pleadings in the reign of Edward III.

Orando pro rege et regno, an ancient writ which issued while there was no standing collect for a sitting Parliament, to pray for the peace and good government of the realm.

Orator, a petitioner; a plaintiff in a bill, or information in Chancery, was formerly so called.

Oratrix, or **Oratress,** a female petitioner; a female plaintiff in a bill in Chancery was formerly so called.

Orbation, privation of parents or children; poverty.—*Cockeram.*

Ordeal [fr. *ordal*, Sax., from *or*, great, and *dele*, judgment], an ancient manner of trial in criminal cases, practised amongst our Saxon ancestors, who affected to believe that God would actively interpose to establish an earthly right. There were four sorts: (1) camp-fight, *duellum*, or combat; (2) fire ordeal; (3) hot water ordeal; (4) cold water ordeal, which titles see. *Verstegan's Decayed Intelligence*, 64; *Turner's Ang. Sax.* vol. ii. 532; 2 *Hallam's Mid. Ages*, 466. They are, of course, all abolished.

Ordeffe, or **Ordelfe,** a liberty whereby a man claims the ore found in his own land; also, the ore lying under land.

Ordels, the right of administering oaths and adjudging trials by ordeal within a precinct or liberty.—*Cowel.*

Order, mandate, precept, command; also, a class or rank.

Orders are promulgated by the courts of law and equity, not only for the proper regulation of their own proceedings, but also to enforce obedience to justice, and compel that which is right to be performed.

Order of discharge, an order made under the Bankruptcy Act 1861, 24 & 25 Vict. c. 134, by a court of bankruptcy, the effect of which is to discharge a bankrupt from all debts, claims, or demands provable under the bankruptcy. It is in its effect analogous to a certificate of conformity under the previous law. The provisions of the Act relating to orders of discharge are as follows:—All classification of certificates is abolished, and in every case where the discharge of a bankrupt shall be suspended, when allowed it shall simply state the period for which it was suspended and the reasons for such suspension; and if the bankrupt shall have been sentenced to imprisonment under the provisions of this Act such discharge shall also set forth the fact of such sentence and the period of such imprisonment (s. 157).

After the bankrupt has passed his last examination, unless an order of discharge shall have been previously made, the court shall appoint a sitting for the purpose of considering the question of granting such order, fourteen days notice of which shall be given in the *London Gazette* and such newspapers as the court shall direct. The assignees, or any creditor who has proved, may be heard against such discharge (s. 158).

In granting orders of discharge, the following rules shall be observed:—

(1) If on the hearing of any application for an order of discharge, the assignees or any creditor shall allege, and if, with or without such allegation, the court shall be of opinion that there is ground for charging the bankrupt with acts or conduct amounting to a misdemeanor under the Act (see s. 221), the court shall, if the bankrupt consent thereto, direct a clear statement in writing of the charge to be delivered to the bankrupt and shall appoint a day for trying the bankrupt on such charge; and if the bankrupt require it, shall summon a jury, and may direct the creditors' assignee or the official assignee, or any of the creditors of the bankrupt, to act as prosecutor on such trial. Provided always, that in every case of accusation against a bankrupt of acts amounting to a misdemeanor, the court may direct that the bankrupt be indicted and prosecuted in one of the ordinary courts of criminal justice, and in all other cases the order of discharge shall take effect immediately from its date, subject to appeal.

(2) If on such trial by a jury, or by the commissioner alone, the bankrupt shall be convicted of any offence by this Act made a misdemeanor, the commissioner shall, in addition to the punishment awarded for the offence, have power to direct that the order of discharge be either wholly refused or suspended during such time and upon such conditions as he shall think fit.

(3) If the bankrupt shall not be accused of acts amounting to misdemeanor, or if he shall have been accused and acquitted, but in either case there shall be made, or shall appear to the court to exist, objection to the granting of an immediate discharge, the court shall proceed to consider the conduct of the bankrupt before and after adjudication, and the manner and circumstances in and under which his debts have been contracted; and if the court shall be of opinion that the bankrupt has carried on trade by means of fictitious capital, or that he could not have had, at the time when any of his debts were contracted, any reasonable or probable ground of expectation of being able to pay the same, or that, if a trader, he has, with intent to conceal the true state of his affairs, wilfully omitted to keep proper books of account, or whether trader or not, that his insolvency is attributable to rash and hazardous speculation, or unjustifiable extravagance in living, or that he has put any of his creditors to unnecessary expense by frivolous or vexatious defence in any action or suit to recover any debt or money due from him, the court may either refuse an order of discharge, or may suspend the same from taking effect from such time as it may think fit, or may grant it, subject to any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings, or income which may afterwards become due to the bankrupt, and touching after-acquired property of the bankrupt, or may be imprisoned for any period of time not exceeding one year from the date of such sentence.

No person shall be liable to any criminal proceeding or penalty in respect of any matter which may have occurred before the passing of this Act, to which he would not have been liable if this Act had not passed (s. 159).

With respect to all persons heretofore bankrupts, and whose certificates of conformity shall have been refused, the court may at any time after the expiration of three years from the time of such refusal hear and determine the application of any such bankrupt for an order of discharge, and, if it think fit, may grant such order either absolute or subject to any condition or conditions in the same manner as if the bankruptcy of such applicant had taken place after the commencement of this Act (s. 160).

The order of discharge shall, upon taking effect, discharge the bankrupt from all debts, claims, or demands, provable under his bankruptcy, save as by the Act otherwise provided; and if thereafter he shall be arrested, or any action shall be brought against him for any such debt, claim, or demand, he shall be discharged upon entering an appearance, and may plead in general that the cause of action accrued before he became bankrupt, and may give this Act and the special matter in evidence, and the order of discharge shall be sufficient evidence of the bankruptcy and the proceedings precedent to the order of discharge (s. 161).

If a bankrupt, after the order of discharge takes effect, be arrested or detained in custody for a debt, claim or demand provable under his bankruptcy, where judgment has been obtained before the order of discharge takes effect, the court, or a judge of a superior court of law, shall, on proof of the order of discharge, and, unless there appear good reason to the contrary, direct the officer who has the bankrupt in custody to discharge him, which shall be done accordingly, without fee (s. 162).

The order of discharge shall not release or discharge any person who was a partner with the bankrupt at the time of the bankruptcy, or was then jointly bound, or had made any joint contract with him (s. 163).

After the order of discharge takes effect, the bankrupt shall not be liable to pay or satisfy any debt, claim, or demand, provable under the bankruptcy, or any part thereof, or any contract, promise, or agreement, verbal or written, made after adjudication; and if he be sued on any such contract, promise, or agreement, he may plead in general that the cause of action occurred pending proceedings in bank-

ruptcy, and may give this Act and the special matter in evidence (s. 164).

The order of discharge shall discharge the bankrupt from the effects of any process, issuing out of any court, for contempt of any court, for non-payment of money, or of costs or of expenses in any court, and from all costs which he would be liable to pay in consequence of or on purging his contempt; and a bankrupt in custody under any such process as aforesaid, shall, on obtaining an order of discharge, be entitled to be discharged from such custody forthwith (s. 165).

Any contract, covenant, or security, made or given by a bankrupt or other person, with, to, or in trust for any creditor, for securing the payment of any money as a consideration, or with intent to persuade the creditor to forbear opposing the order for discharge, or to forbear to petition for a rehearing of, or to appeal against the same, shall be void, and any money thereby secured or agreed to be paid shall not be recoverable, and the party sued on any such contract or security may plead in general that the cause of action accrued pending proceedings in bankruptcy, or may give this Act and the special matter in evidence: provided always, that no such security, if a negotiable security, shall be void, as against a *bonâ fide* holder thereof, for value, without notice of the consideration for which it was given (s. 166).

If any creditor of a bankrupt shall obtain any sum of money, or any goods, chattels, or security for money, from any person as an inducement for forbearing to oppose, or for consenting to the allowance of the discharge of such bankrupt, or to forbear to petition for the recal of the same, every such creditor so offending shall forfeit for every such offence the treble value or amount of such money, goods, chattels, or security so obtained (s. 167).

The order of discharge, whether suspended or not, shall not be reviewed by the court unless it see good cause to believe that the order was obtained by false evidence, or by reason of the suppression of evidence, or otherwise fraudulently, in any of which cases the court may, upon the application of a bankrupt, or of a creditor who has proved, and subject to such deposit for costs, and to such notices by advertisement or otherwise, as the court shall think fit, grant a rehearing of the matter, and rehear it accordingly, and, upon rehearing it, shall make such order as shall seem just, in like manner as it might upon an original hearing (s. 168).

If, upon such hearing, the court shall annul or suspend the order of discharge, all persons having *bonâ fide* become creditors of the bankrupt between the time of the order originally taking effect and the time of its being annulled or suspended, on rehearing shall, as against any property acquired by the bankrupt during the same period, and in priority to the original creditors, be admitted to prove, and have dividends under the bankruptcy (s. 169).

The order of discharge shall not be drawn up until after the expiration of the time allowed for appeal, or if an appeal be brought until after the decision of the Court of Appeal upon such appeal, and shall bear date either the day after the expiration of the time allowed for appeal, or the day of the decision of the Court of Appeal, as the case may require (s. 170).

At any time, within thirty days after any order of discharge shall have been allowed or refused, and subject to such order as to deposit of costs as General Orders shall direct, any creditor of the bankrupt, or any creditor's assignee, or the bankrupt, may, if the order of discharge has been made or refused by any commissioner or any county court judge, apply to the Court of Appeal in Chancery that such order of discharge may be granted or recalled, and delivered up to be cancelled, and such court may, on good cause shown, order such order of discharge to be granted, or to be recalled and cancelled (s. 171).

The order of discharge shall be in such form as General Orders shall direct, and shall be under the hand of the Commissioner and the seal of the Court, and notice of the granting thereof shall be advertised in the *London Gazette* and in two local papers (s. 172). See also *Gen. Ord.* Oct. 12, 1861; and *Re Mew & Thorne*, 31 *L. J.* (*Bank*), 87.

Order of revivor, an order as of course for the continuance of an abated suit. It superseded the bill of revivor. The opposite party may move to discharge it within twelve days after service.—15 & 16 *Vict.* c. 86, s. 52, and *Cons. Ord.* 1860, xxxii., r. 1.

Orders of the clergy. See Holy Orders.

Ordinance, law, rule, prescript.

Ordinance of the forest, a statute made touching matters and causes of the forest.—33 & 34 *Edw. I.*

Ordinance of Parliament, act of Parliament; *acts* and *ordinances* being convertible terms. There seems, however, to be this difference between them: an *ordinance* was but a temporary act, not introducing any new law, but founded on acts formerly made; an *act* was a perpetual law not to be altered but by king, lords, and commons. These distinctions are not now observed.

Ordinarius ita dicitur quia habet ordinariam jurisdictionem, in jure proprio, et non propter deputationem.—Co. Litt. 96.—(The ordinary is so called, because he has an ordinary jurisdiction in his own right, and not a deputed one.)

Ordinary, a judge who has authority to take cognizance of causes in his own right, and not by deputation.—*Civ. Law.*

By the common law, one who has exempt and immediate jurisdiction in causes ecclesiastical.

Also, a bishop; and an archbishop is the ordinary of the whole province, to visit and receive appeals from inferior jurisdictions. Also, a commissary or official of a bishop or other ecclesiastical judge having judicial power; an archdeacon; officer of the royal household.

Ordinary of assize and sessions, a deputy of the bishop of the diocese, anciently appointed to give malefactors their neck verses, and judge whether they read or not; also, to perform divine services for them, and assist in preparing them for death.

Ordinary conveyances, those deeds of transfer which are entered into between two or more persons, without an assurance in a superior court of justice. See DEED.

Ordinary of Newgate, one who is attendant upon condemned malefactors in that prison to prepare them for death; he records the behaviour of such persons. Formerly, it was the custom of the ordinary to publish a small pamphlet upon the execution of any remarkable criminal.

Ordinatio Forestæ, 33 Edw. I. st. 5; 34 Edw. I. st. 5.—2 *Reeves*, c. ix., pp. 104 & 106.

Ordinatio pro statu Hiberniæ, 17 Edw. I.—2 *Reeves*, c. ix., p. 99.

Ordination, the conferring holy orders; or initiating a person into the priesthood. The first thing necessary, on application for holy orders, is the possession of a title, that is, a sort of assurance from a rector to the bishop, that, provided the latter finds the person fit to be ordained, the former will take him for his curate, with a stated salary. The candidate is then examined by the bishop or his chaplain respecting both his faith and his erudition; and various certificates are necessary, particularly one signed by the clergyman of the parish in which he has resided during a given time. Subscription to the thirty-nine articles is required; and a clerk must have attained his twenty-third year before he can be ordained a deacon; and his twenty-fourth to receive priest's orders. The ceremony of ordination is performed by the bishop, by the imposition of hands on the person to be ordained. In the English church, and in most Protestant countries where the church is connected with the state, ordination is a requisite to preaching; but, in some sects, ordination is not considered necessary for that purpose, although it is considered proper, previously to the administration of the sacraments.

In the Presbyterian and congregational churches, ordination means the act of settling or establishing a licensed preacher over a congregation with pastoral charge and authority, or the act of conferring on a clergyman the powers of a settled minister of the gospel, without the charge of a particular church, but with general powers wherever he may be called upon to officiate. As to the ordination of priests and deacons for or in the colonies, see 59 *Geo. III.* c. 60; 3 & 4 *Vict.* c. 33; and 15 & 16 *Vict.* c. 52.

Ordinatione contra servientes, a writ that lay against a servant for leaving his master, contrary to the ordinance or statute 23 & 24 Edw. III.—*Reg. Orig.* 189.

Ordine placitandi servato, servatur et jus.—*Co. Litt.* 303.—(The order of pleading being preserved, right is preserved.)

Ordines, a general chapter or other solemn convention of the religious of a particular order.

Ordines majores et minores, the holy orders of priest, deacon, and sub-deacon, any of which qualified for presentation and admission to an ecclesiastical dignity or cure, were called *ordines majores*; and the inferior orders of chanters, psalmists, ostiary, reader, exorcist, and acolyte, were called *ordines minores*; persons ordained to the *ordines minores* had their *prima tonsura*, different from the *tonsura clericalis*.—*Cowel.*

Ordinum fugitivi, those of the religious who deserted their houses, and, throwing off the habits, renounced their particular order in contempt of their oath and other obligations.—*Par. Antiq.* 388.

Ordnance debentures, bills issued by the Board of Ordnance on the treasurer of that office for the payment of stores, &c.

Ordnance office, or **Board of Ordnance,** an office kept within the Tower of London, which superintends and disposes of all the arms, instruments, and utensils of war, both by sea and land, in all the magazines, garrisons, and forts of Great Britain. It is divided into two distinct branches, the civil and the military; the latter being subordinate to and under the authority of the former.—4 & 5 *Wm. IV.* c. 24, s. 4, and 18 & 19 *Vict.* c. 117.

Ordo, that rule which monks were obliged to observe.

Ordo Albus, the white friars or Augustines; the Cistercians also wore white.

Ordo Niger, the black friars. The Cluniacs likewise wore black.

Ordo nobilium pluribus gaudet privilegiis.—*Jenk. Cent.* 107.—(The rank of nobility enjoys many privileges.)

Ore tenus (*by word of mouth*).

Orfgild [fr. *orf*, Sax., cattle, and *gild*, recompense], a delivery or restitution of cattle. But Lambarde says it is a restitution made by the hundred or county for any wrong done by one who was in pledge, or rather a penalty for taking away cattle.—*Lamb. Arch.* 125.

Orgild, without recompense; as where no satisfaction was to be made for the death of a

man killed, so that he was judged lawfully slain.—*Spelm.*

Orige. See ORWIGE.

Original bills in equity. See BILL IN CHANCERY.

Original charter, that which is granted first to the vassal by the superior.—*Scotch phrase.*

Original and derivative estates. An original is the first of several estates, bearing to each other the relation of a particular estate and a reversion. An original estate is contrasted with a derivative estate; and a derivative estate is a particular interest carved out of another estate of larger extent.—*Prest. on Est.* 125.

Original writ, or **Original** (*breve originale*, Lat.), the beginning or foundation of a real action at common law. It is also applied to processes for some other purposes.

It is a mandatory letter issuing out of the common law or ordinary jurisdiction of the Court of Chancery, under the Great Seal, and, in the sovereign's name, addressed to the sheriff of the county where the injury is alleged to have been committed, containing a summary statement of the cause of complaint, and requiring him to command the defendant to satisfy the claim, and, on his failure to comply, then to summon him to appear in one of the superior courts of common law, there to account for his non-compliance. In some cases, however, it omits the former alternative, and requires the sheriff simply to enforce the appearance.

Original writs differ from each other in their tenor, according to the nature of the plaintiff's complaint, and are conceived in fixed and certain forms. Many of these forms are of a remote and undefined antiquity, but others are of later origin, and their history is as follows:—

The ancient writs had provided for the most obvious kinds of wrong; but, in the progress of society, cases of injury arose new in their circumstances, so as not to be reached by any of the writs then known in practice; and it seems that either the clerks of the Chancery (whose duty it was to prepare the original writ for the suitor) had no authority to devise new forms to meet the exigency of such cases, or their authority was doubtful, or they were remiss in its exercise. Therefore, by the statute of West. 2, 13 Edw. I. c. 24, it was provided, 'That as often as it shall happen in the Chancery that in one case a writ is found, and in a like case, falling under the same right, and requiring like remedy, no writ is to be found, the clerks of the Chancery shall agree in making a writ or adjourn the complaint till the next Parliament, and write the cases in which they cannot agree, and refer them to the next Parliament, &c.' This statute, while it gives to the officers of the Chancery the power of framing new writs in a like case with those that formerly existed, and enjoins the exercise of that power, does not give or recognise any right to frame such instruments for cases entirely new. It seems, therefore, that for any case of that description, no writ could be lawfully issued except by authority of Parliament. But, on the other hand, new writs were copiously produced, according to the principle sanctioned by this act, i. e. in a like case, or upon the analogy of actions previously existing; and other writs, also, being added from time to time, by express authority of the legislature, large accessions were thus, on the whole, made to the ancient stock of *brevia originalia*.

All forms of writs once issued were entered from time to time, and preserved in the Court of Chancery in a book called 'The Register of Writs,' which in the reign of Henry VIII. was first committed to print and published. This book is still an authority, as containing in general an accurate transcript of the forms of all original writs as then framed. But a variation from the register is not conclusive against the propriety of a form, if other sufficient authority can be adduced to prove its correctness.

It was essential to the due institution of all actions in the superior courts, that they should commence by original writ, and in real actions this is still necessary; but in personal actions the use of original writs is abolished, and they are commenced by writ of summons.—2 *Wm. IV.* c. 39; 1 & 2 *Vict.* c. 110.

These instruments, however, have had the effect of limiting and defining the right of action itself, and no cases are even now considered as within the scope of judicial remedy, but those to which some known original writ (when these instruments were in universal use) would have applied, or for which some new original writ, framed on the analogy of those already existing, might, under the provisions of the statute Westminster 2nd, have been lawfully devised. The enumeration of writs and that of actions have become, in this manner, identical.

Great uncertainty exists as to the origin of these ancient writs. Some eminent authorities declare that these writs had their origin in the Roman law, and were in use long before the time of the Conqueror, while others as confidently assert that we derived them, through Normandy, from a Francic source.—*Step. on Plead.* app. n. 2.

The following original writs are issued, not *ex debito justitiæ* but *ex merâ gratia*, and are sometimes denominated discretionary writs: *De ventre inspiciendo; supplicavit; certiorari*; prohibition; writs of error in criminal cases;

ad quod damnum; scire facias, to repeal letters-patent, &c. See 1 *Mad. Eq.* b. 1.

Originalia, transcripts sent to the Remembrancer's office in the Exchequer out of the Chancery, distinguished from *recorda*, which contain the judgments and pleadings in actions tried before the Barons.

Origo rei inspici debet.—1 *Co.* 99.—(The origin of a thing ought to be inquired into.)

Ornest, the trial by battle, which does not seem to have been usual in England before the time of the Conqueror, though without doubt originating in the kingdoms of the north, where it was practised under the name of *holmgang*, from the custom of fighting duels on a small island or *holm*.—*Anc. Inst. Eng.*

Orphan, a fatherless child or minor, or one deprived of both father and mother.

The Lord Chancellor is the general guardian of all orphans and minors throughout the realm.

In London, the Lord Mayor and Aldermen have in their court of orphans the custody of the orphans of deceased freemen, and also the keeping of their lands and goods; accordingly the executors and administrators of freemen leaving such orphans, are to exhibit inventories of the estate of the deceased, and give security to the chamberlain for the orphan's part or share.

Orphanotrophi, managers of houses for orphans.—*Civ. Law.*

Orta est quæstio, si quis ante pater matrem suam desponsaverat fuerit genitus vel natus, utrum talis filius sit legitimus hæres, cum postea matrem suam desponsaverat; et quidem, licet secundum canones et leges Romanas, talis filius sit legitimus hæres; tamen secundum jus et consuetudinem regni nullo modo tanquam hæres in hæreditate sustinetur, vel hæreditatem de jure regni petere potest.—2 *Inst.* 96.—(A question arose whether anyone born before his father married his mother could become a legitimate heir, if he married her afterwards; and indeed, by the canon and Roman laws, such a son would be a legitimate heir; but, by the law and custom of this kingdom, such person could by no means be considered as heir, or succeed to the inheritance.)

Ortelli, the claws of a dog's foot.—*Kitch.*

Ortolagium, a garden plot or hortilage.

Orwige—sine wita, without war or feud, such security being provided by the laws, for homicides under certain circumstances, against the *fœhth*, or deadly feud, on the part of the family of the slain.—*Anc. Inst. Eng.*

Osculum pacis, a former custom of the church, so called because in the celebration of the mass, after the priest had spoken these words, *Pax Domini vobiscum*, the people kissed each other; afterwards, when this custom was abrogated, another was introduced, which was that whilst the priest spoke the afore-mentioned words, a deacon offered the people an image to kiss, which was commonly called *pacem*.—*Matt. Paris*, A.D. 1100.

Ostensible partner, one whose name is made known, and appears to the world as a partner, and is really such.

Ostensio, a tax anciently paid by merchants &c. for leave to show or expose their goods for sale in markets.—*Du Cange; Anc. Inst. Eng.*

Ostium Ecclesiæ, *dower ad.* See AD OSTIUM ECCLESIÆ.

Oswald's Law, the law by which was effected the ejection of married priests, and the introduction of monks into churches, by Oswald Bishop of Worcester, about A.D. 964.

Oswald's Law Hundred, an ancient hundred in Worcestershire, so called from Bishop Oswald, who obtained it from King Edgar, to be given to St. Mary's church in Worcester. It is exempt from the sheriff's jurisdiction, and comprehends 300 hides of land.—*Camd. Brit.*

Ourlop, the lierwite or fine paid to the lord by the inferior tenant, when his daughter was corrupted or debauched.

Ousted, dispossessed.

Ouster, dispossession.

A wrong or injury that may be sustained in respect of hereditaments, corporeal or incorporeal, carrying with it the amotion of possession; for thereby the wrongdoer gets into the actual occupation of the land or hereditament, and obliges him that has a right to seek his legal remedy, in order to gain possession and damages for the injury sustained. Such dispossession may be either of the freehold or of chattels real.

Ouster of the freehold is effected by various methods: 1st, abatement; 2nd, intrusion; 3rd, disseisin; 4th, deforcement; and 5th, discontinuance.

Ouster of chattels real consists: 1st, of amotion of possession from estates held by statute, recognizance, or *elegit*, which happens by a species of disseisin or turning out of the legal proprietor before his estate is determined by raising the sum for which it is given to him in pledge; and 2nd, of amotion of possession from an estate of years, which also takes place by a like kind of disseisin, ejection, or turning out of the tenant from the occupation of the land during the continuance of his term.

The following are the present modes of remedy:—

In the case of land or corporeal hereditaments, the only proper remedy is by way of specific recovery; a mere action for damages, though it will also lie, being in general obviously inadequate to the nature of the injury. The only modes of obtaining a specific recovery, which are generally applicable, are those of entry or ejectment. There are, however, besides these, the two real actions of dower, by

which redress is given for one particular species of deforcement. And there are some particular cases of ouster, for which particular remedies are provided, besides those by action. In the case of forcible entry and ouster, the statutes against forcible entries and detainers give the power to justices of the peace to restore possession. In cases between landlord and tenant, where half a year's rent is in arrear, and the tenant has deserted the premises, and left the same uncultivated or unoccupied, the 11 Geo. II. c. 19, s. 16, and 59 Geo. III. c. 52, authorize a proceeding before two justices of the peace to obtain restitution. By 59 Geo. III. c. 12, ss. 17, 24, 25, paupers intruding into parish property may be dispossessed by warrant of two justices of the peace; and by 1 & 2 Vict. c. 74, a method of proceeding before two justices in petty sessions, to obtain possession, is also provided for landlords in certain cases of holding over by tenants when the rent does not exceed 20*l.* nor the term seven years, and no fine is reserved on forfeiture, &c.; and as to county-courts, see 19 & 20 *Vict.* c. 108, s. 50.

As to the remedy upon ouster of incorporeal hereditaments, such as commons, advowsons, and the like, these also may be claimed in the action of dower, supposing the claimant to be a dowress; and tithes may be recovered in ejectment; and a next presentation by an action of *quare impedit*.—See 23 & 24 *Vict.* c. 126, s. 26, abolishing *dower* and *quare impedit* as real actions. The general remedy is an action of trespass on the case, in which damages are recovered for the invasion of the right.—3 *Step. Com.* 500, *et seq.*

Ousterlemain [*amovere manum*, Lat.], the delivery of the lands out of the guardian's hands, upon the male heir attaining twenty-one, or the female heiress sixteen years of age. Abolished by 12 Car. II. c. 24.

Also, a livery of land out of the sovereign's hands, on a judgment given for him that sued out a *monstrans de droit*.

Ouster le mer, beyond the sea; a cause of excuse, if a person, being summoned, did not appear in court.

Out of court, a plaintiff in an action at common law must declare within one year after the service of a writ of summons, otherwise he is out of court, unless the court shall have, by special order, enlarged the time for declaring.

Outfangthef, a liberty or privilege, in the ancient common law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own court.

Outhest, or **Outhom,** a calling men out to the army by sound of horn.

Outhouses, buildings belonging to and adjoining dwelling houses.

Outland, land lying beyond the demesnes, and granted out to tenants at the will of the lord, like copyholds. Subdivided into *theodans*, or lesser thanes, disposed amongst those who attended the lord, and those parts allotted to their husbandmen or churls.—*Spelm.*

Outlaw [fr. *utlaghe*, Sax.; *utlagatus*, Lat.], a person put out of the law, or deprived of its benefits.

Outlawry [fr. *utlagaria*, Lat.], the being put out of the law for contempt in wilfully avoiding the execution of the process of the Queen's court.

I. Civil actions.

It is a proceeding adopted against a defendant who has absconded and cannot be found. If the defendant be a woman, the proceeding is called a waiver; for as women were not sworn to the law by taking the oath of allegiance in the leet (as men anciently were when of the age of twelve years and upwards), they could not properly be outlawed, but were said to be waived, i. e. *derelicta*, left out, or not regarded. And for the same reason an infant cannot be outlawed under the age of twelve years. Peers and members of parliament are exempt from outlawry, except in criminal cases. Where there are several defendants, there may be outlawry against one or more of them.

(*a*) Before judgment.

Since the C. L. P. A. 1852, s. 24, proceedings to outlawry cannot be taken for the purpose of compelling an appearance by a defendant where the action is commenced by writ of summons.

(*β*) After judgment.

If *non est inventus* be returned to a *ca. sa.* an *exigi facias* is sued out.

The *exigi facias* is a judicial writ commanding the sheriff to demand the defendant from county-court to county-court, until he be outlawed.

It seems it ought to be tested on the *quarto die post* of the return of the *ca. sa.* and in term time. It must be returnable on a day certain, on some day being either the third inclusive before the commencement of term, or between that day and the third day exclusive before the last day of the term. It cannot be made returnable in a term after the term following that in which the writ is tested; and there must be fifteen days at least between the teste and return, and, if possible, the return days should be so regulated as that five hustings in London, or county courts elsewhere, may be held between the teste and return of the writ, in order to save the expense of an allocatur exigent.

A writ of proclamation is not, it seems, necessary.

The *exigi facias* is executed by exacting the defendant or calling upon him to appear at five *successive* county courts, or in London, at five

successive hustings, unless, before that time, he appear, &c.

If there are not five county courts or hustings between the *teste* and return of the *exigi facias*, there must be issued an *allocatur exigent* so as to make up the number.

If the defendant appear before the return of the exigent, a *supersedeas* is issued to stay any further proceedings in the sheriff's office. If the defendant do not appear, he is outlawed at the return of these writs, and a *capias utlagatum* issues, which is either general, against the person only, or special, against the person, lands, and goods.

If the defendant has not as yet appeared, &c. and there is no probability of his doing so, satisfaction for the debt and costs may be obtained out of the property seized under the *capias utlagatum*. A transcript of the proceedings are obtained from the master, and taken to the Exchequer, where a rule is granted for persons to come in and claim the property seized, upon the expiration of which rule a *venditioni exponas* issues to the sheriff to sell the goods, a *levari facias* to levy the issues and profits of the freehold land, and a *scire facias* to recover debts due to the defendant, if necessary. If, to a special *capias utlagatum*, the sheriff return an inquisition, finding that the defendant had benefices, but no lay fee, the court will award a writ of sequestration on reading the transcript of the outlawry and inquisition.

When the goods have been sold, &c. if the amount do not exceed the sum of fifty pounds, a motion is made in the Court of Exchequer for an order to pay it over to the person at whose instance the outlawry has taken place, and a *subpœna* will issue to the sheriff requiring him to pay over the proceeds, deducting the necessary expenses. If the money exceed fifty pounds, the Lords of the Treasury must be petitioned, and the Attorney-General's consent must be obtained. If the debt be considerable, and the chattel property not sufficient to satisfy it, a lease or grant of the Queen's right to levy the issues of the defendant's freehold lands, by petition to the Lords of the Treasury, may be obtained. A warrant will thereupon be granted for the lease, and the lease is made out at the proper office of the Court of Exchequer.

A defendant cannot be outlawed on a judgment, after error brought.

The defendant may be relieved from the outlawry either by obtaining the Queen's pardon, or by reversing it, either by an application to the court, or a judge at chambers, or by proceedings in error, *coram nobis* or *vobis*.—2 *Chit. Arch. Prac. by Pren.* 1295.

II. Criminal prosecutions.

If a defendant cannot be arrested on a *capias* bench warrant, or warrant of a magistrate, he is liable, on his non-appearance to an indictment, to be outlawed. In misdemeanors, the first process is a *venire facias*, which is for the party's appearance, upon the return of which, if it appear that he have lands in the county, a distress infinite issues from time to time till he appears; if he have no lands, then a *capias* issues, and then an *alias* and *pluries*. In treason and felony, a *capias* is the first process. The exigent is then issued, and a writ of proclamation, and on his not appearing at the fifth exaction or inquisition, he is outlawed, and incapable of availing himself of the benefit of the law.

The forfeiture upon indictments for misdemeanors is the same as in civil actions; but in treason or felony, it amounts to a conviction and attainder of the offence, and he may be arrested by anyone in order to be brought to execution.

The outlawry may be reversed by plea or by proceedings in error.—4 *Step. Com.* 467, 550.

The maxim applicable to outlaws is, 'Let them be answerable to all, and none to them.' Accordingly, any person outlawed is *civiliter mortuus*. He can hold no property given or devised to him; and all the property which he held before is forfeited. He can neither sue on his contracts, nor has he any legal rights which can be enforced; while, at the same time, he is personally liable upon all causes of action. He can, however, bring actions *in autre droit*, as executor, administrator, &c. because in such actions, he only represents persons capable of contracting, and under the protection of the law.—*Exp. Franks*, 7 *Bing.* 767.

Outparters, stealers of cattle.

Outputers, such as set watches for the robbing any manor-house.—*Cowel.*

Outriders, bailiffs-errant employed by sheriffs or their deputies, to ride to the extremities of their counties or hundreds to summon men to the county or hundred court.

Outstanding term, a term in gross at law, which, in equity, may be made attendant upon the inheritance, either by express declaration or by implication. See 8 & 9 *Vict.* c. 112.

Outsucken multures, quantities of corn paid by persons voluntarily grinding corn at any mill to which they are not thirled or bound by tenure.

Ovelty, a kind of equality of service in subordinate tenures.

Overcyted, or **Overcyhsed,** proved guilty or convicted.

Overdue, past the time of payment.

When bills of exchange are indorsed after they are overdue, the indorsee is liable to great suspicion; and it behoves him to use every precaution, and make every possible inquiry, for he takes the bill with all its faults on the credit of the indorser, and must stand in the

same situation as the holder when the bill first became payable. This rule, however, does not apply to cheques.—9 *B. and C.* 388.

By 17 Geo. III. c. 7, an overdue bill under 5*l.* cannot be indorsed.

Overhernissa, contumacy or contempt of court.

Overrule, to annul or make void; set aside, reverse.

Oversamessa, a forfeiture for contempt or neglect in not pursuing a malefactor.

Overseers of the poor, public officers created by the 43 Eliz. c. 2, to provide for the poor of every parish. There are two or more, according to the extent of the parish. Churchwardens are, by this statute, overseers of the poor, and they join with the overseers in making poor rates; but the churchwardens having distinct business of their own, usually leave the care of the poor to the overseers, though anciently they were the sole overseers of the poor.—*Wood's Inst.* 98.

Oversewenesse. See OVERHERNISSA.

Oversman, an umpire.—*Scotch term.*

Overt, open.

Overt act, an open act by law must be manifestly proved.—3 *Inst.* 12.

Overt word, an open, plain word, not to be misunderstood.

Overture, an opening; a proposal.

Ovrages, or **Ouvrages,** days' works.

Ovres, acts, deeds, or works.

Owel, equal.

Owelty, equality.

Owlers, persons who carried wool, &c. to the sea-side, by night, in order that it might be shipped off contrary to law.

Owling, the offence of transporting wool or sheep out of the kingdom. Abolished by 5 Geo. IV. c. 107.

Oxfild, a restitution anciently made by a hundred or county for any wrong done by one that was within the same.—*Lamb. Arch.* 125.

Oxford. See UNIVERSITY.

Oxgang, or **Oxgate,** fifteen acres of land. Corrupted, in the north, to *osken.*—*Kelm. Domes. Illustr.*

Oydor [fr. *oyr,* Sp., to hear], a judge.

Oyer (*to hear*), the ancient word for assizes; oyer of a deed is abolished by C. L. P. A. 1852, s. 55.

Oyer de record, a petition made in court that the judges, for better proof's sake, will hear or look upon any record.

Oyer and terminer, a commission directed to the judges and other gentlemen of the county to which it is issued, by virtue whereof they have power to hear and determine treasons, and all manner of felonies and trespasses. *Terminer* is sometimes written *determiner.*

When any sudden insurrection takes place, or any public outrage is committed, which requires speedy reformation, or there is a press of business, then a special commission is immediately granted.

Oyer and terminer, *Courts of,* and *general gaol delivery,* tribunals held before the Queen's commissioners, among whom are usually two judges of the superior courts of law at Westminster, twice in every year in every county of the kingdom, the metropolis and its vicinity excepted. See ASSIZE.

Oyez (*hear ye*), the introduction to any proclamation or advertisement given by the public criers both in England and Scotland. It is most unmeaningly pronounced, *oh! yes!*

Oysters, *stealing,* 24 & 25 Vict. c. 26, s. 26.

P.

Paage [old Fr., fr. *paagium,* low Lat.], a toll for passage through another's land. Obsolete.

Pacare, to pay.

Pacatio, payment.—*Mat. Par.* A.D. 1248.

Pace, a measure of length containing two feet and a half. The geometrical pace is five feet long; the common pace is the length of a step, the geometrical is the length of two steps, or the whole space passed over by the same foot from one step to another.

Paceatur (*let him be freed or discharged*).

Paci sunt maximè contraria, vis et injuria.—*Co. Litt.* 161.—(Violence and injury are especially contrary to peace.)

Pack, to delude, deceive, or counterfeit, e.g. to pack a jury. As to false packing of hay and straw, see 19 & 20 *Vict.* c. 114, which inflicts a penalty of 10*l.*

Package, scavage, baillage, and portage, duties charged in the port of London on the goods imported and exported by aliens, or by denizens, being the sons of aliens.

The Act 3 & 4 Wm. IV. c. 66, authorized the Lords of the Treasury to purchase these duties from the city. This was done at an expense of about 140,000*l.* and the duties were abolished.—*McCull. Comm. Dict.*

Pack of wool, a horse-load, which consists of 17 stone and 2 pounds, or 240 pounds weight.—*Fleta,* l. 2, c. xii.

Pact [fr. *pacte,* Fr.; *pactum,* Lat.], a contract, bargain, covenant.

Pacta privata juri publico derogare non possunt.—7 *Co.* 23.—(Private compacts cannot derogate from public right.)

Paction [fr. *pactio,* Lat.], a bargain, or covenant.

Pactional, by way of bargain or covenant.

Pactitious, settled by covenant.

Pacto aliquod licitum est, quod sine pacto non admittitur.—*Co. Litt.* 166.—(By compact,

something is permitted which, without compact, is not admitted.)

Pactum de non petendo, an agreement made between a creditor and his debtor that the former will not demand from the latter the debt due. By this agreement the debtor is freed from his obligation.—*Civ. Law.* This is not unlike the *covenant not to sue* of our Common Law.

Pactum de quotâ litis, an agreement by which a creditor promised to pay a portion of a debt difficult to recover, to a person who undertook to recover it.—*Civ. Law.*

Pactum constitutæ pecuniæ, an agreement by which a person appointed to his creditor a certain day, or a certain time, at which he promised to pay; or an agreement by which a person promises to pay a creditor.—*Civ. Law.*

Padder, a robber, a foot highwayman.

Paddock [fr. *pannе*, Sax., a park], a small inclosure for deer or other animals.

Pagarchus [fr. *pagus*, Lat., village, and ἀρχή, Gk., command], a petty magistrate of a *pagus* or little district in the country.

Pagoda, a temple; also a gold coin in the south of India valued at 8*s.*—*Indian.*

Pagus, a county.

Pagus, derived from the Doric παγά, a fount; because villages were originally formed round springs of water. 'Religion did first take place in cities, and in that respect was a cause why the name of *Pagans*, which properly signifieth a country people, came to be used in common speech for the same that infidels and unbelievers were.'—*Hooker, E. P.* v. 80.

Paine, or **Peine forte et dure** [*pœna fortis et dura*, Lat.], a special punishment formerly inflicted on those who, being arraigned of felony, refused to put themselves on the ordinary trial, but stubbornly stood mute. It was vulgarly called 'pressing to death.'—2 *Reeves*, 134.

Pains and Penalties, Acts of Parliament to attaint particular persons of treason or felony, or to inflict pains and penalties beyond or contrary to the common law, to serve a special purpose. They are in fact new laws, made *pro re natâ.*

Pairing-off, a practice which is said to have originated in the time of Cromwell, whereby two members of the House of Commons of opposite opinions agree to absent themselves from voting during a given period. See PROXY.

Pais, or **Pays,** the people out of whom a jury is taken.

Pais, *Conveyances in,* ordinary conveyances between two or more persons *in the country,* i. e. upon the land to be transferred.

Pais, *Trial by,* a trial by the country, i.e. a jury.

Paisso, pasnage, a liberty for hogs to run in forests or woods to feed upon mast.—*Mon. Angl.* i. 682.

Palabras [Sp., on my word], a kind of petty oath.

Palace Court, a court formerly held in the borough of Southwark having jurisdiction over personal actions arising within twelve miles of the palace of Whitehall, abolished by 12 & 13 Vict. c. 101, s. 13.—3 *Bl. Com.* 76. See MARSHALSEA.

Palagium, a duty to lords of manors for exporting and importing vessels of wine at any of their ports.

Palatine, possessing royal privileges. See COUNTY PALATINE.

Palfridus, a palfrey, a horse to travel on.

Paling-man, a merchant-denizen, or one born within the English pale.

Pallio cooperire, an ancient custom, where children were born out of wedlock, and their parents afterwards intermarried; the children, together with the father and mother, stood under a cloth extended while the marriage was solemnized. It was in the nature of adoption. By such custom the children were taken to be legitimate by the civil, but not by the common law.

Pamphlet [fr. *par un filet,* Fr., by a thread], a small book, usually printed in the octavo form, and stitched.

It is enacted by 10 Anne, c. 19, s. 113, that no person shall sell, or expose to sale, any pamphlet, without the name and place of abode of some known person, by or for whom it was printed or published, written or printed thereon, under a penalty of 20*l.* and costs. See 60 *Geo. III.* and 1 *Geo. IV.* c. 9; 11 *Geo. IV.* and 1 *Wm. IV.* c. 73, and 6 & 7 *Wm. IV.* c. 76.

Pandectæ or **Digesta.** In the last month of the year A. D. 530, Justinian, by a constitution addressed to Tribonian, empowered him to name a commission for the purpose of forming a code out of the writings of those jurists who had enjoyed the *Jus Respondendi*, or, as it is expressed by the emperor, '*antiquorum prudentium quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes præbuerunt.*' The compilation, however, comprises extracts from some writers of the republican period.—*Const. Deo Auctore.*

Ten years were allowed for the completion of the work. The instructions of the emperor were, to select what was useful, to omit what was antiquated or superfluous, to avoid unnecessary repetitions, to get rid of contradictions, and to make such other changes as should produce out of the mass of ancient juristical writings a useful and complete body of law (*jus antiquum*).

The work was to be named *Digesta*, a Latin term, indicating an arrangement of materials; or *Pandectæ*, a Greek word, expressive of the comprehensiveness of the work. It was also declared that no commentaries should be

written on this compilation, but permission was given to make *paratitla*, or references to parallel passages, with a short statement of their contents (*Const. Deo Auctore*, s. 12). It was also declared, that abbreviations (*sigla*) should not be used in forming the text of the Digest. The work was completed in three years (17 *Cal. Jan.* A.D. 533), as appears by a constitution both in Greek and Latin, which confirmed the work, and gave to it legal authority.

The number of writers from whose works extracts were made is thirty-nine.

Justinian's plan embraced two principal works, one of which was to be a selection from the jurists, and the other from the Constitutiones.

The first, the Pandects, was very appropriately intended to contain the foundation of the law; it was the first work since the date of the Twelve Tables, which in itself, and without supposing the existence of any other, might serve as a central point of the whole body of the law. It may be properly called a code, and the first complete code since the time of the Twelve Tables, though a large part of its contents is not law, but is dogmatic, or is taken up with the investigation of particular cases. Instead of the insufficient rules of Valentinian III. the excerpts in the Pandects are taken immediately from the writings of the jurists in great numbers, and arranged according to their matter.

The Code also has a more comprehensive plan than the earlier codes, since it comprises both rescripts and edicts. These two works, the Pandects and the Code, ought properly to be considered as the completion of Justinian's design. The *Institutiones* cannot be viewed as a third work; independent of both, it serves as an introduction to them, or as a manual.

Lastly, the *Novellæ* are single and subsequent additions or alterations, and it is merely an accidental circumstance that a third edition of the Code was not made at the end of Justinian's reign, which would have comprised the *Novellæ* that had a permanent application.—*Savigny*, as quoted in *Smith's Dict. of Antiq.*

The Pandects are divided into fifty Books, each Book containing several Titles, divided into Laws, and the Laws generally into several Parts or Paragraphs.

The first is called *Principium*, being the beginning of the law; the rest are called Paragraphs.

The First Book begins with laying down the general principles of justice, and sets forth its different kinds; it then proceeds to treat of divisions of Persons and Things; Senators are mentioned next; and lastly, Magistrates, their delegates and assessors.

In the Second we have an account of the power of Magistrates, and their several Jurisdictions, continents; how a defendant is to be brought to try an issue, and of Bail for Action. The subject of the latter part of this Book is Covenants and *Transactiones*, imparlances.

The Third Book explains, in the first place, who those persons are that are allowed to sue at law; and as infamous persons are not admitted so to do, the second title treats of them. The following, of those whose assistance is required in legal proceedings, as attorneys, &c.; and lastly, the Third Book treats of the Oath of Calumny.

The Fourth Book explains the different causes for restoring a question to its normal state, and of an act done under coercion or fear of death. The next subject it treats of is Compromises and Arbitrations; after which it speaks of Innkeepers and others in whose custody we leave anything.

The Fifth states, after having treated of Judgments, who ought to make an Assignment of the demand of Inheritance, and of the Impeachment of a Will for Informality.

The Sixth treats of Real Actions by which private persons recover their own; which actions may be civil and direct, or prætorian or equitable.

The Seventh respects Burdens termed Personal (*servitutes*), Usufructs (leases), hirings.

The Eighth treats of Real Burdens, prædial and urban.

The Ninth treats of Personal assimilated to the Real Actions, as actions for damage or crime committed by a slave, the actions of the *Lex Aquilia*; and as connected with this last, at the end of the Book, of the Action for Damage done by throwing things into a Highway, and of Noxal Actions.

The Tenth Book treats of Mixed Actions, such as the action of bounding and butting, *finium regundorum*; the action for partition of an inheritance or other particular thing; of the action called *Ad Exhibendum*, to compel the party 'to produce,' which is preparatory to the Real Action above mentioned.

The Eleventh Book treats of Interrogatories upon Facts; of such matters as are to be heard before the same Judge; of Seduced or Runaway Slaves; of Gambling, False Measurements of Land; and lastly, of Burials and Funeral Expenses.

The Twelfth Book explains certain Personal Actions, such as the action for a loan, and some others which go by the name of *Condictio*, which properly signifies the fixing a day for the appointment of a Judge.

The Thirteenth Book speaks also of some of these actions, and then of things Lent and of the Actions Relating to Pledges.

The Fourteenth and Fifteenth Books treat of Actions arising from Contracts made by Three

Persons, but whereby such are bound; and lastly, of *Scim Macedonianum.*

The Sixteenth contains *Scim Velleianum*, Compensations, and the Actions concerning Deposits.

The Seventeenth treats of Commissions (*Mandatum*), and Partnership.

The Eighteenth contains the Law on the Usual Covenants of Contracts of Sale, the mode of their decision, and on what ground these contracts may be receded from, and upon whom the gain or the loss of the thing sold is to fall.

The Nineteenth, in the first part, treats of Actions of Bargain and Sale, of Actions of Hiring, of the Action for Computation of Value, called *Æstimationis*, of Permutation, of the Action on the Terms of the Contract, called *Præscriptis Verbis*, arising from innominate contracts.

The Twentieth Book treats of Pledges, of the Precedence of Creditors, and the subrogation of the Rights of Prior Lien; of the *Distractio Pignoris*, or sale of things pawned; and the Redemption of the Pledge, or extinguishment of lien.

The Twenty-first explains the Ædile's Edict concerning the Sale of Slaves and Animals; Dispossession, called *Evictio*; Warranty, and the Exception of the thing Bought and Delivered.

The first part of the Twenty-second treats of Usury, Fruits, Dependencies, Accessaries to Things, and Default; the second, of Proofs and Presumptions, and of Ignorance of the Law or Fact.

The Twenty-third is upon Espousals, Marriage, Dowry, Agreements made relatively to that subject, and of Lands given in Dowry.

The Twenty-fourth lays down the Law of Gifts between Husband and Wife; of Divorce, and Recovery of the Marriage Portion.

The Twenty-fifth treats of Expenses laid out upon Dowries; of Actions for the Recovery of things carried away by a Wife or other Person against whom no Action of Theft lies; of the Obligation to acknowledge Children, and provide for their maintenance; and lastly, of Concubines.

The Twenty-sixth and Twenty-seventh Books treat wholly of Guardianships, *Tutela*, and *Curatela*, and of the Actions which result from them; of Exemption from Wardship, and the Alienation of Goods belonging to Wards, *Pupillæ* or *Minores*.

The Twenty-eighth Book contains the Law of Wills; the Institution and Disinheritance of Children; of the Institution of an Heir; of Substitutions; of Conditions required in Institutions, and of the Right of Deliberating before Accepting an Inheritance.

The Twenty-ninth Book treats of Military Wills; of the Acquisition of an Inheritance, and of the Opening of Wills, &c., and of Codicils.

The Thirtieth, Thirty-first, and Thirty-second treat of Legacies and Bequests in Trust in general.

The Thirty-third, and likewise the first Titles of the Thirty-fourth, treat of Particular Legacies; the Catonian Regulations; of Legacies reputed never to have been left, and those of which unworthy persons are deprived.

The Thirty-fifth speaks of conditional Legacies, and of the Law *Falcidia*, reserving a certain portion of the inheritance for the heir.

The Thirty-sixth explains the *Scim Tribellianum*, regulating Bequests in Trust; the Time when Legacies and Fiduciary Bequests become due, and the security the Heir is obliged to give for their Liquidation, if left conditionally; and of their Foreclosure in default of such security.

The Thirty-seventh Book speaks first of the succession to a Deceased Person's estate, called universal, granted by the Prætor, under the name of *Bonorum Possessio*; after which it treats of Hotch-Pot (*Collationes*), of Goods and Dowry, and the Right of Patronage.

The Thirty-eighth Book lays down the Duties of Freed Men to their Patrons; the Law of their Succession; of Intestate Succession under the authority of the Prætor; and lastly, of Domestic and Legal Heirs, and of the *Scim Tertullianum* and *Orphilianum*.

The Thirty-ninth Book first shows the means which the Law or the Prætor furnishes to prevent anyone from receiving Damage, where a Personal, Real, or Mixed Action will not lie; these means are, Caveat against a New Work —*Cautio Damni Infecti*, and the Action of Eavesdrop—*De Aquâ Pluviâ Arcendâ*; it ends with the Explanation of Donations which come into operation during the life of the donor, and of such as are made in contemplation of Death.

The Fortieth Book relates to Manumissions, distinguishing between Ingenui, Freed Men, and Slaves, and explaining their rights.

The Forty-first treats of the different modes by which Property in Things is acquired by the Law of Nations; of Possession; of Prescriptions; and lastly, of lawful causes authorising Possession, and consequently making it capable of Prescription.

The Forty-second treats, in the first place, of Things Adjudged; of Definitive and Interlocutory Sentences; of Confessions in Judgment; of the Assignment of Goods; of the causes of Seizure and its Effects; and of the privileges of Creditors; it then passes to Curators appointed for the Administration of Goods, and for the revocation of Acts done to defraud Creditors.

The Forty-third treats of Injunctions and Possessory Actions.

The Forty-fourth first treats of Exceptions and Defences, and then of Obligations and Actions.

The Forty-fifth of Stipulations.

The Forty-sixth of Sureties, Novations, and Delegations of Payment and Discharges of Acceptilations, Stipulations, and some Bails for Action.

The Forty-seventh treats of Offences termed Private.

The Forty-eighth begins with public Judgments; then follow Accusations, Inscriptions, Prisons, and all Public Offences; thence it passes to the *Sctm Turpillianum* and abolition of crimes; and lastly, it treats of Torture, Punishments, Confiscation, Exile, Transportation, and of the bodies of Malefactors executed.

The Forty-ninth treats of Appeals, and matters relating thereunto; it then gives an account of the Rights of Exchequer; of matters relating to Captives, Military Discipline, Soldiers, and Veterans.

The Fiftieth Book treats of the Rights of Cities and Citizens; of Magistrates and their Children; of Public Offices, and the causes which exempt persons from them; and also of the Right of Immunity; after, of Deputies and Ambassadors; of the administration of Things belonging to Cities; of Public Works, Fairs, Promises (termed *Pollicitationes*), Judgments given in extraordinary cases by Magistrates; of Brokers and Factors; of Taxes laid upon the Provinces; and lastly, it ends with the Interpretation and signification of Law Terms, and of the Rules of the law. Besides this distribution of the Digest into Fifty Books, it was divided into seven parts, but the reason that induced the Emperor to make this division is not known. Some supposed it was done in order to separate the different matters, and include all that related to one subject in one Part, consisting of several Books. Others attribute it to the superstitious respect of the ancients for the number seven, as the most perfect.

The First Part contained the first four Books.

The Second Part, intitled *De Judiciis*, contained all, beginning with the Fifth to the end of the Eleventh.

The Third Part, *De Rebus*, included all to the end of the Nineteenth.

The Fourth Part included the Accessories to Contracts and Actions arising out of Marriage and Guardianship, ending with the Twenty-seventh Book.

The Fifth, intituled *De Testamentis*, began with the Twenty-seventh and ended with the Thirty-sixth.

The Sixth is intituled *De Bonorum Possessionibus*, at the commencement of the Thirty-seventh Book, and ends with the Forty-fourth.

The Seventh contains the remaining six Books.

The division of the Pandects into the *Digestum Vetus*, *Digestum Novum*, and the *Infortiatum*, belongs to the fifteenth and sixteenth centuries.

That part of the Pandects from the First Book to Title II. of the Twenty-fourth (*De Divortiis*) formed the DIGESTUM VETUS; so called, according to Odofredus, because first compiled—*dicitur Digestum Vetus, quia prius fuit in compilatione.*

The *Infortiatum* begins with Title III. of the Twenty-fourth Book (*Soluto Matrimonio*), and ends with the Thirty-eighth Book; an unnatural division, as it begins not only in the middle of the book, but in the middle of the doctrine of Succession.

The word INFORTIATUM is, according to Odofred, so named from its author Infortiatus; or, according to Inerius, *Aurum vel argentum, nam ab initio fuerunt habiti alii libri legales in civitate istâ, postea supervenit Infortiatum unde scientia nostra aucta vel augmentata est,* sicut dicitur pannus Infortiatus *in quo magis est de lanâ quam sit de aliis communiter.* And again, *Ut dicitur de veste de lanâ* INFORTIATA; i. e. *de veste de lanâ augmentata.* Inerius, too, says, *Jus nostrum augmentatum* Infortiatum *est, sic et vestis serica dicitur* Infortiata, &c.; and Odofred explains the word by *augmentatum*, an augmentation to the parts then already known —the Old and New Digests; that is, found afterwards and inserted in its proper place between those parts already known and in use. But a still more extraordinary subdivision was that of the latter portion of the *Infortiatum*, termed the TRES PARTES; this begins not only in the middle of a Book, of a Title, and of a Lex, but also in the middle of a sentence of that law. The initiatory words doubtless gave it the name by which it went, *Illa pars, quæ dicitur* Tres Partes *non est liber, quia est super Infortiato, et non est ibi lex vel sectio, sed totum sub lege illâ quærebatur*, says Odofredus. That glossator, moreover, informs us, that they had not the Infortiate which was at Rome, and was afterwards brought to Pentapolis in an imperfect state; that is, minus the portion beginning *Tres Partes.*

Savigny, however, clears up the question more satisfactorily. He says that the *Digestum Vetus*—that portion called the *Tres Partes*—and the *Digestum Novum* were discovered; and lastly the remaining part, namely, that beginning with Title III. of the Twenty-fourth Book, and ending at 35, 2, 82, where the *Tres Partes* begin. On this discovery being made, this missing portion was inserted into its proper place, between the end of Title II. of the Twenty-fourth Book of the *Tres Partes*, until then forming a continuous part of the *Digestum Vetus.*

As for the *Digestum Novum*, Savigny thinks

it only meant *pars secunda*, and *Vetus, pars prior*, and is not to be taken in the sense of not new or newly found; both having been found simultaneously.

In order to prevent the circulation of incorrect editions, three Ultramontane and three Citramontane scholars were chosen every year in the University of Bologna, and termed Peciarii; they were excused from all other *munera publica*, and held their sessions once a week for the purpose of correcting imperfect copies in possession of circulating libraries; a fine of five soldi was imposed on all possessors of defective books, together with the expenses of correction, for which purpose every doctor or scholar was obliged to lend his own perfect copy, under pain of a fine of five lire; hence the term *exempla correcta et bene emendata*. Books thus corrected were advertised by the bedel.—1 *Colqu. R. C. L.* 67–73.

Panduxator, a brewer.—*Old Records.*

Panduxatrix, a woman that brews and sells ale.

Panel [fr. *panellum*, Lat.; *panneau*, Fr., a square or panel], a little part, or rather a schedule or page, containing the names of such jurors as the sheriff returns to pass upon a trial; and empanelling a jury is nothing but the entering them into the sheriff's roll or book.

In Scotch law, the prisoner at the bar or person who takes his trial before the Court of Justiciary for some crime.

Pannage [fr. *pannagium*, low Lat.; *panage*, Fr.], food that swine feed on in the woods, as mast of beech, acorns, &c., which some have called *pawnes*. Also, the money taken by the agistors for the food of hogs, with the mast of the royal forests.—*Cowel.*

Pannagium est pastus porcorum, in nemoribus et in silvis, utputa, de glandibus, &c.—1 *Buls.* 7.—(A pannagium is a pasture of hogs, in woods and forests, upon acorns, and so forth.)

Pannel. See Panel.

Pannellation, act of empanelling a jury.

Pannier-man, one who calls the members in the inns of court to dinner, &c., and provides mustard, pepper, and vinegar for the hall.

Pannus, a garment made with skins.—*Fleta*, l. 2, c. xiv.

Pantomime, the name given to a dramatic performance of a particular kind; mimicry. See *Lee* v. *Simpson*, 3 *C. B.* 871.

Paper Book, the issues in law, &c., upon special pleadings, formerly made up by the clerk of the papers, who was an officer for that purpose, but now by the plaintiff's attorney or agent.

By rule of all the courts of Hilary Term, 1853, r. 68, 'four clear days before the day appointed for argument, the plaintiff in error shall deliver copies of the judgment of the court below to the judges of the Queen's Bench on error from the Common Pleas or Exchequer, and to the judges of the Common Pleas on error from the Queen's Bench; and the defendant in error shall deliver copies thereof to the other judges of the Court of Exchequer Chamber, before whom the case is to be heard; and in default by either party, the other party may on the following day deliver such books as ought to have been delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Master a sufficient sum to pay for such copies.'

By rule of all the courts of Hilary Term, 1853, r. 16, 'four clear days before the day appointed for argument, the plaintiff shall deliver copies of the demurrer-book, special case, special verdict, or appeal cases with the points intended to be insisted on, to the Lord Chief Justice of the Queen's Bench or Common Pleas, or Lord Chief Baron (as the case may be), and the senior judge of the court in which the action is brought; and the defendant shall deliver copies to the other two judges of the court, next in seniority, and in default thereof by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default; and the party making default shall not be heard until he shall have paid for such copies, or deposited with the master, a sufficient sum to pay for such copies. If the statement of the points have not been exchanged between the parties, each party shall, in addition to the two copies left by him, deliver also his statement of the points to the other two judges, either by marking the same in the margin of the books delivered, or on separate papers.'—*Chit. Arch. Prac. by Pren.* 572, 916.

Paper-credit, credit given on the security of any written obligation purporting to represent property.

Paper-days. In each of the Common Law Courts there are certain days in each term called *special paper-days*, because the court, on those days, hears the cases which have been entered in the special paper for argument. There are also in the Queen's Bench, Crown paper-days for disposing of business on the Crown side of the court.—1 *Chit. Arch. Prac. by Pren.* 158.

Paper-money, bank notes, bills of exchange, and promissory-notes.

Paper-office (in the palace of Whitehall), an ancient office, where all the public writings, matters of state and council, proclamations, letters, intelligences, negotiations of the Queen's ministers abroad, and generally all the papers and dispatches that pass through the offices of the Secretaries of State, are deposited.

Also, an office or room in the Court of

Queen's Bench, where the records belonging to that court are deposited; sometimes called *Paper-mill.*

Papism, popery.

Papist [fr. *papa*, Lat., a pope], one who adheres to the communion of the church of Rome. The word seems to be considered by the Roman Catholics themselves as a nick-name of reproach, originating in their maintaining the supreme ecclesiastical power of the pope.

By 18 Geo. III. c. 60; 31 Geo. III. c. 32; and 43 Geo. III. c. 30, most of the severer penalties and disabilities to which papists were formerly subject were removed on condition of their qualifying by such oath and declaration as in those acts respectively provided; and by 10 Geo. IV. c. 7, commonly called the Catholic Emancipation Act, Roman Catholics were restored in general to the full enjoyment of all civil rights, except that of holding ecclesiastical offices and certain high appointments in the state. By the provisions of this statute all enactments by which any declaration against transubstantiation, the invocation of the saints, or the sacrifice of the mass, were required from any persons, as qualifications for sitting in Parliament or otherwise, are repealed; and persons professing the Roman Catholic religion, upon taking and subscribing an oath prescribed by the act (which comprises, among other things, the abjuration of any intention to subvert the church establishment, and an oath never to exercise any privilege to disturb or weaken the Protestant religion or government) are relieved from all disabilities and penalties whatever, and made competent to sit in Parliament, to vote at Parliamentary elections, and to be members of lay corporations. They are also qualified, upon taking and subscribing the same oath (which is to stand in place of all other tests whatever), to exercise any franchise or civil right except that of presenting to benefices, and to hold any office, with the exception of the following: the office of guardian, justice, or regent of the United Kingdom; of lord high chancellor or commissioner or keeper of the Great Seals; of lord lieutenant, deputy, or chief governor of Ireland; of high commissioner to the general assembly of the church of Scotland; or any office in the church or the ecclesiastical courts, or in the universities, colleges, and public schools.

Doubts, however, having been still entertained as to the right of Roman Catholic subjects in England to acquire and hold property for the support of religious worship, and for educational or charitable purposes, it was provided by the 2 & 3 Wm. IV. c. 115, that they should be subject, in this particular, to the same laws as were applicable to Protestant dissenters; and the 7 & 8 Vict. c. 102, and 9 & 10 Vict. c. 49, repealed all such enactments as still remained in force, however fallen into oblivion, calculated in any manner to oppress the Roman Catholic subjects of the realm, on account of their religious persuasion. But see 14 & 15 *Vict.* c. 60.

Papist livings. The right to present to them is vested and secured to the Universities of Oxford and Cambridge, according to the several counties in which they are situated.

Par, state of equality; equal value.

Parachronism [fr. παρά, Gk., besides; and χρόνος, time], error in the computation of time.

Paracium, the tenure between parceners, viz., that which the youngest owes to the eldest without homage or service.—*Domesday.*

Parage, an equality of blood or dignity; but more especially of land, in the partition of an inheritance between co-heirs; more properly, however, an equality of condition among nobles, or persons holding nobly. Thus, when a fief is divided among brothers, the younger hold their part of the elder by parage, i. e. without any homage or service.

Paragium, equality, the portion which a woman may obtain on her marriage.

Paragraph, a part or section of a statute, bill, affidavit, &c., which contains one article, the sense of which is complee.

Paralogy [fr. παρά, Gk., against; and λόγος, reason], false reasoning.

Paramount, superior; having the highest jurisdiction, as lord paramount, the supreme lord of the fee, the sovereign.

Paraphernalia [fr. παρά, Gk., beyond; and φερνή, dower], something reserved to a wife over and above her dower or dotal portion. It includes all the personal apparel and ornaments of the wife which she possesses, and which are suitable to her rank and condition of life.

At law, the husband, in his lifetime, may dispose of his wife's paraphernalia, excepting, indeed, her necessary apparel; and they are liable to the claims of creditors, with the like exception. But the wife is entitled to her paraphernalia against his representatives; for the husband cannot, by will, dispose of them, or leave them to his representatives.

Where the husband, either before or after marriage, gives to his wife articles of paraphernal nature, they are not treated as absolute gifts to her as her own separate property; for if they were, she might dispose of them at any time, and he could not appropriate them to his own use. But they are deemed gifts *sub modo* only, i. e. for the purpose of being worn by the wife as ornaments of her person. But if the like articles were bestowed upon

her by her father, or by a relative, or even by a stranger, before or after marriage, they would be deemed absolute gifts to her separate use; and then, if received with the husband's consent, he could not, nor could his creditors, dispose of them, any more than they could of any other property received and held to her separate use.—2 *Story's Eq. Jurisp.* 554.

Parasceve, the sixth day of the last week in Lent, popularly called Good-Friday. It is a *dies non juridicus.*

Parasitus, a domestic servant.—*Blount.*

Parasynexis, a conventicle, or unlawful meeting.—*Civ. Law.*

Paratitla, an abbreviated explanation of some titles or books of the code or digest.—*Civ. Law.*

Paravail [fr. *par*, Fr., and *avayler*, to dismiss], the lowest tenant of a fee; or he who is immediate tenant to one who holds of another.

Parcella terræ (*a parcel of land*).

Parcel Makers, two officers in the Exchequer who formerly made the parcels of the escheators' accounts, wherein they charged them with everything they had levied for the sovereign's use within the time of their being in office, and delivered the same to the auditors, to make up their accounts therewith.—*Prac. Exch.* 99.

Parcels, a description of property, formally set forth in a conveyance, together with the boundaries thereof, in order to its easy identification.

Parcels, *Bill of,* an account of the items composing a parcel or package of goods, transmitted with them to the purchaser.

Parcenary, the tenure of lands by parceners.

Parceners. See COPARCENARY.

Parchment, skins of sheep dressed for writing [fr. *pergamena*, Lat.], so called, because invented at *Pergamus*, in Asia Minor, by King Eumenes, when paper, which was in Egypt only, was prohibited by Ptolemy to be transported into Asia.

Parco fracto, a writ against him who violently broke a pound, and took away beasts which were lawfully impounded.—*Reg. Orig.* 166.

Pardon, forgiveness of a crime; remission of punishment.

The pardoning of criminals is the peculiar and most amiable prerogative of the sovereign.

The Queen may pardon all offences merely against the Crown and the public, excepting: (1) That to preserve the liberty of the subject, the committing any man to prison out of the realm is, by the *Habeas Corpus Act,* 31 Car. II. c. 2, made a *præmunire,* unpardonable even by the Crown; nor (2) can the Queen pardon where private justice is principally concerned in the prosecution of offenders '*non potest rex gratiam facere cum injuriâ et damno aliorum.*' Therefore she cannot pardon a common nuisance while it remains unredressed, or so as to prevent an abatement of it; though afterwards she may remit the fine. Neither can the Queen pardon an offence against a popular or penal statute after information brought; for thereby the informer has acquired a private property in his part of the penalty. But the 22 Vict. c. 32, enables the Crown to remit penalties for offences, although payable to parties other than the Crown. See also 24 & 25 *Vict.* c. 96, s. 109, & c. 97, s. 67. By 12 & 13 Wm. III. c. 2, no pardon, under the Great Seal of England, shall be pleadable to an impeachment by the Commons in Parliament. But after the impeachment has been solemnly heard and determined, the prerogative of pardon may be extended to the person impeached.

As to the manner of pardoning, it is enacted by 7 & 8 Geo. IV. c. 28, s. 13, that where the king's majesty shall be pleased to extend his royal mercy to any offender convicted of any felony punishable with death or otherwise, and by warrant under his royal sign-manual, countersigned by one of his principal secretaries of state, shall grant to such offender either a free or a conditional pardon, the discharge of such offender out of custody, in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the Great Seal for such offender as to the felony for which such pardon shall be granted; subject, however, to a proviso, that they shall have no effect to prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any felony committed after such pardon.

By 9 Geo. IV. c. 32, s. 3, reciting that it is expedient to prevent all doubts respecting the civil rights of persons convicted of felonies not capital, who have undergone the punishment to which they were adjudged, it is enacted that where any offender shall be convicted of any felony not punishable with death, and shall endure the punishment to which he has been adjudged for the same, the punishment so endured shall have the like effects and consequences as a pardon under the Great Seal, as to the felony whereof the offender was so convicted; subject, however, to a proviso that it shall not prevent or mitigate any punishment to which he might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

It is a general rule that whenever it may reasonably be presumed that the Queen has been deceived, the pardon is void. A pardon

of all felonies will not pardon a conviction or attainder of felony, but the conviction or attainder must be particularly mentioned; and a pardon of felonies will not include piracy, for that is no felony punishable at the common law. A pardon shall be taken most beneficially for the subject, and most strongly against the sovereign. A pardon may also be conditional, that is, the Queen may extend her mercy upon what terms she pleases, and may annex to her bounty a condition either precedent or subsequent, on the performance whereof the validity of the pardon will depend, and this by the common law; which prerogative is daily exercised in the pardon of felons, on condition of being confined to hard labor for a stated time, or of transportation to some foreign country for life or for a term of years.

A pardon by Act of Parliament is more beneficial than by the Queen's charter; for a man is not bound to plead it, but the court must, *ex officio*, take notice of it; neither can he lose the benefit of it by his own *laches* or negligence, as he may of the Queen's charter of pardon. The Queen's charter of pardon must be specially pleaded, and that at a proper time. It may be pleaded in bar as at once destroying the end and purpose of the indictment, by remitting the punishment to which the offender is liable. There is one advantage in pleading a pardon in bar or in arrest of judgment, *before* sentence is past, which gives it the preference over such a plea *after* sentence or attainder. This is, that by stopping the judgment, it stops the attainder, and prevents the corruption of blood which follows in certain cases, on conviction, and which cannot afterwards be purged except by Act of Parliament. The 5 & 6 W. & M. c. 13, gives the judges of the court a discretionary power to bind over the criminal pleading such pardon to his good behaviour, with two sureties, for any term not exceeding seven years.

The effect of a pardon is to make the offender a new man (*novus homo*), to acquit him of all corporal penalties and forfeitures annexed to the offence pardoned, and not so much to restore his former as to give him new credit and capacity. A pardon of treason or felony, even after conviction or attainder, will enable a person to maintain an action of slander for calling him a traitor or felon. A pardon, prior to conviction, will prevent any forfeiture either of lands or goods, though on the other hand, it will not, without express words of restitution, divest either the Crown or a subject of any interest already vested in either by force of an attainder or conviction precedent. See CORRUPTION OF BLOOD, and APPROVER.

Pardon, in the canon law, extends beyond the affairs of this world, being an indulgence which the pope grants to supposed penitents for remission of the pains of purgatory, which they have merited for the punishment of their sins.

Pardoners, persons who carried about the pope's indulgences, and sold them to any who would buy them.

Parens est nomen generale ad omne genus cognationis.—Co. Litt. 80.—(Parent is a name general for every kind of relationship.)

Parens Patriæ, the sovereign, as *parens patriæ*, has a kind of guardianship over various classes of persons, who, from their legal disability, stand in need of protection, such as infants, idiots, and lunatics.

Parent and Child, an universal and natural relationship, derived from the bond of husband and wife.

The duties of parents consist in three particulars—the maintenance of their children, their protection, and their education.

Very slight circumstances will be sufficient to raise the presumption of a contract on the part of a father to pay for necessaries provided to his infant-child. The poor-laws compel maintenance; for the father and mother, grandfather and grandmother, or children of poor persons not able to work, shall maintain them at their own charges, if of sufficient ability, according as the quarter-sessions or two justices in petty sessions shall direct; and if a parent run away and leave his children, the churchwardens and overseers of the parish shall seize his rents, goods, and chattels, and dispose of them towards their relief.—See POOR LAWS, 4 & 5 *Wm. IV.* c. 76; 11 & 12 *Vict.* c. 110; and 18 & 19 *Vict.* c. 87.

No person is bound to provide a maintenance for his issue, unless where the children are impotent and unable to work, either through infancy, disease, or accident; and then only obliged to find them with necessaries. Our law has made no provision to prevent the disinheriting of children.

The protection of children is a natural duty, and rather permitted than enjoined by our municipal laws. Their education also is rather a moral than a legal duty.

A father is, generally speaking, guardian to his infant children; and it is understood, that though this right ceases, in some instances and for some purposes, at fourteen, he is always entitled, in his paternal capacity, to the control of their persons, until the age of twenty-one; and if the possession of them during this period be withheld from him, he may in general regain it by writ of *habeas corpus*. By 24 & 25 Vict. c. 100, s. 56, whosoever by force or fraud shall take or entice away or detain any child under the age of fourteen, with intent either to deprive its parent or any other person having lawful charge of it, of the possession thereof, or to steal any article about its person, shall be guilty of felony, &c.

A father may correct his infant-child in a reasonable manner; for this is for the benefit of his education. His consent to the marriage of his child, if under age, is also required.—4 *Geo. IV.* c. 76; 6 & 7 *Wm. IV.* c. 85.

As to property, where the child has any real estate, his father, in the capacity of guardian, has generally the charge of it, and may receive the rents and profits during the minority of the child, subject to the liability to account for them on the child's attaining full age.

With respect to the mother, she has no legal power over the child in the father's lifetime, at least as against the father, except that by the 2 & 3 Vict. c. 54, where the child is within the age of seven years, the Lord Chancellor or Master of the Rolls may, upon the mother's petition (unless she have been judged adulteress), make an order on the father or testamentary guardian to deliver it into her custody. After the father's death, the mother is entitled to the custody of her child until the age of twenty-one years, and if she is unmarried her consent to the marriage of an infant child is necessary (see MARRIAGE); but she cannot appoint a guardian by will (see GUARDIAN). The Divorce Court has power to make such orders as it may think fit with regard to the custody, maintenance, and education of the children of the parties to suits for judicial separation, nullity of marriage, or dissolution of marriage.—20 & 21 *Vict.* c. 85, s. 35; 22 & 23 *Vict.* c. 61, s. 4. The law has not deemed it necessary to make much provision on the subject of filial obligations, but it is held that a child is justified in defending the person, and maintaining the cause or suit of a parent, as a parent is justified in performing the same duties for a child.—2 *Step. Com.* 295.

Parentela, *de parentelâ se tollere*, signified a renunciation of one's kindred and family. This was, according to ancient custom, done in open court, before the judge, and in the presence of twelve men, who made oath that they believed it was done for a just cause. We read of it in the laws of Henry I. After such abjuration, the person was incapable of inheriting anything from any of his relations, &c.—*Encyc. Lond.*

Parenticide [fr. *parens*, Lat., a father, and *cædo*, to kill], one who murders a parent.

Pares, a person's peers or equals; as the jury for trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals judged each other in the lord's courts, so the sovereign's vassals, or the lords themselves, judged each other in the sovereign's courts.—3 *Bl. Com.* 349.

Pares copulantur paribus.—*Bacon.*—(Like things unite with like.)

Pariar, Pariah, an outcast of the Hindoo tribes.—*Indian.*

Paribus sententiis reus absolvitur.—4 *Inst.* 64.—(Where the opinions are equal, a defendant is acquitted.)

Paricide, a word to be distinguished from *patricide*, or *parricide*, with two *r*'s, which is simply a softening of the *t*. The one is a murderer generally; the other a murderer of his father. The derivation is evidently in one case fr. *parem*, Lat., an equal, and *cædo*, to kill, that is, the murder of a fellow-citizen, not a slave; but in the other, fr. *patrem*, a father, and *cædo*. See PARRICIDE.

Par in parem imperium non habet—*Jenk. Cent.* 174.—(An equal has no power over an equal.)

Pari passu [Lat.] (*by the same gradation*), equally, without preference.

Parish [fr. *parochia*, low Lat.; *paroisse*, Fr., fr. παροικία, Gk., habitation], the particular charge of a secular priest. It is that circuit of ground which is committed to the care of one parson or vicar, or other minister having permanent cure of souls therein.—1 *Step. Com.* 120. As to the origin of parishes, see 2 *Hall M. A.* c. vii. pt. 1, p. 144.

Parish-apprentices, persons who are bound out by the overseers of parishes, or by the guardians of the poor. The children of poor persons may be apprenticed out by the overseers, with consent of two justices, and by the guardians without such consent, till twenty-one years of age, to such persons as are thought fitting; who are no longer, however, compellable to take them.—7 & 8 *Vict.* c. 101, s. 13; and see 14 & 15 *Vict.* c. 11; and 17 & 18 *Vict.* c. 104.

Parish-clerk. The office of parish-clerk is one of extreme venerableness and antiquity; next in dignity to the clergy, says Leland; semi-ecclesiastical, according to Camden. Witty Fuller likens him in his Church History to the bat—half-bird, half-beast—yet so as there is more in him of the former than of the latter; his clergy wings outweigh the laic or mouse part of him. He is the mouthpiece of the congregation, says Hooker; mouth of mouths, according to Bishop Bull; the connecting link between the minister and people; cousin, twice removed, to the vicar, says another; note, that the curate is betwixt. Bellwether to the flock, says Bishop Andrews, speaking it in honor. Spelman doubts whether he is not entitled to a portion of the lesser tithes—say a tenth. From all which expressions, though some of them seem run up into a height of metaphor and allegory greater peradventure than the matter soberly considered will bear, we may yet gather in what kind of estimation antiquity has held the function.—*Encyc. Lond.*

He is generally appointed by the incumbent,

but by custom may be chosen by the inhabitants; his appointment may be by word of mouth only; and his remuneration depends altogether upon the custom of the particular parish.—58 *Geo. III.* c. 45; 59 *Geo. III.* c. 134; 19 & 20 *Vict.* c. 104. He may be suspended or removed by the archdeacon for misconduct or neglect.—7 & 8 *Vict.* c. 59.

The Company of Parish Clerks is the most ancient in the city of London; yet they stand at the bottom of the list, and have neither livery nor the privilege of making their members free of the city.

Parishes (New) Acts, 6 & 7 Vict. c. 37; 7 & 8 Vict. c. 94; and 19 & 20 Vict. c. 104.

Parish-officers, churchwardens, overseers, and constables.

Parish-priest, the parson; a minister who holds a parish as a benefice. If the predial tithes are appropriated, he is called *rector*; if impropriated *vicar*.

Parish-registers. See BILLS OF MORTALITY.

Parishioner, one that belongs to a parish.

Parishioners are a body-politic for many purposes; as to vote at a vestry if they pay scot and lot; and they have a sole right to raise taxes for their own relief, without the interposition of any superior court. They may make bye-laws to mend the highway, and to make banks to keep out the sea, and for repairing the church, and making a bridge, &c. or any such thing for the public good.—*Encyc. Lond.*

Paritor [fr. *apparitor*, Lat.], a beadle; a summoner to the courts of civil law.

Parium eadem est ratio, idem jus.—(Of things equal, the reason is the same, and the same is the law.)

Park [fr. *parcus*, Lat., from *parco*, to spare], a place of privilege for wild beasts of venery, and also for other wild beasts that are beasts of the forest and of the chase; and those wild beasts are to have a firm place and protection there, so that no man may hurt or chase them within the park, without license of the owner.

A park differs from a forest, in that, as Compton observes, a subject may hold a park by prescription or royal grant, which he cannot do with respect to a forest. It differs from a chase also, because a park must be enclosed; if it lie open, it is a good cause of seizing it into the sovereign's hands, as a free chase may be if it lie enclosed.

To a park three things are required:—1st, a grant thereof; 2nd, inclosure by pale, wall, or hedge; 3rd, beasts of a park, such as buck, doe, &c.—*Cro. Car.* 59.

As to the management of the royal parks, see 14 & 15 *Vict.* c. 42; as to Victoria Park, 14 & 15 *Vict.* c. 46; and as to Battersea Park, 14 & 15 *Vict.* c. 77. As to Kennington Park, 15 & 16 *Vict.* c. 29.

Park-bote, to be quit of enclosing a park or any part thereof.

Parker, a park-keeper.

Parkhurst Prison, established in the Isle of Wight for the confinement and correction of young offenders, male or female, as well those under sentence of penal servitude as those under sentence of imprisonment. The rules for this prison are to be made by one of the Principal Secretaries of State, and afterwards laid before Parliament, and they may include the infliction of corporal punishment on all such offenders. By the same authority a governor, chaplain, surgeon, matron, and other necessary officers are to be appointed.—13 & 14 *Vict.* c. 39; 3 *Step. Com.* 240.

Parliament, *the Imperial,* the legislature of the United Kingdom of Great Britain and Ireland, consisting of the Queen, the lords spiritual and temporal, and the knights, citizens, and burgesses.

The word is generally considered to be derived fr. the French, *parler*, to speak. 'It was first applied,' says Blackstone, 'to general assemblies of the state, under Louis VII., in France, about the middle of the twelfth century.' The earliest mention of it in the statutes is in the preamble to the statute of Westminster 1st A. D. 1272.

The origin of any ancient institution must be difficult to trace, when, in the course of time, it has undergone great changes; and few subjects have afforded to antiquaries more cause for learned research and ingenious conjecture than the growth of our Parliament into the form which it had assumed when authentic records of its existence and constitution are to be found. Great councils of the nation existed in England both under the Saxons and Normans, and appear to have been common among all the nations of the north of Europe. They were called by the Saxons *michel-synoth*, or great council; *michel-gemote*, or great meeting; and *wittena-gemote*, meeting of wise men, by the last of which they are now most familiarly known. There appear to have been *wittena-gemotes* in each of the kingdoms composing the Saxon Heptarchy, and these, after the union of the kingdoms, became united into one great assembly or council.

The constitution of these councils cannot be known with any certainty, and there has been much controversy on the subject, and especially as to the share of authority enjoyed by the people. Different periods have been assigned for their admittance into the legislature. Coke, Spelman, Camden, and Prynne, agree that the commons formed part of the great synods or councils before the Conquest, but how they were summoned, and what degree of power they possessed, is a matter of doubt and obscurity. Under the Saxon kings, the forms of local

government were undoubtedly popular. The *shire-gemote* was a kind of county Parliament at which the alderman or earl of the shire (being himself elected to that office by the freeholders) presided, with the bishop, the *shire-gerieve*, or sheriff, and the assessors appointed to assist their deliberations upon points of law. A *shire-gemote* was held twice a-year in every county, when the magistrates, thanes, abbots, with all the clergy and landholders, were obliged to be present. A variety of business was conducted, but the proceedings of these assemblies generally partook more of the character of a court of justice than of a legislative body. That the *wittena-gemote*, or national council, was of an equally popular constitution with the *shire-gemote* is not so certain. If the smaller proprietors of land were not actually disqualified by law from taking part in the proceedings, yet their poverty, and the distance of the council from their homes, must generally have prevented them from attending. It has been conjectured that they were represented by their tithing-men, and the inhabitants of towns by their chief magistrates; but no system of political representation can be traced back to that time.—*Squire on the English Constitution*, pp. 120, 244; *Henry's History of England*, vol. iii., p. 372. In the absence of any such trace, however, the late Mr. Sharon Turner says, that 'after many years' consideration of the question, he is inclined to believe that the Anglo-Saxon *wittena-gemote* very much resembled our present Parliament in the orders and persons that composed it, and that the members who attended as representatives were chosen by classes analogous to those who now possess the elective franchise.'—*History of the Anglo-Saxons*, vol. iii., p. 180. He considers it 'incumbent on the historical antiquary to show, not when the people acceded to the *wittena-gemotes*, but when, if ever, they were divested of the right of attending them,' as the German national councils, from which this Saxon institution derived its origin, were attended by all the people; and he argues that 'the total absence of any document or date of the origin of the election of representatives by the freeholders of counties is the strongest proof we can have that the custom has been immemorial, and long preceded the Norman Conquest. The facts that such representatives have been called knights of the shire, and that milites, or an order like those afterwards termed knights, were part of the *wittena-gemote*, befriend this deduction.'—*Ib.* p. 184. As there are no records which can be held as conclusive upon this point of history, we must be satisfied with conjecture, and the liberal character of the other Saxon institutions inclines us to infer that whether there was representation or not, the commonalty had a share in the government.

That we are indebted to our Saxon ancestors for the germs of our free institutions there can be no doubt, though we cannot trace their growth so distinctly as we could wish. That the people were frequently present at the deliberations of the *wittena-gemote*, and that the authority of their name was used, appears from many records, but whether as witnesses (in which capacity they are sometimes spoken of), or because their presence was necessary to give effect to laws, is not so clear. In the reign of Ethelwolf, A. D. 855, a great council was held at Winchester, in which a tenth of the whole nation was given to the church by 'the king, the barons, and the people, in an infinite multitude,' but the nobles only signed the law.—*Ingulf*, p. 863. A 'copious multitude of people, with many knights,' is also said to have attended a similar council in the fifth year of the reign of King Canute, but it does not appear that the people took any part in the proceedings save as spectators. In Edward the Confessor's law, *de Apibus*, a tenth is confirmed to the church, 'by the king, the barons, and the people;' but in other laws of the same king, the whole authority of the state is declared to be vested in the king, acting with the advice of his barons. The Normans were not likely to advance the pretensions of the people whom they had conquered. Theirs was an oppressive feudal government at variance with popular privileges. All rank and property was the gift of the Crown, involving military service and subordination. Spelman, in his Treatise on Parliaments, thus describes the political condition of the commonalty under the feudal system: 'Every lord having authority over his tenant, the superior, as comprehending them all, and holding *in capite* (i. e. in chief, or direct from the king), was tied to the king to see all under his tenure to be of good government. By reason whereof, whatsoever those their lords agreed or disagreed unto in matters of the state and commonwealth, it did bind every of them their inferiors. Hence, then, it comes to pass, that in making laws of the kingdom, the common people were not consulted with, but only the barons, or those who held *in capite*, who then were called *concilium regni*.'—*Reliquiæ Spelmannianæ*, p. 60.

From the haughty character of the Norman barons, Mr. Turner infers the improbability of an elective Parliament having been instituted since the Conquest. Here, again, no positive evidence is supplied by our records. The laws and charters of the early Norman kings constantly mention councils of bishops, abbots, barons, and the chief persons of the kingdom, but are silent as to the commons.

In the 22nd year of Henry II., A. D. 1176, Benedict Abbas, one of our monkish annalists, relates that, about the feast of St. Paul, the king

came to Northampton, and there held a great council concerning the statutes of his realm, in the presence of bishops, earls, and barons of his dominions, and with the advice of his knights and men. This is the first record which appears to include the commons in the national councils.

Forty years afterwards, the Great Charter of King John throws a light upon the constitution of Parliament, which no earlier record had done; but even there the origin of a representative system is left in obscurity. It reserves to the city of London, and to all other cities, boroughs, and towns, and to the cinque ports, and other ports, all their ancient liberties and free customs; but whether the summons to Parliament, which is there promised, was then first instituted, or whether it was an ancient privilege confirmed and guaranteed for the future, the words of the charter do not sufficiently explain. From this time, however, may be clearly traced the existence of a Parliament similar to that which has continued to our own days. 'The main constitution of Parliament, as it now stands,' says Blackstone, 'was marked out so long ago as the seventeenth year of King John, A.D. 1215, in the Great Charter granted by that prince, wherein he promises to summon all archbishops, bishops, abbots, earls, and greater barons, personally, and all other tenants-in-chief under the Crown, by the sheriff and bailiffs, to meet at a certain place, with forty days' notice, to assess aids and scutages when necessary; and this constitution has subsisted in fact, at least, from the year 1266 (49 Hen. III.), there being still extant writs of that date to summon knights, citizens, and burgesses to Parliament.' There are writs of an earlier date than that mentioned by Blackstone, in the 49 Hen. III., which involve the principle of representation, though not to the same extent. One, in the 38th year of that reign, requires the sheriff of each county to cause to come before the king's council two good and discreet knights of his county, whom the men of the county shall have chosen for this purpose, in the stead of all and each of them, to consider, along with the knights of other counties, what aid they will grant the king.—2 *Prynne's Register*, p. 23. This, however, was for a particular occasion only; and to appear before the council is not to vote as an estate of the realm. Nevertheless, representation of some kind there existed; and it is interesting to observe how early the people had a share in granting subsidies. Another writ, in 1261, directs the sheriffs to cause knights to repair from each county to the king at Windsor. It only remains to notice a statute passed, 15 Edw. II., 1322, which declares that 'the matters to be established for the estate of the king, and of his heirs, and for the estate of the realm and of the people, should be treated, accorded, and established in Parliament by the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm, according as had been before accustomed.' In reference to this statute, Mr. Hallam observes, 'that it not only establishes, by a legislative declaration, the present constitution of Parliament, but recognises it as already standing upon a custom of some length of time.'—1 *Const. Hist.* p. 5; and see 3 *Hall. M. A.* c. viii. pt. 3, p. 4.

The authority of Parliament extends over the United Kingdom, and all its colonies and foreign possessions. There are no other limits to its power of making laws for the whole empire than those which are common to it, and to all other sovereign authority, the willingness of the people to obey, or their power to resist them. It has power to alter the constitution of the country; for that is the constitution which the last Act of Parliament has made. It may take away life by acts of attainder, and make an alien to be as a natural-born subject.

Parliament does not, in the ordinary course, legislate directly for the colonies. For some the Queen in council legislates, and others have legislatures of their own, and propound laws for their internal government, subject to the approval of the Queen in council, but these may afterwards be repealed or amended by statutes of the Imperial Parliament. There are some subjects, indeed, upon which Parliament, in familiar language, is said to have no right to legislate; such, for instance, as the church; but no one who thinks correctly, can intend more by that expression than that it is inexpedient to make laws as to such matters.

The very prayers and services of the church are prescribed by statute. Parliament has changed the professed religion of the country, and has altered the hereditary succession to the throne. To conclude, in the words of Sir Edward Coke, the power of Parliament 'is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds.'

Custom and convenience have assigned to different branches of the legislature peculiar powers, but they are subject to any limitation, or even transference, which Parliament may think fit to enact.

It is by the act of the Sovereign alone that Parliament can be assembled.

There have been only two instances in which the lords and commons have met of their own authority, namely, previously to the restoration of King Charles II. and at the Revolution in 1688.

There is one contingency upon which the Parliament may meet without summons under the authority of an Act of Parliament. It was provided by the 6 Anne, c. 7, that 'in case

there should be no Parliament in being at the time of the demise of the Crown, then the last preceding Parliament should immediately convene and sit at Westminster, as if the said Parliament had never been dissolved.' By the 37 Geo. III. c. 127, a Parliament so revived would only continue in existence for six months, if not sooner dissolved.

As the Sovereign appoints the time and place of meeting, so also at the commencement of every session she declares to both houses the cause of summons by a speech delivered to them in the House of Lords by herself in person, or by commissioners appointed by her. Until she has done this, neither house can proceed with any business.

After the speech any business may be commenced, and the Commons, in order to assert their right to act without reference to any authority but their own, invariably read a bill a first time *pro formâ*, before they take the speech into consideration.

Parliament, it has been seen, can only commence its deliberations at the time appointed by the Sovereign, neither can it continue them any longer than she pleases. She may prorogue Parliament by having her command signified in her presence by the Lord Chancellor or Speaker of the House of Lords to both houses, or by writ under the Great Seal, or by commission. The effect of a prorogation is at once to suspend all business until Parliament may be summoned again. Not only are the sittings of Parliament at an end, but all proceedings pending at the time, except impeachments by the Commons, are quashed.

Adjournment is solely in the power of each house respectively.

The Sovereign may also put an end to the existence of Parliament by a dissolution. She is not, however, entirely free to define the duration of a Parliament, for after seven years it ceases to exist under the statute of George I., commonly known as the Septennial Act. Parliament is dissolved by proclamation after having been prorogued to a certain day.

The judicial functions of the Lords, and their right to pass bills affecting the peerage, which the Commons may not amend, are the only properties peculiar to them apart from their personal rights and privileges.

The chief powers vested in the House of Commons are those of imposing taxes and voting money for the public service. Bills for these purposes can only originate in that house, and the Lords may not make any alterations in them, except for the correction of clerical errors.

Another important power peculiar to the Commons is that of determining all matters touching the election of their own members, and involving therein the rights of the electors.

The power of administering oaths is exercised by the Lords and Commons. See 21 & 22 *Vict.* c. 78.

Both Houses of Parliament possess various rights and privileges for the maintenance of their collective authority, and for the protection, convenience, and dignity of individual members. The power of commitment for contempt has always been exercised by both houses. The House of Lords, in addition to the power of commitment, may impose fines. Freedom of speech is one of the privileges claimed by the Speaker on behalf of the Commons; but it has long since been confirmed as the right of both Houses of Parliament by statutes. The law presumes that everything said in Parliament is with the view to the public good, and necessary for the conduct of public business; but should a member publish his speech, he is viewed as an author only; and if it contain libellous matter, he will not be protected by the privilege of Parliament.

The persons of members are free from arrest or imprisonment in civil actions, but their property is as liable to the legal claims of all other persons as that of any private individual. Their servants do not enjoy any privilege or immunity whatever.

The privilege of freedom from arrest has always been subject to the exception of cases of 'treason, felony, and surety of the peace.' Peers are always free from arrest; and as regards the Commons, their privilege is generally held to exist for forty days after every prorogation, and forty days before the next appointed meeting.

Each House of Parliament is acknowledged to be the judge of its own privileges.

In the House of Lords, business may proceed when three peers are present; but forty members are required to assist in the deliberations of the lower house.

When any question arises upon which a difference of opinion is expressed, it becomes necessary to ascertain the numbers on each side. In the Lords, the parties in favor of the question are called 'content,' and those opposed to it 'non-content.' In the Commons, these parties are described as the 'ayes' and 'noes.' When the Speaker cannot decide by the voices which party has the majority, or when his decision is disputed, a division takes place.

In addition to the power of expressing assent or dissent by a vote, peers may record their opinion, and the grounds of it, by a protest, which is entered in the journals, together with the names of all the peers who concur in it.

When matters of great interest are to be debated in the upper house, the Lords are summoned; and in the House of Commons an order is occasionally made that the house be called over, and members not attending when

their names are called, are reported as defaulters, and ordered to attend on another day, when, if they are still absent, and no excuse be offered, they are sometimes committed to the custody of the serjeant-at-arms.

The business, which occupies nearly the whole attention of both houses, if we except the hearing of appeals by the Lords, and the trial of controverted elections by the Commons, is the passing of bills.—*May's Imperial Parliament.* See HOUSE OF LORDS, HOUSE OF COMMONS, and IMPEACHMENT.

Parliamentary Agents, persons whose business is to promote or oppose the passing of private Acts of Parliament. A solicitor may act as a parliamentary agent. As to the delivery, taxation, and recovery of their costs, see 10 & 11 *Vict.* c. 69, and 12 & 13 *Vict.* c. 78.

Parliamentary Committee, a committee of members of the House of Peers or of the House of Commons, appointed by either house for the purpose of making inquiries, by the examination of witnesses or otherwise, into matters which could not be conveniently inquired into by the whole house. Not only any bill, but any subject that is brought under the consideration of either house, may, if the house thinks proper, be referred to a committee; and when the inquiry is ended, the committee, through their chairman, make a report to the house of the result. All election petitions are now inquired into by select committees of the House of Commons, the members of which are chosen by lot. All private bills, such as bills for railways, canals, roads, or other undertakings in which the public is concerned, are referred to select committees of each house before they are sanctioned by that house. Their reports are not absolutely binding upon the house. Great weight is always attached to them, and the house seldom reverses their decision upon such matters.

Parliamentary Grants for Education. See 7 & 8 *Vict.* c. 37; 18 & 19 *Vict.* c. 131; and 19 & 20 *Vict.* c. 116.

Paroche, a parish.

Parochia est locus quo degit populus alicujus ecclesiæ.—5 *Co.* 67.—(A parish is a place in which the population of a certain church resides.)

Parochial, belonging to a parish. See POOR LAWS.

Parochial Chapels, places of public worship in which the rites of sacrament and sepulture are performed.

Parochial Buildings in Scotland. As to their erection and improvement, see 25 & 26 *Vict.* cc. 58 & 103. And as to district parochial churches in Ireland, see 26 & 27 *Vict.* c. 123.

Parochian, a parishioner.

Paroichia, a parish.

Parol [fr. *parole,* Fr.], by word of mouth.

Also, the pleadings in an action were, when they were given *vivâ voce* in court, frequently termed the *parol.*

As to parol leases, assignments, contracts, and conveyances, see 29 *Car. II.* c. 3, commonly called 'The Statute of Frauds.'

Parol arrest, any justice of the peace may, by word of mouth, authorize any one to arrest another who is guilty of a breach of the peace in his presence.

Parol demurrer, abolished by 11 Geo. IV. and 1 Wm. IV. c. 47, s. 10.

Parol evidence, testimony by the mouth of a witness.

It is a general rule that oral evidence shall in no case be received as equivalent to, or as a substitute for, a written instrument, where the latter is required by law, or to give effect to a written instrument, which is defective in any particular which by law is essential to its validity; or to contradict, alter, or vary a written instrument, either appointed by law, or by the compact of private parties, to be the appropriate and authentic memorial of the facts which it recites; for by doing so, oral testimony would be admitted in the place of a species of evidence decidedly superior in degree.

But parol evidence is admissible to defeat a written instrument on the ground of fraud, mistake, &c., or to apply it to its proper subject, or in some instances, as ancillary to such application, to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases the parol evidence does not usurp the place or arrogate the authority of written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect.—3 *Stark. Evid.* 752.

The general rule with regard to the admission of parol evidence to explain the meaning of, or to add to, vary, or alter the express terms of a deed, is, that it shall not be admitted, except: (1) where, although the deed is clearly enough expressed, some ambiguity arises from extrinsic circumstances; (2) where the language of a charter or deed has become obscure, and the construction doubtful from antiquity; (3) where the grant appears uncertain, owing to a want of acquaintance with the grantor's estate; (4) where it is important to show a different consideration consistent with but not repugnant to that stated in the deed itself; (5) where it becomes necessary to show a different time of delivery from that at which the deed purports to have been made; (6) where it is sought to prove a customary right not expressed in the deed, but which is not inconsistent with any of its stipulations; or, lastly, where fraud or illegality in the formation of the deed is

relied on to avoid it. If a clause in a deed be so ambiguously or defectively expressed that a court of justice cannot, even by reference to the context, collect the meaning of the parties, it will be void on account of uncertainty.—*Woodf. Land. and Tent.* 83.

Parol lease, a verbal lease. See 29 *Car. II.* c. 3, s. 2.

Parole, the promise made by a prisoner of war, when he has leave to go anywhere, of returning at a time appointed, or not to take up arms till exchanged.

Parricide, one who kills his father; one who destroys or invades any person or thing to whom he owes particular reverence: as his country or patron. Also the crime of killing one's father.

Our laws, unlike the ancient laws, distinguish in no respect between the crime of parricide and that of killing a husband, wife, or master, and the crime of simple murder. See PARICIDE.

Parson [fr. *persona*, Lat., because the parson *omnium personam in ecclesiâ sustinet*; or from *parochianus*, the parish-priest.—*Johnson.* It was anciently written *persone.—Todd*], the rector or incumbent of a parish; one that has a parochial charge or cure of souls.

A parson has, during his life, the freehold in himself of the parsonage-house, the glebe, the tithes, and other dues. But these are sometimes appropriated, that is to say, the benefice is perpetually annexed to some spiritual corporation, either sole or aggregate, being the patron of the living, which the law esteems equally capable of providing for the service of the church as any clergyman. Many appropriations, however, are now in the hands of lay persons, who are usually styled, by way of distinction, lay impropriators.

In all appropriations there is generally a spiritual person attached to the same church, under the name of vicar, to whom the spiritual duty or cure of souls belongs, in the same manner as to the rector in parsonages not appropriate or rectories; and to whom, on the other hand, a certain portion of the tithes or other emoluments of the church, by way of exception out of those enjoyed by the appropriator, is assigned.

The method of becoming a parson or a vicar is much the same. To both there are, in general, four requisites necessary: holy orders, presentation, institution, and induction. A parson or vicar may cease to be so by death, by cession, or by taking another benefice, by consecration to a bishopric, by resignation, or by deprivation.—3 *Step. Com.* 19.

Parsonage, the benefice of a parish.

Parson imparsonee [fr. *persona impersonata*, Lat.], a clerk in complete and full possession of a spiritual benefice.

Parson mortal [fr. *persona mortalis*, Lat.], a rector instituted and inducted for his own life. But any collegiate or conventional body, to whom a church was for ever appropriated, was termed *persona immortalis.*

Pars rationabilis, the ancient division of a man's goods into three equal parts, of which one went to his heirs or lineal descendants, another to his wife, and the third was at his own disposal; or if he died without a wife, he might then dispose of one moiety, and the other went to his children, and so *è converso*; but if he died without either wife or issue, the whole was at his own disposal. The shares of the wife and children were called their reasonable parts; and the writ *de rationabili parte bonorum* was given to recover them. This law has been altered by imperceptible degrees, and the deceased may now by will bequeath the whole of his goods and chattels.—2 *Step. Com.* 193; 1 *Wms. Exors.* 2.

Parte quâcunque integrante sublatâ tollitur totum.—8 *Co.* 41.—(An integral part being taken away, the whole is taken away.)

Partem aliquam rectè intelligere nemo potest, antequam totum, iterum atque iterum, perlegerit. 3 *Co.* 52.—(No one can rightly understand any part until he has read the whole again and again.)

Partes finis nihil habuerunt, &c. (*the parties to the fine had nothing*, &c.), an exception taken against a fine levied.—3 *Rep.* 88.

Partial insanity, mental unsoundness always existing, although only occasionally manifest; in fact, monomania.—*Dew* v. *Clark, Add.* 279; *Waring* v. *Waring*, 6 *Mos. P. C.* 341.

Partial loss See ABANDONMENT.

Particeps criminis, or **Fraudis** (*a partner in crime or fraud.*)

Participes plures sunt quasi unum corpus, in eo quod unum jus habent, et oportet quod corpus sit integrum, et quod in nullâ parte sit defectus.—*Co. Litt.* 164 *a.*—(Many parceners are as one body, inasmuch as they have one right, and it is necessary that the body be perfect, and that there be a defect in no part.)

Participes, quasi partis capaces, sive partem capientes, quia res inter eas est communis, ratione plurium personarum.—Ibid. 164 *b.*—(Parceners, as it were 'partes capaces,' or 'partem capientes,' because the thing is common to them, by reason of their being many persons.)

Particula, a small piece of land.

Particular estate, that interest which is granted or carved out of a larger estate, which then becomes an expectancy either in reversion or remainder. See 3 *Prest. Conv.* 169.

Particular lien, a right of retaining possession of a chattel from the owner, until a certain claim upon it be satisfied. See LIEN.

Particular tenants, *alienation by,* when they conveyed by a feoffment, fine, or recovery, a greater estate than the law entitled them to

make, a forfeiture ensued to the person in immediate remainder or reversion. As if a tenant for his own life aliened by feoffment for the life of another or in tail or in fee, these being estates which either must or may last longer than his own, his creating them was not only beyond his power, and inconsistent with the nature of his interest, but was also a forfeiture of his own particular estate to him in remainder or reversion, who was entitled to enter immediately.

The same law which is thus laid down with regard to tenants for life held also with respect to all tenants of mere chattel-interests.

This forfeiture differed materially from forfeiture by breach of condition in deed, for in that case the reversioner is in as of his former seisin, and consequently not only the estate of the tenant himself, but all interests derived out of it (even though derived before the forfeiture) were defeated; but in case of such forfeiture by particular tenants, all legal estates by them created (as if tenant for twenty years grant a lease for fifteen), and all charges by him lawfully made on the lands would have been good and available in law. But fines and recoveries having been abolished, and a feoffment having no longer a tortious operation (8 & 9 Vict. c. 106, s. 4), a tenant, by creating a larger interest than he has in the property, does not incur a forfeiture, for such a creation is now void as to the excess, and good for his own interest.—1 *Step. Com.* 468.

Particulars of breaches. Where an ejectment is brought for a forfeiture, the court, or a judge upon application, will order the plaintiff to give the defendant particulars of the covenants and breaches, &c. on which he means to insist that the defendant has forfeited his term, and that he shall not be allowed to give evidence at the trial of anything not contained in such particulars.—*C.L.P. Act* (1852), s. 175; 2 *Chit. Arch. Prac. by Pren.* 1038.

Particulars of breaches of, and objections to, Patent. The Act for amending the law of patents, 15 & 16 Vict. c. 83, s. 41, enacts that 'in any action in any of her Majesty's superior courts of record at Westminster, or in Dublin, for the infringement of letters-patent, the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action; and the defendant, on pleading thereto, shall deliver with his pleas, and the prosecutor in any proceedings by *scire facias* to repeal letters-patent shall deliver with his declaration, particulars of any objections on which he means to rely at the trial in support of the pleas in the said action, or in the suggestions of the said declaration in the proceedings by *scire facias* respectively; and at the trial of such action or proceedings by *scire facias*, no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of such letters-patent which shall not be contained in the particulars delivered as aforesaid. Provided always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters-patent shall be stated in such particulars. Provided also, that it shall and may be lawful for any judge at chambers to allow such plaintiff, or defendant, or prosecutor, respectively, to amend the particulars delivered as aforesaid upon such terms as to such judge shall seem fit. Provided also, that at the trial of any proceedings by *scire facias*, to repeal letters-patent, the defendant shall be entitled to begin and to give evidence in support of such letters-patent; and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such letters-patent, the defendant shall be entitled to the reply.' As to particulars of objection to copyright, see 5 & 6 *Vict.* c. 45, s. 16.—2 *Chit. Arch. Prac. by Pren.* 1452.

Particulars of criminal charges. A prosecutor, when a charge is general, is frequently ordered to give the defendant a statement of the acts charged.

Particulars of escape. The defendant is entitled to a statement of the escape sued for, with the precise day of such escape.—2 *Chit. Arch. Prac. by Pren.* 1191.

Particulars of payment. Where a defendant pleads payment, a plaintiff, according to a decision of the Court of Common Pleas, may obtain particulars of the payments relied upon, on an affidavit stating that he cannot safely go to trial without them.—*Ireland* v. *Thompson*, 4 *Bing. N. C.* 716, *sed qu.* See 2 *Chit. Arch. Prac. by Pren.* 1451.

Particulars of premises, &c. A defendant, if there be any reasonable doubt as to the lands, &c., for which an ejectment is brought, may take out a summons before a judge, and obtain an order calling upon the plaintiff to give him a bill of particulars. The court or a judge may also order the defendant to give a particular of the premises for which he defends, 2 *Chit. Arch. Prac. by Pren.* 1038.

Particulars of residence. Where a plaintiff is unknown to a defendant, the latter may call for particulars of his residence or place of abode from the opposite attorney, and if he refuse to give it, or give a fictitious account of a person who cannot be found, the court or a judge will stay proceedings until security be given for costs.—*C. L. P. Act* (1852), s. 169.

An attorney may in general be compelled by a court or a judge to disclose the place of his client's residence, if the application be made in an early stage of a cause, but he cannot be compelled to disclose the place of his client's residence after verdict.

Particulars of set-off. Where a defendant pleads a set-off, the plaintiff may obtain a particular of the set-off in the same cases as a defendant would be entitled to it, if the matter so set off were declared upon; and if the defendant in such a case do not deliver a bill of particulars within the time limited in the judge's order for that purpose, he will not be allowed to give evidence of his set-off at the trial.—2 *Chit. Arch. Prac. by Pren.* 1450.

Particulars of the plaintiff's demand. By r. 19, H. T. 1853, 'with every declaration (unless the writ have been specially indorsed pursuant to s. 25 of the C. L. P. Act, 1852) delivered or filed, containing causes of action such as those set forth in schedule B of that Act, and numbered from 1 to 14 inclusive, or of a like nature, the plaintiff shall deliver or file full particulars of his demand under such claim, where such particulars can be comprised within three folios; and, where the same cannot be comprised within three folios, he shall deliver or file such a statement of the nature of his claim, and the amount of the sum or balance which he claims to be due, as may be comprised within that number of folios, and with every plea of set-off containing claims of a similar nature as those in respect of which a plaintiff is required to deliver or file particulars, the defendant shall in like manner deliver particulars of his set-off. And to secure the delivery or filing of particulars in all such cases, it is ordered that if any such declaration shall be delivered or filed, or any plea of set-off delivered, without such particulars or such statement as aforesaid, and a judge shall afterwards order a delivery of particulars, the plaintiff or defendant, as the case may be, shall not be allowed any costs in respect of any summons, for the purpose of obtaining such order, or of the particulars he may afterwards deliver; and a copy of the particulars of the demand and set-off shall be annexed by the plaintiff's attorney to every record at the time it is entered with the proper officer.'

Where the declaration contains special counts, it may be laid down as a general rule, that in all actions in which the plaintiff does not specify in the declaration the particulars of his cause of action, a judge, upon summons, will make an order upon him to give the defendant the particulars in writing, and that all proceedings be stayed in the meanwhile.

In actions for *torts*, it is generally the practice to refuse particulars of demand, which in most cases are comprised in the declaration. But, under circumstances, a judge will in such actions, compel a delivery of particulars, if there be an affidavit stating that the defendant does not know for what the plaintiff is proceeding.

By R. H. T. 1853, r. 21, 'a summons for particulars and order thereon may be obtained by a defendant before appearance, and may be made, if the judge think fit, without the production of any affivavit.' A judge may make an order at any time before the trial. The term of pleading issuably, and taking short notice of trial, if necessary, will be imposed on a defendant by the order. The order operates as a stay of proceedings from the time of its service till the particulars have been delivered. The particulars must be explicit, and should specify items, dates, and amounts. If they be incorrect, the party who delivered them may have leave to amend them; or if not sufficiently explicit, the other party may take out a summons, and obtain an order for further and better particulars.

By r. 21, H. T. 1853, 'a defendant shall be allowed the same time for pleading after the delivery of particulars under a judge's order which he had at the return of the summons; unless otherwise provided for in such order.'

At the trial, the party who delivered the particulars will be confined in his proof to the items therein contained, but if it appear from the defendant's evidence that he is entitled to recover for items not included in the bill, he shall recover them.—2 *Chit. Arch. Prac. by Pren.* 1437, *et seq.*

Particulars, the courts have a general jurisdiction, independently of statute, to order a detailed statement of the demand in any litigation, or of the defence to be given, that surprise may be avoided, and substantial justice promoted.—2 *Chit. Arch. Prac. by Pren.* 1437.

Particulars of Sale. See CONDITIONS OF SALE.

Parties, persons jointly concerned in any act; litigants.

The parties to an action at law are called in real actions demandant and tenant, and in personal actions plaintiff and defendant, and so in suits in equity.

In appeals they are called appellant and respondent.

The order in which the parties to a conveyance are set out is as follows: (1) The owner of the legal inheritance; (2) Persons having equitable or beneficial interests in the inheritance; (3) Persons possessed of chattel interests; (4) The grantee or releasee; (5) Trustees for the grantee or releasee.

In criminal cases they are the prosecutor and the prisoner or defendant.

Partition, the act of dividing.

Partition, *Bill for a,* a proceeding in Chancery which resembles the action *communi dividendo* of the civil law.

Since the abolition of the inadequate writ of partition at common law by the 3 & 4 Wm. IV. c. 27, s. 36, equity enjoys the exclusive jurisdiction of dividing the estates of joint tenants, tenants in common and coparceners,

which is effected by first ascertaining the rights of the several persons interested, and then issuing a commission, which is an equitable process, to make the partition required; and upon the return of the commissioners, and confirmation of that return by the court, the partition is finally completed by mutual conveyances of the allotments made to the several parties. Where the object is the partition of an advowson it is done by the decree (without a commission), directing alternate presentations. Equity is now empowered by 4 & 5 Vict. c. 35, s. 85, to decree a partition of copyholds. Where one of the parties interested is an infant, the court will now order such infant to execute the necessary deeds instead of waiting till his majority.—*Cole* v. *Sewell*, 17 *Sim.* 40 (1849).

With a view to the more convenient and perfect partition or allotment of the premises, equity frequently decrees a pecuniary compensation to one of the parties for owelty or equality of partition, so as to prevent any injustice or unavoidable inequality, as where one party has laid out large sums in improvements on the estate.

On a partition, every part of the estate need not be divided. If there be three houses, it would not be right to divide every house, for that would be to spoil them; but some recompense is to be made, either by a sum of money or rent for owelty of partition, to those that have the houses of least value.

The commissioners are not limited as to time in executing the commission; the proceedings under it are open, and may take place in or within twenty miles of London, all parties having a right to be present, as the commissioners act in a judicial capacity; they proceed without a jury.

It is not usual to give any costs of a partition until the commission; but the costs of issuing and executing it, and of confirming the return of the commissioners, are borne by the parties in proportion to the value of their respective interests, no costs of the subsequent proceedings being given.

Partition, *Deed of*, a primary or original conveyance. When an estate is held in community by joint tenants, tenants in common, coparceners, or joint heirs in gavelkind, and they are desirous of dividing it into distinct portions to be exclusively enjoyed by each, and are not under legal disability, they can accomplish such desire by this deed. Sometimes, instead of agreeing as to their several allotments, a reference is made to a person by them to divide the estate into the required portions, and a good plan of effecting this division is to convey the whole estate to the proposed referee upon trust to convey the several allotments to the respective parties, according to his award. A partition of any tenements or hereditaments, not being copyhold, is void at law, unless made by deed (8 & 9 Vict. 106, s. 3), and it is no longer to imply any condition in law (Ib. s. 4), so that a declaration negativing implied mutual warranty is now unnecessary.

There are two methods of carrying out a partition; one is by separate conveyances of the several allotments, when every party has the custody of his own title-deed; the other is by including the several allotments in one conveyance executed in several parts, one for each party. And this is the better method of the two, since it obviates the necessity of covenants to produce the respective conveyances.

A partition of copyholds should be by surrender and admittance, and thus the lord's consent is had.

It is frequently expedient, from the difficulties and intricacy of settlements, to effect a partition of property by a private Act of Parliament, which operates as a conveyance, and binds persons under disability. The 8 & 9 Vict. c. 118, s. 90, enacts that the appointed valuer upon the written request of any person interested in land to be inclosed in undivided shares, or as a joint tenant, coparcener, or tenant in common, is to make partition of, and allot the same in severalty to the persons interested who are to hold the allotments, subject to the same uses as if the partition had not been made. Such valuer is also to apportion the costs and expenses (s. 91).

In Kent, where the land is of gavelkind tenure, they call these partitions *shifting*, from the Saxon, *shiftan*, to divide; *herciscere*, Lat.

Partition, *Writ of*, abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Partner, partaker, sharer; one who has part in anything; associate.

Partnership is the result of a contract whereby two or more persons agree to combine property or labor, or both, for the purpose of a common undertaking and the acquisition of a common profit.—*Smith's Merc. Law.*

Every person except a married woman can contract a partnership. Married women are legally incapable of this contract, and although they are frequently entitled to shares in banking-houses and other mercantile concerns, their husbands in their stead become partners in the concern. An infant-partner is entitled to all the benefits, although not liable for the losses of the partnership, if he avail himself of his minority: but if, on attaining majority, he do not disaffirm the partnership, he is responsible on contracts subsequently made by the firm.

Partnerships are either public or private. Public partnerships are usually denominated

companies or societies. They consist of a large number, definite or indefinite, of persons who have joined together to carry on some undertaking. Some of them are incorporated by letters-patent, or by Act of Parliament, while others are unincorporated, as most of the fire and life insurance companies, and are, in fact, ordinary partnerships. They usually, however, divide their capital into shares, each partner holding one or more of them up to a certain restricted number, transferable under certain regulations; the business is intrusted to officers, generally under the superintendence of directors, elected from the general body, for whose acts the whole company is responsible.

The Queen can charter a society, or public company, for the advantage of trade, but not for a total restraint thereof. A royal charter is necessary to enable a company to hold lands, to have a common seal, and to enjoy the other privileges of a corporation. Trading companies sometimes obtain Acts of Parliament which confer exclusive privileges not grantable, according to the principles of the common law, by the Queen's charter. A charter is sometimes procured to limit the risk of the partners, for when societies are incorporated, the members are liable to the extent of their shares only, but when unincorporated, their liability is unlimited.

Public incorporated trading companies are not regulated by the same legal principles as those which govern ordinary partnerships. Thus, the members, as such, are not, as a general rule, subject to the bankrupt laws; nor are they liable in their individual capacities; nor for the debts or engagements of other members; in short, they are only liable in respect of the trade, and contracts carried on and made in the corporate character, to the extent of their respective shares or interests in the joint stock.

Private partnerships are contracted by the mere consent of the parties, no charter or license being necessary. Consent may be expressly testified by articles of copartnership, or positive agreement; or it may be implied from the acts and conduct of the parties, which is equally effective. Persons having a mutual interest in the profits of any business carried on by them, or appearing ostensibly as joint traders, may be treated as partners by the world, whatever may be the nature of the agreement under which they act, or whatever motive or inducement may have prompted them so to act.

It is so essentially necessary that the parties exercise their choice freely and voluntarily, that the joint donees, or joint legatees, of one and the same thing, or those chancing, through other causes, to hold something undivided between them, to be possessed in common, without any mutual agreement, cannot be treated as partners, for they hold not by force of their own free election; nor can the executors and representatives of deceased partners, in their representative characters, be deemed partners; a community of interest, however, exists between them and the surviving partners, until the affairs of the concern are wound up. And one partner cannot introduce a stranger into the concern as a partner without the consent of the rest, although he has a right to charge his own undivided interest to any extent he pleases in favor of such stranger.

A partnership may be limited to a particular transaction or branch of business, without comprehending all the adventures in which any one partner may embark. And where this limitation is distinctly defined, and in the absence of any power, expressed or implied, enabling a part of the firm to bind the whole to the responsibility of any new project, it is not competent for any number of the firm, short of the whole partnership, to embark it in any undertaking not contemplated by the original contract. Each partner has a right to hold his copartners to the specified purposes of their union whilst the partnership continues, and not to rest upon indemnities with respect to what he has not contracted to engage in, and he cannot be compelled to part with his shares, although he might sell them for double what he originally gave for them; his principal reason for keeping them may be that the partnership concern should be carried on according to the contract. The original contract, and the loss which his partners would suffer by a dissolution is his security that it shall be so carried on for him and them beneficially, and with augmented improvement in the value of his and their shares.

Partners, upon their entering into partnership, usually execute articles of agreement by the terms and stipulations of which the concern is regulated, and the rights, duties, and obligations of the partners, *inter se*, are defined; and such terms, &c., cannot be impeached unless they contravene any rule or principle of law.

In the absence of any express agreement, the partnership is regulated by the contract implied by law from the relation of the parties. And where a partnership is constituted by the mere act of trading jointly, each person so trading, although liable to creditors for the whole amount of the losses, is only responsible, *inter se*, for his own proportion of them, and each will be considered, as to the profits, as equally interested, unless the contrary appear.

Partners are ordinarily divided as follows: (1) ostensible partners; (2) nominal partners; (3) dormant partners: which see.

At law there are several actions which it is

competent to a partner to bring against persons who are jointly engaged with him in trade: account, covenant, assumpsit, and trover are severally adapted to the adjustment of partnership differences. Besides the legal remedies, relief is, in most cases of partnership dissensions, administered in a court of equity.

A dissolution of a partnership may take place,

(1) By the act, or agreement, or consent of the parties, including all cases where the partnership is merely at will, or is for a prescribed period, which expires by efflux of time or otherwise, according to its own limitation, or is voluntarily dissolved by mutual consent within the prescribed or limited period.

(2) By the decree of a court of equity, which may be made on account of

(*a*) Causes arising subsequently to the formation of the contract, founded upon the alleged misconduct, or fraud, or violation of duty of one partner; or of

(*b*) Causes arising subsequently to the formation of the contract, where no blame, laches, or impropriety of conduct necessarily attaches to any of the partners, as ill health, sudden incapacity, insanity.

(3) By mere operation of law; as

(*a*) By the change of the state or condition of one or more of the partners.

(*b*) By the transfer of the property of one or more of the partners by his or their own act or by the act of the law.

(*c*) By the bankruptcy and insolvency of one or more of the partners.

(*d*) By a public war between the countries of which the partners are respectively subjects.

(*e*) By the death of one or more of the partners. Consult *Collyer*, *Gow*, or *Story on 'Partnership,' Smith's Merc. Law*. See JOINT-STOCK COMPANIES.

Partnership property. It makes no difference whether partnership property, held for the purposes of a trade or business, consists of personal or movable property or of real or immovable property, or of both, so far as the ultimate rights and interests of the partners are concerned. It is true, that at law, real or immovable property is deemed to belong to the person in whose name the title by conveyance stands. If it is in the name of a stranger, or of one partner only, he is deemed the sole owner at law; if it is in the names of all the partners, or of several strangers, they are deemed joint-tenants, or tenants in common, according to the true interpretation of the terms of the conveyance. But, however the title may stand at law, or in whose name or names soever it may be, the real estate of the partnership will in equity be treated as belonging to the partnership, and disposable and distributable in like manner as its personal property, and the parties in whose names it stands as owners of the legal title will be held to be trustees for the partnership, and accountable accordingly to the partners, according to their several shares, rights, and interests in the partnership, as *cestuis que* trust or beneficiaries of the same. Hence, in equity, in case of the death of one partner, there is no survivorship in the real estate of the partnership, but his share will go to his representatives.—*Collyer on Partnership*, 82.

Part owners or **Quasi-partners** [*quasi associés*, Lat., Fr.], joint-owners, or tenants-in-common, who have a distinct, or at least an independent, although an undivided interest in the property. Neither of them can transfer or dispose of the whole property, or act for the others as partners can in relation thereto; each can merely deal with his own share, and to the extent of his own several right and interest.

Part-owners of ships are tenants-in-common, holding distinct but undivided interests, and each is deemed the agent of the others, as to the ordinary repairs, employment, and business of the ship, in the absence of any known dissent. A majority of the owners in interest can employ the ship, although the minority may dissent, and they may appoint a master, and the dissenting minority will be bound, unless those dealing with the master have had notice of their dissent, or they have protected themselves by proper proceedings in the Court of Admiralty. *Story's Agency*, 37.

Partridge, a fowl of warren.

Parturition. See DELIVERY.

Partus ex legitimo thoro non certius noscit matrem quam genitorem suum.—*Fortescue*, 42. (The offspring of a legitimate bed knows not his mother more certainly than his father.)

Partus sequitur ventrem.—2 *Bl. Com.* 390.—(The offspring follows the dam.)

Party-jury, a jury made up of half foreigners and half natives.

Party-wall, a wall that separates one house from another.

The common use of a wall separating adjoining lands belonging to different owners is *primâ facie* evidence that the wall and the land on which it stands belong to the owners of those adjoining lands, in equal moieties, as tenants in common. If a house or office be separated from other premises by a wall, and that wall belongs to the owner of the house or office, he is of common right bound to repair it; and an action will lie against him for not doing it. As to the repair of party structures under the Building Act, see *Woodf. Land. and Ten.* 486, *et seq.*

Parum differunt quæ re concordant.—2 *Bulst.* 86.—(Things which agree in substance differ but little.)

Parum est latam esse sententiam nisi mandetur executioni.—*Co. Litt.* 289.—(It is not enough

that sentence be given unless it be carried to execution.)

Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum.—2 *Inst.* 503. (It avails little to know what ought to be done, if you do not know how it is to be done.)

Parvise, an afternoon's exercise or moot for the instruction of young students, bearing the same name originally with the *Parvisiæ* of Oxford.—*Selden's notes on Fortesque*, c. li.

Pas, precedence; right of going foremost.

Pasch [fr. *pasahh*, Heb.], the passover.

Pascha clausum, the octaves of Easter or Low-Sunday, which close that solemnity.

Pascha floridum, the Sunday before Easter, called Palm-Sunday.

Paschal rents, yearly tributes paid by the clergy to the bishop or archdeacon at their Easter visitations.

Pascua, a particular meadow or pasture land set apart to feed cattle.

Pascuage, the grazing or pasturage of cattle.

Pasnage or **Pathnage in woods,** &c. See PANNAGE.

Passage, a way over water.

Passagio, an ancient writ addressed to the keepers of the ports to permit a man who had the king's leave to pass over sea.—*Reg. Orig.* 193.

Passagium regis, a voyage or expedition to the Holy Land made by the kings of England in person.—*Cowel.*

Passator, he who has the interest or command of the passage of a river; or a lord to whom a duty is paid for passage.

Passengers, persons conveyed for hire from one place to another. Passenger-ships are those peculiarly appropriated to the conveyance of passengers. In some respects, passengers by ship may be considered as a portion of the crew. They may be called on by the master or commander of the ship, in case of imminent danger, either from tempest or enemies, to lend their assistance for the general safety; and in the event of their declining, may be punished for disobedience. This principle has been recognised in several cases; but as the authority arises out of the necessity of the case, it must be exercised strictly within the limits of that necessity.—*Boyce* v. *Badcliffe*, 1 *Camp.* 58.

A passenger is not, however, bound to remain on board a ship in the hour of danger, but may quit it if he have an opportunity; and he is not required to take upon himself any responsibility as to the conduct of the ship; if he incur any responsibility, and perform extraordinary services, in relieving a vessel in distress, he is entitled to a corresponding reward. The goods of passengers contribute to general average.—*Abbott on Shipping*, p. 3, c. x. Amended by 26 & 27 *Vict.* c. 51.

Passengers' Act, 18 & 19 Vict. c. 119, and see 16 & 17 *Vict.* c. 84.

Passenger-ship, or **Steamer,** as to, see 17 & 18 *Vict.* c. 104, ss. 303–325.

Passiagiarius, a ferry-man.

Passing-ticket, a kind of permit, being a note or check which the toll-clerks on some canals give to the boatmen, specifying the lading for which they have paid toll.

Passive debt, a debt upon which, by agreement between the debtor and creditor, no interest is payable, as distinguished from *active* debt, i. e. a debt upon which interest is payable. In this sense, the terms active and passive are applied to certain debts due from the Spanish Government.

Passive trust, a trust as to which the trustee has no active duty to perform. Passive uses were resorted to before the Statute of Uses, in order to escape from the trammels and hardships of the common law, the permanent division of property into legal and equitable interests being clearly an invention to lessen the force of some pre-existing law. For similar reasons, equitable interests were after that statute revived under the form of trusts. As such, they continued to flourish, notwithstanding the singular amelioration effected at a later period in the law of tenure, because the legal ownership was attended with some peculiar inconveniences. For, in order to guard against the forfeiture of a legal estate for life, passive trusts, by settlement, were resorted to, and hence, trusts to preserve contingent remainders; and passive trusts were and are created in order to prevent dower.

Where an active trust was created, without defining the quantity of the estate to be taken by the trustee, the courts endeavored to give by construction the quantity originally requisite to satisfy the trust in every event, but if a larger estate was expressly given, the courts could not reject the excess; and, although the estate taken, whether expressly or constructively, might not have exceeded the original scope of the trust, yet, if eventually no estate, or a less estate, were actually wanted, the legal ownership remained wholly or partially vested in the trustee as a merely passive trustee.—1 *Hayes's Conv.* 103.

Passive use, a permissive use, which see.

Passport, a license for the safe passage of any one from one place to another; a sea-brief, or letter.

The stamp-duty on passports is reduced from 5*s.* to 6*d.* by 21 Vict. c. 24.

Aliens by 6 & 7 Wm. IV. c. 11, are required, on arrival in this country, to exhibit such passports as they have, and make a declaration of the time and place of their landing, their names, the country to which they belong, and the country from which they have come.

Pastitium, pasture land.—*Domesday.*

Pastor [fr. *pasco*, Lat., to feed], literally a shepherd, but generally applied to a minister of the Christian religion, who has charge of a congregation, correlatively called his flock.

Pasture, land on which cattle feed.

It is of two sorts: the one is low-meadow-land, which is often overflowed, and the other is upland, which lies high and dry. See COMMON.

Pastus, the procuration or provision which tenants were bound to make for their lords at certain times, or as often as they made a progress to their lands. It was often converted into money.

Patent ambiguity, a doubt that is apparent upon the face of an instrument. See AMBIGUITY.

Patent-letters. See LETTERS-PATENT.

Patent-right, the exclusive privilege granted by the Crown to the first inventor of a new manufacture of making articles according to his invention. See LETTERS-PATENT.

Patent-rolls, registers in which letters-patent are recorded.

Patentee, one who has a patent. The offices of patentee and deputy patentee of the *Subpœna* office are abolished by 15 & 16 Vict. c. 87, s. 27.

Pater est quem nuptiæ demonstrant.—*Co. Litt.* 123.—(He is the father whom the nuptials indicate.)

Pater et mater et puer sunt una caro.—(The father, mother, and son are of one flesh.)

Paterfamilias, one who was *sui juris* and the head of a family.—*Civ. Law; Sand. Just.* 38, 107.

Paternity. It becomes a question, when a widow marries immediately after the death of her husband, and she is delivered of a child at the expiration of ten months from the death of the first husband, as to the paternity of the child.

Blackstone and Coke say, that if a man die, and his widow soon after marry again, and a child is born within such a time as that by the course of nature it might have been the child of either husband, in this case he is said to be more than ordinarily legitimate, for he may, when he arrives at years of discretion, choose which of the fathers he pleases. But Hargrave suggests, that the circumstances of the case, instead of the choice of the issue, should determine who is the father.

The Romans forbade a woman to marry until after the expiration of ten months from her husband's decease, which term was prolonged to twelve by Gratian and Valentinian. The French code has adopted the same rule, viz. after ten months. It was also established under the Saxon and Danish governments. It was the law in this country until the Conquest.—*Beck's Med. Jurisp.* 382.

Patibulary [fr. *patibulum*, Lat.], belonging to the gallows.

Patibulated, hanged on a gibbet.

Patrem sequitur sua proles.—(His own issue follows the father.)

Patria, the country; the men or jury of a neighbourhood.

Patria dicitur à patre, quia habet communem patrem, qui est pater patriæ.—*7 Co.* 13.—(*Patria* (country) is so called from *pater*, because it has a common parent who is father of the country.)

Patria laboribus et expensis non debet fatigari.—*Jenk. Cent.* 6.—(A jury ought not to be fatigued by labors and expenses.)

Patria potestas, paternal power.—*Civ. Law.* For the extent of this great power, see *Sand. Just.* 110. The modes in which the *patria potestas* was ended, were: (1) the death of the parent; (2) the parent or son suffering loss of freedom or of citizenship; (3) the son attaining certain dignities; (4) emancipation.

Patriarch, the chief bishop over several countries or provinces, as an archbishop is of several dioceses.—*God.* 20.

Patricide, one who has killed his father. As to its punishment by the Roman Law, see *Sand. Just.* 606.

Patricius, a title of the highest honor, conferred on those who enjoyed the chief place in the emperor's esteem.—*Civ. Law.*

Patrimony, an hereditary estate or right descended from ancestors.

Patrinus, a godfather.

Patritius, an honor conferred on men of the first quality in the time of the English Saxon kings.

Patron, one who has the disposition of an ecclesiastical benefice; also an advocate or defender. See CLIENT.

Patronage, the right of presenting to a benefice.

A disturbance of patronage is a hindrance or obstruction of a patron to present his clerk to a benefice, the remedy for which is the real action of *quare impedit.*

Patronatus, patronage.

Patronum faciunt dos, ædificatio, fundus.—*Dod. Adv.* 7.—(Endowment, building, and land make a patron.)

Patruelis, a cousin-german by the father's side; the son or daughter of a father's brother. *Civ. Law.*

Patruus, an uncle by the father's side, a father's brother.

Patruus magnus, a grandfather's brother, grand-uncle.

Patruus major, a great-grandfather's brother.

Patruus maximus, a great-grandfather's father's brother.

Pauper, a poor man. See POOR-LAWS and IN FORMA PAUPERIS.

Pauper Lunatic Asylums. 26 & 27 *Vict.* c. 110.

Pavage, money paid towards paving the streets or highways.

Paving Acts, 57 Geo. III. c. 29, commonly called Angelo Taylor's Act; 5 & 6 Wm. IV. c. 50; 10 & 11 Vict. c. 34; and 20 & 21 Vict. c. 50.

Pawn, or **Pledge** [fr. *pignus*, Lat.], a bailment of goods by a debtor to his creditor, to be kept till the debt is discharged.

A mortgage of goods is in the common law distinguishable from a mere pawn. By a mortgage the whole legal title passes conditionally to the mortgagee; and if the goods be not redeemed at the stipulated time, the title becomes absolute at law, although equity allows a redemption. But in a pledge, a special property only passes to the pledgee, the general property remaining in the pledger. Also, in the case of a pledge, the right of the pledgee is not consummated, except by possession; and, ordinarily, when that possession is relinquished, the right of the pledgee is extinguished or waived. But, in the case of a mortgage of personal property, the right of property passes by the conveyance to the mortgagee, and possession is not or may not be essential to create or support the title.

As to things which may be the subject of pawn. These are, ordinarily, goods and chattels; but money, debts, negotiable instruments, choses in action, and indeed any other valuable thing of a personal nature, such as patent-rights and manuscripts, may by the common law be delivered in pledge. It is not indispensable that the pledge should belong to the pledger; it is sufficient if it is pledged with the consent of the owner. By the pledge of a thing, not only the thing itself is pledged, but also as accessory, the natural increase thereof. If the pledger have only a limited title to the thing, as for life or for years, he may still pawn it to the extent of his title; but when that expires, the pledgee must surrender it to the person who succeeds to the ownership. See 6 *Geo. IV.* c. 94, and 7 & 8 *Geo. IV.* c. 29, enabling factors, in certain cases, to pledge the goods of their principals.

It is of the essence of the contract that there should be an actual delivery of the thing to the pledgee; for, until delivery, the whole contract is executory, however strong may be the engagement to deliver it, and the pledgee acquires no right of property in it. But there need not be an actual manual delivery, as it is sufficient if there are any of those acts or circumstances, which, in construction of law, are deemed sufficient to pass the possession of property, as the key of a warehouse. As possession is necessary to complete the title, so by the common law, the title determines if the pledgee lose the thing pledged or deliver it back to the pledger unless for a temporary or special purpose.

It is of the essence of the contract that the thing should be delivered as a security for some debt or engagement. It may be delivered as security for a future debt or engagement, as well as for a past debt; for one or for many debts and engagements; upon condition or absolutely; for a limited time or for an indefinite period. It may also be implied from circumstances, as well as arise by express agreement, and it matters not what is the nature of the debt or the engagement. The pledge is understood to be a security for the whole and for every part of the debt or engagement. It is indivisible; *individua est pignoris causa.*

As to the pledgee or pawnee's rights and duties. The pawnee acquires, in virtue of the pawn, a special property in the thing, and is entitled to the exclusive possession of it, during the time and for the objects for which it is pledged. In regard to the expenses which have been incurred by the pledgee about the pledge, if they are necessary, then the pledger is bound to reimburse them to the pledgee; but if they are merely useful then he is not bound to reimburse them unless incurred by his own express or implied authority. The pledgee has a right to sell the pledge, when the pledger fails to perform his engagement. He may file a bill in equity against the pawner for a foreclosure and sale, or he may proceed to sell *ex mero motu*, upon giving due notice of his intention to the pledger. If several things be pledged, each is deemed liable for the whole debt or engagement; and the pledgee may proceed to sell them from time to time, until the debt or other claim be completely discharged. The possession of the pawn does not suspend the right to sue for the whole debt or other engagement without selling the pawn, for it is only a collateral security. A pawnee cannot become the purchaser at the sale. A pledgee cannot alienate the property absolutely, nor beyond the title actually possessed by him, unless in special cases. He may deliver the pawn into the hands of a stranger for safe custody, without consideration; or he may sell or assign all his interest in the pawn, or he may convey the same interest conditionally, by way of pawn, to another person, without destroying or invalidating his security.

The following rules elucidate the principles as to the pawnee's title to use the pawn:—

(1) If the pawn is of such a nature that the due preservation of it requires some use, there such use is not only justifiable, but it is indispensable to the faithful discharge of the duty of the pawnee.

(2) If the pawn is of such a nature that it will be worse for the use, such, for instance, as clothes, the use is prohibited to the pawnee.

(3) If the pawn is of such a nature that the keeping is a charge to the pawnee, as a cow or a horse, there the pawnee may milk the cow and use the milk, and ride the horse by way of recompense for the keeping.

(4) If the use will be beneficial to the pawn, or it is indifferent, there it seems that the pawnee may use it.

(5) If the use will be without any injury, and yet the pawn will thereby be exposed to extraordinary perils, there the use is impliedly interdicted.

The pawnee is liable for ordinary neglect in keeping the pawn. He must return the pledge and its increments, if any, after the debt or other duty has been discharged. He must render a due account of all the income, profits and advantages derived by him from the pledge, in all cases where such an account is within the scope of the bailment.

As to the pledger's rights and duties:

If the pledge is conveyed by way of mortgage, so that the legal title passes, unless the pledge is redeemed at the stipulated time, the title of the pledgee becomes absolute at law; and the pledger has only an equitable right to redeem. If, however, it be a mere pledge, as the pledger has never parted with the general title, he may, at law, redeem, notwithstanding he has not strictly complied with the conditions of his contract. If, when the pledger applies to redeem, the pledge has been sold by the pledgee without any proper notice to the former, no tender of the debt due need be made before bringing an action therefor; for the party has incapacitated himself to comply with his contract to return the pawn. Subject to the pledgee's right, the owner has a right to sell or assign his property in the pawn. As the general property of goods pawned remains in the pawner, and the pawnee has a special property only, either may maintain an action against a stranger for any injury done to it, or for any conversion of it. Goods pawned are not liable to be taken in execution in an action against the pawner, at least not unless the bailment is terminated by payment of the debt, or by some other extinguishment of the pawnee's title, except in case of the Crown, and then subject to the pawnee's right. By the act of pawning, the pawner enters into an implied engagement or warranty that he is the owner of the property pawned. The pawner is responsible for all frauds, not only in the title but in the concoction of the contract. The pawner must reimburse to the pawnee all expenses and charges which have been necessarily incurred by the latter in the preservation of the pawn, even though by some subsequent accident these expenses and charges may not have secured any permanent benefit to the pawner.

The contract of pledge is put an end to or extinguished:—

(1) By the full payment of the debt, or the discharge of the other engagements for which the pledge was given;

(2) By the satisfaction of the debt in any other mode, either in fact or by operation of law; as, for instance, by receiving other goods in payment or discharge of the debt;

(3) By taking a higher or different security for the debt, without any agreement that the pledge shall be retained therefor (this is called a *novation* in the Roman Law);

(4) By extinguishing the debt, which also extinguishes the right of the pledge;

(5) By the debt being barred by prescription;

(6) By the thing perishing;

(7) By any act of the pledgee which amounts to a release or waiver of the pledge.—*Story on Bailments*, c. v.

Pawnage, or **Pannage.** See PANNAGE.

Pawnbroker, one who lends money on goods which he receives upon pledge.

By the Pawnbrokers' Act, 39 & 40 Geo. III. c. 99 (amended by 9 & 10 Vict. c. 98; 19 & 20 Vict. c. 27; 22 & 23 Vict. c. 14; and 23 Vict. c. 21), it is enacted (*inter alia*), that any person suspecting his goods to have been unlawfully pawned, and satisfying a justice of the peace that there is probable ground for that suspicion, may obtain a warrant for searching the house of the person supposed to have taken them in pawn, and if on such search they shall be found, and the property of the claimant proved he shall be entitled to have them restored. See 1 *Jac. I.* c. 21.

Pawnee, the person with whom a pawn is deposited. See PAWN.

Pawner, or **Pawnor**, the person depositing a pawn. See PAWN.

Pax regis, the king's peace or verge of the court.

Payee, one to whom a bill of exchange or promissory note is made payable.

Payment. The payment of money before the day appointed is in law payment at the day; for it cannot, in presumption of law, be any prejudice to him to whom the payment is made to have his money before the time; and it appears, by the party's receipt of it, that it is for his own advantage to receive it then, otherwise he would not do it.—5 *Rep.* 117.

For payment of rent there are said to be four times:—1st, a voluntary time, that is not satisfactory, and yet good to some purpose: as where a lessee pays his rent before the day, this gives seisin of the rent, and enables him to whom it is paid to bring his assize (now abolished) for it; 2nd, a time voluntary and satisfactory in some cases: when it is paid the morning of the last

day, and the lessor dies before the end of the day, this is a good payment to bind the heir or executor, but not the Crown; 3rd, the legal, absolute, and satisfactory time, which is a convenient time before the last instant of the last day, and then it must be paid; 4th, satisfactory and not voluntary, but coercive when forced, and recovered by suit at law.—*Co. Litt.* 200.

Payment of money into court. When a person is satisfied that he is indebted to another, upon a claim for a sum certain, or capable of being ascertained by mere computation, but disputes the amount claimed of him, then, before action brought, he may tender to his creditor the sum which he admits he owes, and then plead the tender in bar of the action. Or, after action brought, the defendant may, even though the claim be for an unliquidated amount, apply to a judge to stay the proceedings, upon payment of the sum which he admits to be recoverable, and for a rule to show cause why, upon default of plaintiff's accepting it, he should not pay to defendant the costs subsequent to the application, if the plaintiff afterwards accept that sum in satisfaction. Or, after action brought, and after, or in some cases before, the declaration, he may pay that sum into court and plead the payment of it, and let the plaintiff afterwards proceed in the action at his peril.

By the C. L. P. A. 1852, s. 70, it shall be lawful for the defendant in all actions (except for assault and battery, false imprisonment, libel, slander, malicious arrest or prosecution, or debauching of the plaintiff's daughter or servant), and, by leave of the court or a judge, upon such terms as they or he may think fit, for one or more of several defendants to pay into court a sum of money by way of compensation or amends.

The 6 & 7 Vict. c. 96, enables money to be paid into court in actions of libel. See LIBEL.

In actions against mail-coach contractors, stage-coach proprietors, or common carriers, for the loss of or injury to goods, the defendants may pay money into court, as of course.—1 *Wm. IV.* c. 68; and so under the Railway and Canal Traffic Act, with leave of a judge or the court.—*R.* 7, 31st January, 1855.

In actions against justices of the peace, or against officers of the excise or customs, for any thing done by them in the execution of their respective offices, if they have not made a tender, or if they conceive the amends tendered to be insufficient, they may pay into court such sum of money as they shall think fit.

If there be two or more counts in a declaration, the defendant may pay money into court upon one of them, and plead it as in other cases. Where there are several counts for several causes of action, or several breaches are assigned in covenant, the defendant may plead payment into court of one entire sum, in satisfaction of all the counts or breaches. If a defendant find that he has not paid in a sufficient sum, he will generally be allowed to amend his plea and pay in a further sum, on payment of costs and other reasonable terms.

No rule or judge's order to pay money into court shall be necessary, except in the case of one or more of several defendants, but the money shall be paid to the proper officer of each court, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the plaintiff or to his attorney, upon a written authority from the plaintiff, on demand.—*C. L. P. A.* 1852, s. 72.

When money is paid into court, such payment shall be pleaded in all cases, as near as may be, in the form given by the act, *mutatis mutandis* (s. 71).

The plaintiff after the delivery of a plea of payment of money into court, shall be at liberty to reply to the same by accepting the sum so paid into court in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and in case of non-payment thereof in forty-eight hours, to sign judgment for his costs of suit so taxed; or the plaintiff may reply that the sum paid into court is not enough to satisfy the claim of the plaintiff in respect of the matter to which the plea is pleaded; and, in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit (s. 73).

No affidavit shall be necessary to verify the plaintiff's signature to the written authority to his attorney to take money out of court, unless specially required by the master.—*R.* 11, H. T. 1853.

When money is paid into court in respect of any particular sum or cause of action in the declaration, and the plaintiff accepts the same in satisfaction, the plaintiff, when the costs of the cause of action are taxed, shall be entitled to the costs of the cause in respect of that part of his claim so satisfied, up to the time the money is so paid in and taken out, whatever may be the result of any issue or issues in respect of other causes of action; and if the defendant succeeds in defeating the residue of the claim, he will be entitled to the costs of the cause in respect of such defence, commencing at '*Instructions for Plea*,' and not before.—*R.* 12.

When money is paid into court in several actions which are consolidated, and the plaintiff, without taxing costs, proceeds to trial on one and fails, he shall be entitled to costs on the others up to the time of paying money into court.—*R.* 13.

By paying money into court on the whole of a special declaration, or on a special count, the defendant impliedly admits the contract so declared on, and all the breaches on which it is paid in, and the only remaining question to be determined is the amount of the damages. The money can never be taken out of court by the defendant or his representatives.—2 *Chit. Arch. Prac. by Pren.* 1351, *et seq.*

Peace, a quiet behaviour towards the queen and her subjects.

It is one of the prerogatives of the Crown to make war and peace.

Peace, *Bill of.* This equitable remedy seeks repose from perpetual and useless litigation, and protection from a multiplicity of suits, either by establishing and perpetuating a right which the plaintiff claims, and which, from its nature, may be controverted by different persons at different times and by different actions; or where separate attempts have already been unsuccessfully made to overthrow the same right, and justice requires that the plaintiff should be quieted in the right if it is already sufficiently established, or if it should be sufficiently established under the direction of the court.

This bill is usually filed where there is one general right to be established against a great number of persons; or where one person claims or defends a right against many; or where many claim or defend a right against one. Thus it is filed by a parson for tithes against his parishioners; by parishioners against a parson to establish a *modus*; by a lord of a manor against the tenants for an encroachment under color of a common right; or by the tenants against the lord for disturbance of a common right; by a party interested to establish a toll due by custom; for a right to the profits of a fair, there being several claimants; by a lord to establish an inclosure which he has approved under the statute of Merton (20 Hen. III. A.D. 1236), and which his tenants throw down, although sufficient common of pasture is left. Another class of cases to which this bill is now applicable is, where the plaintiff has, after repeated and satisfactory trials, established his right at law, and yet is in danger of further litigation and obstruction to his right from new attempts to controvert it. Under such circumstances courts of equity will interfere and grant a perpetual injunction to quiet the possession of the plaintiff, and to suppress future fruitless litigation.

This bill should not merely pray special relief, as that the plaintiff may be quieted in the possession till the right is tried at law, but should also pray relief in the premises, or a perpetual injunction.—*Sto. Eq. Jur.* c. xxii.; and 1 *Madd. Ch.* 231.

Peace, *Breach of the,* a violation of that quiet, peace and security which is guaranteed by the laws for the personal comfort of the subjects of this kingdom.

Peace, *Clerk of the,* an officer who acts as clerk to the court of quarter sessions, and records all their proceedings.—7 *Wm. IV.* and 1 *Vict.* c. 83. As to their remuneration, see 14 & 15 Vict. c. 55, s. 9, and 18 & 19 Vict. c. 126, s. 18.

Peace, *Commission of the,* a special commission under the Great Seal, appointing justices of the peace. It is one of the authorities, by virtue of which the judges sit upon circuit.—3 *Bl. Com.* 60. See ASSIZE and JUSTICES.

Peace of God and the Church [*pax Dei et ecclesiæ*, Lat.], that cessation which the king's subjects had from trouble and suit of law between the terms, and on Sundays and holidays.

Peace, *Justices of.* See JUSTICES.

Peace of the Queen [*pax reginæ*, Lat.], that security for life and goods which the Queen promises to all her subjects, or others taken into her protection.

Peccata contra naturam sunt gravissima.—3 *Inst.* 20.—(Crimes against nature are the most heinous.)

Peccatum peccato addit qui culpæ quam facit patrocinia defensionis adjungit.—5 *Co.* 49.—(He adds fault to fault who sets up a defence of a wrong committed by him.)

Pecia, a piece or small quantity of ground.—*Paroch. Antiq.* 240.

Peck, a measure of two gallons. Dry measure.

Peculator, a robber of the public.

Peculatus, embezzling public money.

Peculiar, a particular parish or church that has jurisdiction within itself, and exemption from that of the ordinary. There are several sorts:—

(1) Royal peculiars, which are the sovereign's free chapels, and are exempt from any jurisdiction but that of the sovereign.

(2) Peculiars of the archbishops, exclusive of the bishops and archdeacons, which arose from a privilege they had to enjoy jurisdiction in such places where their seats and possessions were.

(3) Peculiars of bishops, exclusive of the jurisdiction of the bishop of the diocese in which they are situate.

(4) Peculiars of bishops in their own dioceses, exclusive of archidiaconal jurisdiction.

(5) Peculiars of deans, deans and chapters, prebendaries, and the like, which are places wherein, by ancient compositions, the bishops have parted with their jurisdiction as ordinaries to these corporations.

Peculiars, *Court of,* a branch of, and annexed to the Court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury in the midst of other dioceses, which are exempt from the ordinary's

jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these peculiar or exempt jurisdictions are originally cognizable in this court, from which an appeal lies to the Court of Arches.—3 *Step. Com.* 441.

Peculium, the savings of a son or slave accumulated with the father or master's consent.—*Civ. Law.*

Pecunia [fr. *pecus*, Lat., cattle], properly money, but anciently cattle, and sometimes other goods as well as money.

Pecunia dicitur à pecus, omnes enim veterum divitiæ in animalibus consistebant.—Co. Litt. 207.—(Money (*pecunia*) is so called from cattle (*pecus*), because all the wealth of our ancestors consisted in cattle.)

Pecunia sepulchralis, money anciently paid to the priest at the opening of a grave, for the good of the deceased's soul. See MORTUARY.

Pecuniary, relating to money.

Pecuniary causes, such as arise either from the withholding of ecclesiastical dues, or the doing or neglecting to do some act relating to the church whereby damage accrues to the plaintiff, to obtain satisfaction for which he is permitted to institute a suit in the spiritual court.

Pecuniary legacy, a testamentary gift of money.

Pedage, money given for the passing of foot or horse through any country.—*Spelm.*

Pedigree [fr. *per* and *degré*, Fr.—*Skinner*], genealogy; lineage; account of descent.

Pedis abscissio, cutting off a foot; a punishment anciently inflicted instead of death.—*Fleta*, l. 1, c. xxxviii.

Pedis possessio, an actual possession or foothold.

Pedones, foot soldiers.

Peer, an equal; one of the same rank.

Peerage, the dignity of the lords, or peers of the realm. See LIFE PEERAGE.

Peeress. Women may acquire peerages by creation, descent, or marriage.

The 20 Hen. VI. c. 9, declares that peeresses, either in their own right or by marriage, shall be tried before the same judicature as peers of the realm. This statute is said to be remarkable, as being the only instance of a legislative explanation of any part of *Magna Charta*.

If a woman, noble in her own right, marry a commoner, she still remains noble, and shall be tried by her peers; but if she be only noble by marriage, then, by a second marriage with a commoner she loses her dignity: for as by marriage it is gained, so by marriage it is also lost. Yet, if a duchess-dowager marry a baron, she continues a duchess still: for all the nobility are *pares*, and therefore it is no degradation. A woman, noble in her own right, or by a first marriage, marrying a commoner, communicates no rank or title to her husband.—1 *Inst.* 326.

Peers of fees, vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function; these were termed *peers of fees*, because holding fees of the lord, or because their business in court was to sit and judge, under their lords, of disputes arising upon fees; but if there were too many in one lordship, the lord usually chose twelve, who had the title of peers, by way of distinction; whence, it is said, we derive our common juries and other peers.—*Cowel.*

Peers of the realm [*proceres*, Lat.], the nobility of the kingdom and lords of Parliament, who are divided into dukes, marquises, earls, viscounts, and barons. They are called peers, because, although there is a distinction of dignity among them, they are equal in all public actions, as in their votes of Parliament, and trial of any nobleman.—*Selden's Titles of Honor.*

Peers are created either by writ or by patent. The claim by prescription is founded upon the presumption that an ancestor of the claimant was created a peer by writ or patent, which has been lost. The creation by writ, or the Queen's letter, is a summons to attend the House of Lords, by the style and title of that barony which the Queen is pleased to confer. That by patent is a royal grant to a subject of any dignity or degree of peerage. The creation by writ is the more ancient way, but a man is not ennobled thereby, unless he actually take his seat in the House of Lords; and some are of opinion, that there must be at least two writs of summons and a sitting in two distinct Parliaments to evidence an hereditary barony; and therefore the most usual, because the surest way, is to grant the dignity by patent, which enures to a man and his descendants, according to the limitations thereof, though he never himself make use of it. The eldest son of a peer is frequently called up to the House of Lords by writ of summons, in the name of his father's barony, because in that case there is no danger of his children losing the nobility in case he never takes his seat, for they will succeed to their grandfather.

In cases of treason and felony, a nobleman is tried by his peers, but in mere misdemeanors he is tried, like a commoner, by jury. He cannot be arrested in civil cases, but he is not exempted from arrest in criminal matters. A peer loses his nobility by death or attainder.—1 *Bl. Com.* 227.

Peine forte et dure (*the strong and hard pain*), [*peine* (or penarce), probably a corrupted abbreviation of *prisonæ*.—3 *Bl. Com.* 325], a punishment, now happily abolished, by which

a prisoner indicted for felony was compelled to put himself upon his trial. If, when arraigned, he stood mute, he was remanded to prison, and placed in a low dark chamber, and there laid on his back on the bare floor naked, unless where decency forbade; upon his body was placed as great a weight of iron as he could bear; on the first day he received no sustenance, save three morsels of the worst bread, and on the second day three draughts of standing water that should be nearest to the prison-door, and such was alternately his daily diet till he died or answered.—3 *Bl. Com.* 327; 2 *Reeves*, c. ix., p. 134.

Pela, a peal, pile, or fort.

Peles, issues arising from or out of a thing.

Pelfe and **Pelfre,** booty; also the personal effects of a felon convict.

Peliparius, a leatherseller or skinner.

Pellage, the custom or duty paid for skins of leather.

Pellicia, a pilch or surplice.—*Spelm.*

Pellota, the ball of a foot.

Pells, *Clerk of the*, an officer in the Exchequer, who enters every seller's bill on the parchment-rolls, the roll of receipts, and the roll of disbursements.

Pelt-wool, the wool pulled off the skin or pelt of dead sheep.

Pembrokeshire, originally a county palatine, but dispalatinated in the reign of Henry VIII.

Pen, a high mountain.

Penal laws, those laws which prohibit an act, and impose a penalty for the commission of it. They are of three kinds: *pœna pecuniaria*, *pœna corporalis*, and *pœna exilii*.—2 *Cro. Jac.* 415.

Penal servitude, a punishment which has superseded transportation. See 16 & 17 *Vict.* c. 92, and 20 & 21 *Vict.* c. 3.

Penal statutes, those which impose penalties or punishments for an offence committed. As to the Crown's power of remitting these penalties, see 22 *Vict.* c. 32.

Penal statutes, *Actions on.* The penalties or forfeitures under these statutes are generally made recoverable by the Crown, or the party aggrieved, or a common informer, as the case may be.

This remedy is generally designated a penal action; or where one part of the forfeiture is given to the Crown and the other part to the informer, a popular or *qui tam* action.

Penalty, where a certain gross sum of money is reserved on an agreement to be paid in case of the non-performance of such agreement, it is generally to be considered as a penalty, the legal operation of which is, not to create a forfeiture of that entire sum, but only to cover the actual damages occasioned by the breach of contract. Wherever the payment of a small sum is secured by the payment of a much larger sum, it must be considered as a penalty, and calling a sum liquidated damages will not change its character as a penalty, if upon the true construction of the instrument, it must be deemed to be a penalty.

A general principle adopted in equity is, that wherever a penalty is inserted merely to secure the performance or enjoyment of a collateral object, the latter is considered as the principal intent of the instrument, and the penalty is deemed only as accessory; and therefore, as intended only to secure the due performance thereof, or the damage really incurred by the non-performance. In every such case, the true test by which to ascertain whether relief can or cannot be had in equity, is to consider whether compensation can be made or not. If it cannot be made, then the courts of equity will not interfere; if it can be made, then, if the penalty is to secure the mere payment of money, courts of equity will relieve the party upon paying the principal and interest. If it is to secure the performance of some collateral act or undertaking, then courts of equity will retain the bill, and will direct an issue *quantum damnificatus*; and when the amount of damages is ascertained by a jury upon the trial of such an issue, they will grant relief upon the payment of such damages. But see 21 & 22 *Vict.* c. 27.

Courts of equity will not interfere in cases of liquidated damages, but will deem the parties entitled to fix their own measure of damages.

Courts of equity will decree to the obligee of a bond interest beyond the penalty, wherever the obligor has unreasonably deprived him of his power to enforce it until it is no longer adequate to secure his rights.—2 *Story's Eq. Jurisp.* 497. See LIQUIDATED DAMAGES.

Penance [fr. *pœnitentia*, Lat.], an ecclesiastical punishment used in the discipline of the church, which affects the body of the penitent, by which he is obliged to give a public satisfaction to the church for the scandal he has given by his evil example. So in the primitive times, he was to give testimony of his reformation before he was re-admitted into the Christian society. In the case of incontinence, the offender is usually enjoined to do a public penance in the parish church, bareheaded and barefooted, in a white sheet, and to make open profession of his crime in a prescribed form of words, which is augmented or moderated according to the quality of the offence and the discretion of the judge. So in smaller faults and scandals, a public satisfaction or penance, as the judge shall decree, is to be made before the minister, churchwardens, or some of the parishioners, respect being had to the quality of the offence and circumstances of the fact; as in case of defamation or laying violent hands on a clerk, or the like. And as these

censures may be moderated by the judge's discretion, according to the nature of the offence, so also they may be totally altered by a commutation of penance; and this has been the ancient privilege of the ecclesiastical judge to admit that an oblation of a sum of money for pious uses shall be accepted in satisfaction of public penance. But penance must be first enjoined before there can be a commutation; or otherwise it is a commutation for nothing.—*Godolph. Repert. Canon, app.* 18.

Pendente lite (*during litigation*).

Administration *pendente lite* is sometimes granted when a suit is commenced in the Probate Court touching the validity of a will.

An injunction will be granted to restrain a party from making vexatious alienations of real property *pendente lite*.

Pendente lite, Alimony. See ALIMONY.

Pendente lite nihil innovetur.—Co. Litt. 344. (During a litigation nothing new should be introduced.)

Pendentes, ungathered fruits.—*Civ. Law.*

Penerarius, an ensign-bearer.

Penitentiary-houses, prisons where criminals are confined to hard labor.—19 *Geo. III.* c. 74.

Pennyweight, twenty-four grains.

Penon, a standard, banner, or ensign carried in war.

Pensam, the full weight of twelve ounces.

Pension, an allowance made to anyone without an equivalent. See 1 & 2 *Vict.* c. 2.

The duty upon offices and pensions is a branch of the Crown's extraordinary revenue. It consists in an annual payment (over and above all other duties) out of all salaries, fees, and perquisites of offices and pensions, payable by the Crown, exceeding the value of 100*l.* per annum.—31 *Geo. II.* c. 22; 49 *Geo. III.* c. 29; 1 & 2 *Vict.* c. 2; and 2 & 3 *Vict.* c. 94.

By 6 Anne, c. 7, and 1 Geo. I. st. 2, c. 56, no person having a pension under the Crown during pleasure, or for any term of years, is capable of being elected or sitting in the House of Commons. But see 22 & 23 *Vict.* c. 5.

Taking a pension from any foreign prince, without the consent of the Crown, is an offence against the government, and punishable by fine and imprisonment.

Pension of churches, certain sums of money paid to clergymen in lieu of tithes.

A spiritual person may sue in the spiritual court for a pension originally granted and confirmed by the ordinary; but where it is granted by a temporal person to a clerk, he cannot; as if one grant an annuity to a parson, he must sue for it in the temporal courts.—*Cro. Eliz.* 675.

Pension of the Inns of Court, an annual payment made by each member to the houses. Also, that which in the two Temples is called a parliament, and in Lincoln's Inn a council, is, in Gray's Inn, termed a pension, being an assembly of the members, usually to consult upon the affairs of the society.

Pensioner, one who is supported by an allowance at the will of another; a dependant; he who receives an annuity from government without filling any office.

Also, a band of gentlemen who attend as a guard on the royal person. It was instituted A.D. 1539; each gentleman has an allowance of 150*l. per annum*, and two horses. This band is inow called the Honorable Body of Gentlemen-at-Arms.

Pension-writ, a process issued against a member of an inn of court, when he is in arrear for pensions, commons, or other duties, &c.

Pentecostals, pious oblations made at the feast of Pentecost by parishioners to their priests; and sometimes by inferior churches or parishes to the principal mother-church. They are also called Whitsun-farthings.

Pentonville Prison, a place which is provided for the confinement of male convicts under sentence or order of penal servitude, until they shall be otherwise disposed of. It is under the superintendence of 'The Directors of Convict Prisons;' and power is conferred on them to hold meetings, and make rules subject to the approbation of a principal secretary of state, and with the like approbation to appoint officers, consisting of a governor, chaplain, medical officer, and such others as may be found necessary. The directors must, from time to time, appoint one or more of themselves to visit the prison during the interval between their meetings, and, if they think fit, may delegate power to such visitors to make orders in cases of pressing emergency. They must make annual reports to the Secretary of State as to all matters relating to the prison, its discipline and management, which reports are laid before Parliament.—5 & 6 *Vict.* c. 29; 13 & 14 *Vict.* c. 39; 16 & 17 *Vict.* c. 99, s. 6; and 20 & 21 *Vict.* c. 3, s. 3.

Peon, a footman, a soldier, an inferior officer, a servant employed in the business of the revenue, police, or judicature.—*Indian.*

People [*peuple*, Fr.; *popolo*, It.; *pueblo*, Sp.; fr. *populus*, Lat.], the many, the multitude, the inhabitants of a nation, state, town, &c.; the commonalty or common folk, as distinguished from the higher classes; men; individuals.—*Richard. Dict.*

Per and Post. To come in the *per* is to claim by or through the person last entitled to an estate as the heirs or assigns of the grantee; to come in in the *post* is to claim by a paramount and prior title, as the lord by escheat.

Perambulation, a travelling through or over.

Perambulation of parishes is to be made by the minister, churchwardens, and parishioners, by going round them once a-year, in or about Ascension week; and the parishioners may well justify going over any man's land in their perambulation, according to usage, and it is said may abate all nuisances in their way.—*Cro. Eliz.* 441. Manors are also perambulated. *Wheat. Com. Pr.* 234.

Perambulatione faciendâ, a writ which lay where any encroachments had been made by a neighbouring lord, &c. to the sheriff to perambulate or settle the bounds. Equity grants commissions to perambulate.

Actions upon writs of perambulation were authorized in Scotland, by the Act 1597, c. 79, to settle the bounds of disputed properties adjoining each other.

Perangaria. See ANGARIA.

Perca, a perch of land, 16½ feet.

Per capita (*through one's own right*).

Percaptura, a place in a river properly banked for the better preserving and taking of fish.

Perch, a measure of land, consisting of five yards and a half of the standard measure.—5 *Geo. IV.* c. 74.

Per, Cui, and **Post,** writs of entry, which are abolished.

Perdings, men of no substance.

Perdonatio utlagariæ, a pardon for a man who, for contempt in not yielding obedience to the process of a court, is outlawed, and afterwards of his own accord surrenders.—*Reg. Orig.* 28.

Perduellio, treason.—*Civ. Law.*

Pereat unus ne pereant omnes.—(Let one perish lest all perish.)

Peregrini, foreigners commorant or sojourning in Rome.—*Civ. Law.*

Peremption, a nonsuit, also a quashing or killing.

Peremptory [fr. *perimo,* Lat., to cut off], final and determinate.

Peremptory challenge, an arbitrary species of challenge to a certain number of jurors, without showing any cause.

This privilege is granted to a prisoner in criminal cases, but denied to the Crown by 6 Geo. IV. c. 50. In treason a prisoner can challenge without cause thirty-five jurors, and in felony twenty.—7 & 8 *Geo. IV.* c. 28, s. 3.

Peremptory day, a precise time when certain business by rule of court ought to be spoken to; but if it cannot be spoken to, then the court, at the prayer of the party concerned, will give a further day without prejudice to him.

Peremptory mandamus, a second *mandamus,* which issues where the return which has been made to the first writ is found either insufficient in law or false in fact. To this writ no other return will be admitted but a certificate of perfect obedience and due execution. See MANDAMUS.

Peremptory order for time to plead. A further time to plead is after such an order usually refused. But see 1 *Chit. Arch. Prac. by Pren.* 250.

Peremptory pleas, or **Pleas in bar,** those which are founded on some matter tending to impeach the right of action.

Peremptory rule. Formerly a defendant, if he wished a plaintiff to declare, obtained from one of the masters, upon counsel's signature, a peremptory rule to declare within a certain time, which rule was absolute in the first instance. It prevented a plaintiff from taking out more rules for time to declare. If the plaintiff did not declare within the time so limited, the defendant might, after a four-day written demand of declaration, have signed judgment of *non pros.*—*R. H.* 2 *Wm. IV.* c. 39. This is abolished by *C. L. P. A.* 1852, s. 53, and a four-day notice substituted.

Peremptory undertaking. The court, as a matter of indulgence, will, in some cases, set aside a judgment for not proceeding to trial, upon payment of costs, and a peremptory undertaking to try at the next sittings or assizes, especially where the plaintiff has been delayed on account of his witnesses, or the like.

Peremptory writ, a class of original writs.

Perfect trust, an executed trust. See EXECUTED TRUST.

Perfectum est cui nihil deest secundum suæ perfectionis vel naturæ modum.—*Hob.* 151.—(That is perfect which wants nothing, according to the measure of its perfection or nature.)

Periculosum est res novas inusitatas inducere. Co. Litt. 379.—(It is dangerous to introduce new and unusual things.)

Periculosum existimo quod bonorum virorum non comprobatur exemplo.—9 *Co.* 97.—(I think that dangerous which is not warranted by the example of good men.)

Periculum rei venditæ, nondum traditæ est emptoris.—(The risk of a thing sold, and not yet delivered, is the purchaser's.)

Perils of the Sea. They are strictly the natural accidents peculiar to the water, but the law has extended this phrase to comprehend events not attributable to natural causes, as captures by pirates, and losses by collision, where no blame is attachable to either ship, or at all events to the injured ship. The word *peril,* like *periculum,* Lat., from which it is derived, is in itself ambiguous, and sometimes denotes the risk of inevitable mischance, and sometimes the danger arising from the want of due circumspection.—*Jones on Bailments,* 98.

Perinde valere, a dispensation granted to a clerk, who, being defective in capacity for a benefice or other ecclesiastical function, is *de facto* admitted to it.—*Gibs.* 87.

Perindinare, to stay, remain, or abide in a place.

Periphrasis, circumlocution; use of many words to express the sense of one.

Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt.—3 *Inst.* 166.—(They are perjured, who, preserving the words of an oath, deceive the ears of those who receive it.)

Perjury, an offence against public justice, being a crime committed when a lawful oath is administered by any that has authority, to any person in any judicial proceeding, who swears absolutely and falsely in a matter material to the issue and cause in question; also a false oath taken in certain cases, although not in judicial proceedings, is deemed to amount to perjury, and is visited by the same penalties.

A mere voluntary oath, that is, an oath administered in a case for which the law has not provided, is not one on which perjury can be assigned; for as such a proceeding is not required, so neither is it protected by the law. But voluntary oaths are now prohibited by 5 & 6 Wm. IV. c. 62, which provides that a certain form of declaration may be substituted for them, and that any party falsely making such declaration shall be guilty of a misdemeanor.

It is necessary, in order to constitute the offence of perjury:—

(1) That the false oath be taken wilfully, i. e. with some degree of deliberation, and *malo animo*. It must also be positive and absolute, not merely owing to surprise or inadvertency, or a mistake of the true state of the question.

(2) The oath must be taken either in a judicial proceeding, or in some other public proceeding of the like nature, except in certain cases expressly provided for by statute.

(3) It must be taken before persons lawfully authorized to administer it.

(4) It must be taken by a person sworn to depose the truth.

(5) It is not material whether the thing sworn be true or false, or whether the person who swears it in truth knows nothing of it, if he takes a false oath that he knows it to be true.

(6) It must be taken absolutely and directly, therefore if a man only swears as he thinks, remembers, or believes, he is not guilty of perjury; but, if he swears that he believes a fact to be true, which he knows to be false, he is guilty of perjury.

(7) The thing sworn ought to be in some way material, for if it be wholly foreign to the purpose or immaterial, and neither pertinent to the matter in question nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give credit to the substantial part of the evidence, it cannot amount to perjury, because it is wholly insignificant.

(8) It is not material whether the false oath were credited or not, or whether the party in whose prejudice it was taken was in the event damaged by it, for the prosecution is not grounded on the damage to the party, but on the abuse of public justice.

Subornation of perjury is the offence of procuring another to take such a false oath as constitutes perjury in the principal.

In prosecutions for perjury there can be no conviction except on the oath of two witnesses, though it will be sufficient that the perjury be directly proved by one witness, and corroborative evidence on some particular point be given by another; and where the alleged perjury consists in the defendant's having contradicted what he himself swore on a former occasion, the testimony of a single witness in support of the defendant's own original statement will support a conviction. By 23 Geo. II. c. 11, any judge of assize, while the court is sitting, or within twenty-four hours after, is empowered to direct a witness to be prosecuted for perjury; and it is provided that in an indictment for perjury or subornation, it shall be sufficient to set forth the substance of the offence. See 14 & 15 *Vict.* c. 100, s. 9.

Perjury and subornation of perjury are both misdemeanors, and their punishment at common law is by fine and imprisonment. But the following statutes have enacted additional punishments. By 5 Eliz. c. 9 (made perpetual by 29 Eliz. c. 5, s. 2, and 21 Jac. I. c. 28, s. 8), the offender, if indicted for perjury, may be imprisoned for six months and fined 20*l.*, and if indicted for subornation may be fined 40*l.*, and in default of payment imprisoned for six months. By 2 Geo. II. c. 25, s. 2, he may be sent to the house of correction with hard labor for seven years; or be sentenced to penal servitude for not more than seven, nor less than three years (16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3). And by 3 Geo. IV. c. 114, the offender may be sentenced to imprisonment with hard labor, for any term for which he may be lawfully imprisoned, either in addition to or in lieu of any other punishment.

The following statutes relate to perjury in particular cases: government annuities, 48 Geo. III. c. 142, ss. 4, 26; 52 Geo. III. c. 129, ss. 2, 7; exchequer bills, 51 Geo. III. c. 15, ss. 9, 10; stamps, 55 Geo. III. c. 184, ss. 52, 53; customs, 3 & 4 Wm. IV. c. 51, ss. 28, 29; excise, 7 & 8 Geo. IV. c. 53, ss. 29, 30, 31; naval stores, 39 & 40 Geo. III. c. 89, s. 36; quarantine, 6 Geo. IV. c. 78, s. 29; pilotage, 6 Geo. IV. c. 125, s. 80; vessels carrying passengers, 43 Geo. III. c. 56, s. 20; bankrupts, 12 & 13 Vict. c. 106, s. 254; insolvents, 7 Geo. IV. c. 57, s. 71; 1 & 2 Vict. c. 110,

s. 100; registry acts, 2 & 3 Anne, c. 4, ss. 18, 19; inclosure act, 41 Geo. III. c. 109, s. 43; elections, 2 Wm. IV. c. 45, s. 58; 5 & 6 Wm. IV. c. 76, s. 34; 26 Vict. c. 29, s. 7; naval and military pay, &c., 11 Geo. IV. and 1 Wm. IV. c. 20, ss. 85, 86; 7 Geo. IV. c. 78, s. 29; slave trade, 5 & 6 Vict. c. 42, s. 7; oaths sworn abroad, 6 Geo. IV. c. 87; 18 & 19 Vict. c. 42; Court of Probate, 20 & 21 Vict. c. 77, s. 27; and 21 & 22 Vict. c. 95, s. 34; Court for Divorce and Matrimonial Causes, 20 & 21 Vict. c. 85, s. 50; and 21 & 22 Vict. c. 108, s. 23; parliamentary committee, 21 & 22 Vict. c. 78, s. 3.

By the 22 & 23 Vict. c. 17, s. 1, no indictment for perjury, subornation of perjury, &c., is to be presented to or found by any grand jury, unless the person presenting it has been bound by recognizance to prosecute or give evidence against the accused, or unless the accused has been committed to or detained in custody, or bound by recognizance to appear and answer to the indictment, or unless the indictment be preferred by the direction or with the consent, in writing, of a judge of one of the superior courts, or of the attorney or solicitor-general, or by the direction of any court, judge, or public functionary authorized by the 14 & 15 Vict. c. 100, so to direct.

If perjury be committed in a spiritual cause, the spiritual judge has authority to inflict canonical punishment, and prohibition will not go. But the judge cannot punish *pro salute animæ*; and the party grieved by such perjury must recover his damages at the common law.

In Scotland the punishment of perjury is directed by statute, the last of which, 1555, c. 47, declares perjury to be punishable by confiscation of movables, piercing the tongue, and infamy; to which the judge, in aggravated cases, may add any other penalty that the case seems to require. By the same act, subornation of perjury is punishable as perjury. See *Rosc. Crim. Evid.*

Perkins, the author of the *profitable* book on the learning of conveyancing; as valuable a performance as any, perhaps, of the reign of Henry VIII. This was first printed in 1532, with the following title: 'Incipit perutilis Tractatus Magistri Jo. Perkins Interioris Templi Socii, &c.' This book is in French.—4 *Reeves*, c. xxx., p. 120.

Permanent Building Society, a building society without limit as to the time within which the object for which it was formed is to be accomplished. Building societies were originally formed on what is called the *terminating* system, i. e. the members composing them made periodical payments, so as to insure the realisation within a given period of the shares of each of the members, and at the expiration of such period, the object of the society having been attained, it ceased to exist. In a terminating society, a member who joins it after its formation, in addition to payments falling due subsequently, is obliged to pay an amount equal to that which has been previously paid by each original member. In permanent societies an investor or borrower is able to enter at any time without any extra payment, and with the same advantages as original members. The most striking advantage of a permanent society over a terminating one, that which doubtless first gave rise to the change, is the total absence of any difficulty respecting the '*back payments*.' Another important advantage which permanent societies possess is, that there is much less need in them to have the investors and borrowers at all times as nearly as possible balanced in amount, and the ballot rule is less likely to come into operation. Another advantage is, that investors and borrowers know the exact periods for which their subscriptions are to be paid; and investors may withdraw from time to time, with less probability of injury to the society; because the calculations on which it is founded are less likely to be interfered with. Then, again, the borrower has the privilege of choosing the period over which he will spread his repayments, or subscriptions; —either five, seven, ten, twelve, or fourteen years. He can, therefore, make his arrangements with much greater precision, according to his anticipated income, and various other circumstances, of which he alone can form a correct judgment. The Permanent Societies may adopt the system of borrowing money to lend again to their members to much greater advantage than those which are not permanent. A Permanent Society, as it grows older, year by year, will create increased confidence, if it be founded on correct and safe principles, and every year its members of both classes will be likely to increase.—*Stone's Build. Soc.* 14. See TERMINATING BUILDING SOCIETIES.

Permissions, negations of law, arising either from the law's silence, or its express declaration.—*Ruth. Nat. Law*, b. 1, c. i.

Permissive use, a passive use which was resorted to before the Statute of Uses, in order to avoid a harsh law, as that of mortmain or a feudal forfeiture; it was a mere invention in order to evade the law by secrecy, as a conveyance to A. to the use of B. A. simply held the possession, and B. enjoyed the profits of the estate.

Permissive waste, the neglect of necessary repairs. See *Woodfall's Land. & Ten.* 481.

Permit, a license or instrument granted by the officers of excise, certifying that the excise duties on certain goods have been paid, and permitting their removal from some specified place to another. The acts relative to permits were consolidated by the 2 Wm. IV. c. 16.

The commissioners of excise provide moulds or frames for making the paper used in the printing of permits, which has the water-mark, 'Excise Office,' visible in its substance; and the counterfeiting of such frames or paper, or the possession of the latter without being able satisfactorily to account for it, are felonies, punishable by transportation. Permits are not delivered except on the receipt of 'request-notes' specifying the places from and to which the goods are to be conveyed. A penalty of 500*l.* is imposed on all persons counterfeiting 'request-notes,' or fraudulently procuring or misapplying permits; and all goods for the removal of which permits are necessary, if they be removed without them, are to be forfeited, and the various parties engaged in their removal are each to be amerced in a penalty of 200*l.* It is needless to dwell on the extreme inconvenience that would result from such regulations were permits in extensive use. But such is not the case; and they are not wholly dispensed with, except in the case of a very few articles.—*McCull. Comm. Dict.* See CUSTOMS.

Permutatione, &c., a writ to an ordinary, commanding him to admit a clerk to a benefice upon exchange made with another.—*Reg. Orig.* 307.

Permutation or **Barter**, the exchange of one movable subject for another.

Per my et per tout (*by the half and the whole*).

Pernancy [fr. *prendre*, Fr., to take], the taking or receiving of anything.

Pernor, he who receives the profits of lands, &c.

Per pais (*by the country*, i. e. a jury).

Perpars, a part of the inheritance.

Perpetua lex est, nullam legem humanam ac positivam perpetuam esse; et clausula quæ abrogationem excludit, ab initio non valet.—Bacon. (It is an everlasting law, that no positive and human law shall be perpetual; and a clause which excludes abrogation is not good from its commencement.)

Perpetual curate, a minister in holy orders, who is charged with the permanent care of a parochial church, which, although an appropriation, has no endowed vicar. He is entitled to emolument for his services.

By 1 & 2 Wm. IV. c. 38, churches or chapels built and endowed by particular individuals, shall have districts assigned to them, and be deemed perpetual curacies, and the right of nomination thereto shall be vested in the person so building and endowing.

Perpetuating testimony. When evidence is likely to be irrecoverably lost, by reason of a witness being old, or infirm, or going abroad before the matter to which it relates can be judicially investigated, equity will, by anticipation, preserve and perpetuate such evidence in order to prevent a failure of justice. Also any person who would become entitled, upon the happening of any future event, to any honor, title, dignity, or office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such future event, may obtain the perpetuation of any testimony which may be material for establishing such claim or right; but the attorney-general must be joined should the Crown be interested (5 & 6 Vict. c. 69).

This jurisdiction emanates from the anxiety of equity to ward off litigation, where there is a chance of its being oppressively exercised; and it is administered by preserving the evidence either in maintenance of an unpossessed legal right, or where it is anticipated that an adversary with an apparent right is only postponing his attack against the lawful possessor, until the death of witnesses who can give material evidence in resistance to his colourable claim. A common case under this jurisdiction is that of a devisee establishing the will under which he claims, against the heir-at-law who is inclined to dispute its validity, by compelling him to litigate the question at once or not at all, and by perpetuating, at the same time, the evidence of the attesting witnesses in maintenance of the devise. It is not necessary that the devise should be coupled with a trust. Read *Boyse* v. *Rossborough*, 2 *Eq. Rep.* 675 (1854).

This object is accomplished by filing a bill, the nature of which is an original bill, not praying relief. The bill should set forth the matter and facts as to which the plaintiff is desirous of preserving evidence; his interest, which may be endangered should the testimony in support of it be lost; the defendant's title, or pretended title, or interest, by which he claims to contest the plaintiff's title in the subject of the proposed testimony; and the ground of necessity for perpetuating the testimony, as that the facts to which the testimony of the witnesses proposed to be examined relate, cannot yet be judicially investigated, or, if they can be so investigated, that the right of investigation belongs exclusively to the defendant; or, that the defendant has interposed some impediment (such as an injunction) to an immediate trial of the right in the action at law, so that, before the investigation can take place, the evidence of a material witness is likely to be lost by his death or absence abroad. In the former case, the bill should allege that the plaintiff is in possession of the property or the right, without any disturbance by the opposite party upon which an action-at-law can be founded. In the latter case, the bill must allege the specific facts upon which the plaintiff

rests his case; and also that the witnesses are old, or infirm, or in ill health, and not likely to live; or that he has no present right to maintain an action, as if he have a title in remainder or reversion expectant on a present existing estate for life. Without such allegations the bill will be clearly demurrable; since, if the subject-matter be capable of being immediately investigated, there is no ground to perpetuate the testimony; as it will be *laches* or negligence not at once to try the right. The bill should pray leave to examine the witnesses touching the matter stated, to the end that their testimony may be preserved and perpetuated.

An affidavit of the materiality of the witnesses, and the circumstances by means of which the testimony may be lost, must be annexed to the bill.

The bill, not praying relief, is never brought to a hearing. If the defendant do not answer the bill, the court will order the witnesses to be examined; but if he do, then, after issue joined, an application is made to the court to grant the prayer of the bill, and the suit terminates with the examination of the witnesses. The defendant can also, in this suit, examine any of his own witnesses, whose testimony he is desirous of preserving.

The suit being ended, the defendant is entitled to his costs, which he may obtain by motion as of course, upon the simple allegation that he did not examine any witnesses, for his examination of witnesses will disentitle him to his costs. A defendant to a bill of discovery, and to perpetuate the testimony of witnesses, is entitled to his costs of the discovery, although he have examined witnesses in chief.—*Skrine* v. *Powell*, 15 *Sim.* 81 (1845).

Should the plaintiff, after the defendant's answer, neglect to proceed, the defendant may serve him with a notice that he intends to move the court that the plaintiff file a replication forthwith (should he not have already replied), and proceed to the examination of his witnesses, and procure such examination to be completed on or before a certain day; and that in default thereof, that he may pay to the defendant his taxed costs of the suit.

The court will not permit the depositions to be made use of in evidence, except to support a suit or action; and then only after the death of the witness, or in case he is sick, or incapable of travelling, or is prevented by accident from attending to be examined. The order of the court so to use the depositions, is obtained upon a special motion, supported by an affidavit of all the circumstances.

This jurisdiction of equity is fallen somewhat into desuetude, since the legislature, by several statutes, has given to the common law courts and to the judicial committee of the privy council, power to order the examination on oath, upon interrogatories or otherwise before the master of the court, or other person named in such order, any witness within the jurisdiction of the court, *in which any action or other proceeding is pending*, or to order a commission for the examination of witnesses out of their jurisdiction, in such manner and at such times and places as shall seem reasonable and just, and also to make orders for compelling the attendance of witnesses, and production of documents, but no such examination or deposition is to be read in evidence at any trial, without the consent of the party against whom the same is offered, unless it shall appear to the satisfaction of the judge that the deponent is beyond the jurisdiction of the court, or dead, or unable from permanent sickness or infirmity, to attend at the trial; in any of which cases, the deposition certified under the hand of the person taking the same, shall without proof of the signature to such certificate be received and read in evidence, saving all just exceptions, 13 Geo. III. c. 63, ss. 40, 44; 1 Wm. IV. c. 22; 3 & 4 Wm. IV. c. 41, s. 14; and 6 & 7 Vict. c. 82, s. 5, *et seq.* See *Biddulph* v. *Camoys*, 20 *Bea.* 402 (1856), showing that the 1 Wm. IV. c. 22, has not taken away the jurisdiction of equity in these matters.

An order for the examination of a plaintiff in a cause as a witness on his own behalf may be obtained under 1 Wm. IV. c. 22, and 14 & 15 Vict. c. 99, before appearance, and on an affidavit simply stating that the party is a material and necessary witness, that he is about to leave the country on his usual business immediately, and that he is not likely to return until after the cause has been tried, provided no facts are stated by affidavit in answer, suggesting any suspicion of an improper object in the application.—*Brown* v. *Mollett*, 3 *Com. L. Rep.* 925 (1855). The rule appears to be different as to defendants.

Perpetuity, duration to all futurity; exemption from intermission or ceasing, where though all who have interest should join in a covenant, they could not bar or pass the estate. It is odious in law, destructive to the commonwealth, and an impediment to commerce, by preventing the wholesome circulation of property.

The rule against perpetuities, or the doctrine of remoteness, applies to the *corpus* of property, whether real or personal, and whether limited by deed or will, and may be thus stated: that the vesting of property cannot be postponed, or the alienation of it restricted, beyond any number of lives in being, whether interested or not is quite immaterial (*Duke of Norfolk's case*, 3 Cha. Ca. 1 (33 *Car. II.* called 'the Case of Perpetuities'), and *Stephens* v. *Stephens*, Ca. Tem. Talb. 228 (1736)), and twenty-one years from the death of the

surviving life, absolutely and wholly independent of infancy (i. e. a gross term of twenty-one years), together with one or two periods of actually existing gestation (read the arguments in *Bengough* v. *Edridge*, 1 Sim. 173, *et seq.* (1827)), either at the commencement or at any intermediate part of the period of postponement, or at the both periods, should two gestations really occur (*Cadell* v. *Palmer*, 7 Bli. N.S. 202, an appeal from *Bengough* v. *Edridge* (1833)). This gestation (which is naturally 9 calendar months, 10 lunar months, 40 weeks or 280 days) may occur at the commencement thus:—A limitation to A., for life, remainder to such of his children as shall attain twenty-one, and A. dies leaving his widow *enceinte*, then the period of gestation is added to the minority. Two gestations may occur thus:—A limitation to A., a child *en ventre sa mère*, remainder to such of his children as shall attain twenty-one; and A. dies, leaving his widow *enceinte*, then two periods are added to the life and the minority.

Any word or phrase, however sounding in remoteness, will not of itself invalidate a limitation; there must exist an illegal remoteness in the contingency contemplated by the limitation, as also a possibility of such a contingency operating in fact remotely, in order to render a limitation void. For example, a limitation to A. on the death of B. without issue sounds invalid for remoteness, but if B. be already dead issueless, remoteness does not really exist, and the limitation to A. is valid. Thus remoteness in terms, without remoteness in reality, avails not.

The rule requires a limitation, whether of an absolute or partial interest, positively and necessarily to vest within the period prescribed, and not to depend upon a mere possibility.

If the rule be exceeded, the limitation is wholly void and cannot be validated by the happening of any event subsequently to its creation. When a limitation might have included objects too remote, it is invalid, notwithstanding the objects may actually be ascertained within the verge of the rule.

The period presented by the rule is to be computed from the date or delivery of the deed creating the limitations; or, from the testator's death, when given by will, that being the period at which a will takes effect.

The following limitations are exempt from the perpetuity rule:—

(1) A limitation expectant upon an entail, for it can be destroyed by barring the entail, but should the entail be preceded by a term for years, and its trusts be postponed until the failure of the issue in tail, they will be void, because limited to arise on an indefinite failure of issue.

(2) Limitations, the nature of whose subject-matter is such as to render it necessary for them to take effect, if at all, within the period prescribed by the perpetuity-rule.

(3) Limitations in mortmain, and to charitable uses. Church property is not embraced by the law of perpetuity.

(4) Perpetuities allowed or created by Act of Parliament, such as Blenheim, settled upon the renowned Duke of Marlborough and his posterity (3 & 4 Anne, c. 6; 4 Anne, c. 4; and 5 Anne, c. 3); and Strathfieldsaye on the great Duke of Wellington and his descendants (41 Geo. III. c. 59; 42 Geo. III. c. 113; and 54 Geo. III. c. 161). For the detailed learning of this abstruse doctrine, see *Lewis on Perp.*, and *Supp.*; and *Cattlin* v. *Brown*, 1 *Eq. Rep.* 550 (1853).

Per quæ servitia, a judicial writ issuing from the note of a fine; it lay for cognisee of a manor, seigniory, chief rent, or other services, to compel him who was tenant of the land at the time of the note of the fine levied, to attorn unto him.—*O. N. B.* 155.

Perquisite, something gained by a place or office over and above the stated wages; anything gotten by industry or purchased with money different from that which descends from a father or ancestor; also, fines of copyholds, heriots, amerciaments, &c.

Perquisitor, a searcher.

Per quod (*whereby*), a phrase made use of by a plaintiff in a declaration, alleging special damage, without which an action would not have been maintainable.

Per quod consortium amisit [Lat.] (*whereby he lost the benefit of her society*).

Per quod servitium amisit [Lat.] (*whereby he lost the benefit of her service*).

Per rationes pervenitur ad legitimam rationem.—*Litt.* s. 386.—(By reasoning we come to legal reason.)

Person (fr. *persona*, Lat.), the individuality of a human being; individual character or station; bodily form or substance.—*Rich. Dict.*

Persons are divided into: (1) *natural*, such as God formed them; and (2) *artificial*, such as are created and devised by human laws for purposes of society and government, which are called corporations or bodies-politic.—1 *Bl. Com.* 123. See 3 & 4 *Wm. IV.* c. 27, s. 1.

Person, *indecent exposure of*, an offence against the public economy, punishable by fine or imprisonment, or both, with hard labor, at the court's discretion.—14 & 15 *Vict.* c. 100, s. 29.

Persona, anybody capable of having and becoming subject to rights.—*Civ. Law.* See *Sand. Just.* 95.

Persona conjuncta æquiparatur interesse proprio.—*Bacon.*—(The interest of a man's kindred is equivalent to his own.)

Personâ regis, mergitur personâ ducis.—*Jenk. Cent.* 160.—(The person of duke merges in that of king.)

Personable, the being able to hold or maintain a plea in court; also, capacity to take anything granted or given.—*Plowd.* 27.

Personal, any movable thing, either living or dead.

Personal action, one brought for the specific recovery of goods and chattels, or for damages or other redress for breach of contract, or other injuries, of whatever description, the specific recovery of lands, tenements, and hereditaments, only excepted. See ACTIONS.

For the mode of proceeding in personal actions, see *Chit. Arch. Prac. by Pren.*; or *Lush's Prac. by Step.*

Personal Acts of Parliament. Statutes confined to particular persons, e. g. authorizing a person to change his name, &c.

Personal chattels, goods, money, or movables.

Personal identity. See IDENTITY.

Personal property, chattels which include whatever wants either the duration or the immobility attending things real. They are distributed into chattels-real and chattels-personal. See CHATTELS.

Property in personalty is either in possession, which is absolute, where a person has such an exclusive right in the thing that it cannot cease to be his without his own act or default, or qualified, arising where the subject is incapable of absolute ownership, or from the peculiar circumstances of the owners; or, in action, where a man has not the actual occupation of the thing, but only a right to it, arising upon some contract, and recoverable by an action at law.

The property of chattels personal is liable to remainders, expectant on estates for life; to joint-tenancy, and to tenancy-in-common.

The title to things personal may be acquired or lost by occupancy, prerogative, forfeiture, custom, succession, marriage, judgment, gift, or grant, invention, contract, bankruptcy, insolvency, testament, and administration.—2 *Bl. Com.* 384.

Any person shall have power to assign personal property, now by law assignable, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.—22 & 23 *Vict.* c. 35, s. 1.

Personal representatives, executors or administrators.

Personal rights, the right of personal security, comprising those of life, limbs, body, health, reputation, and the right of personal liberty.

Personal tithes, those that are paid out of such profits as come by the labor of a man's person; as by buying and selling, gains of merchandise, handicrafts, &c.

Personality, said of an action when it is brought against the right person.

Personality of laws. All laws concerning the condition, state, and capacity of persons, as distinguished from the reality of laws which means all laws concerning property or things. Whenever foreign jurists wish to express that the operation of a law is universal, they compendiously announce that it is a personal statute; and whenever, on the other hand, they wish to express that its operation is confined to the country of its origin, they simply declare it to be a real statute.

Livermore uses the words *personality* and *reality*. Henry, the words *personalty* and *realty*. Story preferred the former, as least likely to lead to mistakes, as *personalty* in our law is confined to personal estate, and *realty* to real estate.—*Conft. of Laws*, 23.

Personalty, personal property, that which relates to the person.

Personation. See FALSE PERSONATION.

Perspicua vera non sunt probanda.—*Co. Litt.* 16.—(Plain truths need not be proved.)

Per stirpes (*by the right of ancestry*).

Perticata terræ, the fourth part of an acre.

Perticulas, a pittançe; a small portion of alms or victuals. Also, certain poor scholars of the Isle of Man.

Pertinents, appointments.—*Scotch term.*

Perturbatrix, a woman who breaks the peace.

Pervise, the palace-yard at Westminster.—*Somn.*

Per varios actus legem experientia fecit.—4 *Inst.* 50.—(By various acts experience framed the law.)

Pesa, a wey or weigh.

Pesage, a custom or duty paid for weighing merchandise or other goods.

Peshcush, a present, particularly to government, in consideration of an appointment, or as an acknowledgment of a tenure. Also tribute, fine, quit rent, or advance on stipulated revenues.—*Indian.*

Peshura, Paishura, guide, leader, the prime minister of the Mahratta government.—*Ibid.*

Pessona, mast of oaks, &c. or money taken for mast, or feeding hogs.

Pessurable, Pestarble, or **Pestarable wares,** merchandise which takes up a good deal of room in a ship.

Peter-pence, an ancient levy or tax of a penny on each house throughout England, paid to the pope. It was called *Peter-pence,* because collected on the day of St. Peter *ad vincula*; by the Saxons it was called *Rome-feoh, Rome-scot,* and *Rome-pennying,* because collected and sent to Rome; and lastly, it was called *hearth-money,* because every dwelling-house was liable

to it, and every religious house, the Abbey of St. Alban's alone excepted.

It was not intended as a tribute to the pope, but chiefly for the support of the English school or college at Rome; the popes, however, shared it with the college, and at length found means to appropriate it to themselves.

At first it was only an occasional contribution, but it became at last a standing tax; being established by three laws of King Canute, Edward the Confessor, and the Conqueror. Edward III. first forbade the payment, but it soon after returned, and continued till the time of Henry VIII. when Polydore Vergil resided here as the pope's receiver-general. It was abolished under that prince, and restored again under Philip and Mary, but was finally prohibited under Queen Elizabeth. *Chambers's Cyc.*

Petit Cape. See CAPE.

Petitio, a count or declaration.—*Glanv.*

Petition, a supplication made by an inferior to a superior, and especially to one having jurisdiction.

The subject has a right to petition the Sovereign, or the two houses of Parliament, and all commitments and prosecutions for such petitioning are illegal. But see TUMULTUOUS PETITIONING.

There are several regulations respecting petitions to Parliament, which, if neglected in any one particular, will prevent their reception. When intended for the House of Lords, a petition must be addressed 'To the Right Honorable the Lords Spiritual and Temporal in Parliament assembled;' when addressed to the House of Commons, it may be directed, 'To the Honorable the Knights, Citizens, and Burgesses of the United Kingdom of Great Britain and Ireland in Parliament assembled,' but it is more usually in this form, 'To the Honorable the Commons of the United Kingdom in Parliament assembled.' Its commencement must describe the petitioners thus: 'The Humble Petition of the Electors of the Parish of ——— showeth that,' &c.; or, in the case of an individual, his name and occupation must be stated thus, 'The Humble Petition of A. B. of &c. showeth that,' &c. The statement of grievance must then follow, and the whole must conclude with a specific prayer. The omission of a prayer has often proved fatal to the reception of a petition, for no mere remonstrance or detail of grievance will be received. The prayer must be thus introduced: 'Wherefore your Petitioners humbly pray that your Honorable House will be pleased to,' &c.; the particular relief expected being here stated. To the whole petition must be added the words, 'And your Petitioners, as in duty bound, will ever pray;' and immediately thereupon must follow the signatures; of which one at least must be on the same sheet of paper, or skin of parchment, as the petition, not pasted or otherwise appended. The signatures or marks must be original, not copies nor signatures of agents on behalf of others; thus no chairman of a public meeting can sign for the whole meeting; by such an informality the petition becomes that of an individual. But the common seal of a corporation is received as the petition of the whole corporate body. A printed or lithographed petition will not be received; it must be in writing on parchment, or on paper, free from erasures or interlineations, and composed in English, or accompanied by a translation, which the presenting member certifies to be correct; but no letters, affidavits, or other documents can be annexed. Petitions are uniformly rejected, if not respectful and temperate in language, free from imputations upon the character and conduct of Parliament, the courts of justice, or other constituted authorities. No reference is permitted to any debates or to any motions supposed to be in preparation; while petitions for the remission (not abolition) of customs, stamps, or other duties, can only be received on the recommendation of the Crown. The presenting member is expected to examine whether these conditions have been complied with; and the committee on public petitions subsequently subject all those documents to a severe scrutiny. Petitions for presentation may be forwarded by post, free of charge to any member of either house, in parcels open at the ends, marked outside 'Parliamentary Petitions,' and not exceeding thirty-two ounces in weight.—*Dod's Parl. Comp.*

A petition in *Chancery* is a written document setting forth a series of facts, and containing a prayer for the direction or order of the judge to whom it is addressed. There are two classes of petitions:—(1) *Original*, which are framed under a particular Act of Parliament, or by virtue of a special authority giving jurisdiction to Chancery; and (2) *Cause petitions*, where a suit is pending. These are either: (*a*) for orders of course, or (*b*) for special orders not of course, or (*c*) for a rehearsal or appeal.

A petition should be brief and in the accustomed form. It is entitled in the court and cause or matter, and addressed to the House of Lords, to the Lord Chancellor, or to the Master of the Rolls. It sets forth the name and description of the petitioner, and states concisely the facts and circumstances, which are necessary in order that the court may be enabled to decide whether the prayer (which concludes the petition) should be granted or not.

A petition does not generally require a signature, except in certain charity cases, when

it must bear the Attorney-General's signature, or for a rehearing or appeal, when it must be signed by counsel; or a pauper-petition, which must be signed by his solicitor or a clerk of records and writs.

A petition, being engrossed on plain paper, is presented to the judge, to whom it is addressed. If it be addressed to the Lord Chancellor, it should be left with his secretary, who obtains an answer to it by means of a memorandum written at its foot, signed by the Chancellor, directing all parties concerned to attend before him on the next day of petitions. A cause petition presented to the Chancellor is heard by the Vice-Chancellor, to whose court the cause is attached. A petition addressed to the Master of the Rolls must be left with his secretary, who, if it be not of course, obtains an answer to it in a manner similar to a petition addressed to the Chancellor. Petitions for matters of course are usually addressed to the Master of the Rolls, and orders then are forthwith granted by his secretary without being answered or any attendance of parties required.

A copy of the petition, unless it be for an order as of course, must be served upon the solicitors of the adverse parties or their town agents, showing the original petition and answer thereto, unless personal service on the parties themselves is requisite. *Two clear judicial days* must intervene between the service of, and the day appointed for hearing, the petition. If it is not intended to serve the petition, a note to that effect should be appended to it.

Petitions for special orders are set down in the paper of petitions appointed for the day, and called on in their order. A petition is heard by its being opened and argued by the petitioner's counsel; counsel are then heard for the respondents, and the senior counsel of the petitioner replies; whereupon the proper order is made. Should the petitioner not appear, his petition is dismissed with costs, on producing to the registrar in court an office-copy of an affidavit that the respondent has been served with a copy of the petition. Should the respondent not appear, the petitioner, upon an affidavit of service upon all necessary parties, is entitled to an order so far as the case made out by him will justify. Every party who is served with a copy of a petition is entitled to his costs of appearing upon it, whether he is interested in the matter or not.

The original petition having been filed with the clerk of reports, the order thereon is drawn up, passed, entered, and served in a manner similar to decrees or orders made upon a hearing. Such orders can only be altered, varied, or discharged by petition; and if new facts occur after a petition has been answered, a supplemental petition must be presented. See *Smi. Ch. Pr.* 149, *et seq.*

Petitions at *common law* are presented for various purposes, as for leave to sue or be sued by guardian, or to sue *in formâ pauperis*, or to the Lords of the Treasury, for the proceeds of an outlaw's goods, or to resist an extent.

In bankruptcy, proceedings are usually, but not always, commenced by one or more creditors of the debtor, or by the debtor himself filing a petition in the Court of Bankruptcy, praying that the debtor may be adjudged bankrupt. The petition must be on oath, and must state the trading of the debtor, where such trading is essential to the adjudication, and the amount of the debt or debts due to the petitioning creditor or creditors, if the petition be not presented by the debtor himself, and the act of bankruptcy. No petition is necessary in proceedings upon a judgment debtor summons under s. 83 of 24 & 25 Vict. c. 134, or where a person in prison is adjudged bankrupt by the registrar under ss. 101, 102. See 24 & 25 *Vict.* c. 134, s. 86, *et seq.*; 12 & 13 *Vict.* c. 106, ss. 88, 89. A petition is also one of the modes of appealing in bankruptcy.

Divorce and matrimonial suits, and suits instituted under the Legitimacy Declaration Act are commenced by petition.

The mode of obtaining redress for an improper *election* of a Member of Parliament is by petition to the House of Commons.

Petitions, in this case, are either—

I. Original, which lie

(*a*) Against an undue election or return of a member.

(*b*) When no return has been made to any writ issued for the election of any member to serve in Parliament on or before the day on which such writ is made returnable.

(*c*) When a writ is issued during any session or prorogation of Parliament, and no return has been made to the same within fifty-two days after the day on which such writ bears date.

(*d*) When any return is not according to the requisition of a writ.

(*e*) When the special matters contained in the return are improper.

(*f*) Upon an appeal from the decision of the revising barrister: (1) where the name of any person who voted at the election was improperly inserted in the register; (2) where the name of any person who voted at the election was improperly retained in the register; (3)where the name of any person who tendered his vote at the election was improperly omitted from the register. An appeal from the barrister's decision is made to the Court of Common Pleas.—6 & 7 *Vict.* c. 18.

II. Supplemental in aid of original; they are either—

(*a*) *Quia timet*, or

(*b*) From subsequent events, subdivided into

(1) Death.
(2) Elevation to the peerage.
(3) Member abandoning defence.
(4) Petitioners declining to proceed.
(5) Resolution of vacancy.
(6) Renewed petition.

The manner of proceeding upon such petitions is regulated by 11 & 12 Vict. c. 98, the substance of which is as follows:—Any person who voted, or had a right to vote, at the election, or claiming to have had a right to be returned or elected, or alleging himself to have been a candidate thereat, may subscribe and present to the House of Commons a petition, complaining of an undue election or return, or that no return has been made according to the requisition of the writ; but it is required that some one or more of the petitioners should enter into a recognizance, with sureties, for payment of all costs and expenses; and the sitting member, and any other person who voted or had a right to vote at the election (or such persons without the sitting member, if he declines to be a party), are entitled to oppose the petition. The list of voters intended to be objected to, together with the heads of the objection to each, are then delivered by either party to the 'General Committee of Elections' appointed by the House for such business at the commencement of each session, and the petition is afterwards referred by the House to a select committee, consisting of a chairman and four other members of the House, the former of whom is chosen by, and from out of, a select body called the chairman's panel appointed to serve for that session by the general committee, and the latter by the general committee itself. This select committee, who are sworn well and truly to try the matter before them, and are required to examine all witnesses on oath, then proceed to try the merits of the return or election (admitting no evidence, however, against any voter or in support of any objection, not set forth in the list of voters, and objections which had before been delivered to the general committee), and by their decision —which is by the majority of voices where the committee consist for the time of more than one member—they determine whether the sitting members, or either of them, or any and what other persons, were duly returned or elected; or whether the election be void; or whether a new writ ought to issue; and such determination is final between the parties to all intents and purposes, and is reported to the House at large, and entered in their journals. It is also to be observed that, if the select committee report the petition, or the opposition to it, to be frivolous or vexatious, the party in whose favor such report is made is entitled to recover from the other his full costs and expenses incurred in that behalf; that if they report any ground of objection stated against any voter, to be of that character, the opposite party shall be entitled to costs in like manner against the party on whose behalf the objection was made; and that, as to all specific allegations with regard to the conduct of either party or his agents, which shall appear to the select committee to have been advanced without reasonable or probable ground, the party making the allegation becomes liable to such order as to the costs thereby incurred as to the select committee may seem fit.

If any candidate at an election for any county, city, or borough, shall be declared by any election committee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough, during the Parliament then in existence.—17 & 18 *Vict.* c. 102, s. 36; continued and amended by 21 & 22 *Vict.* c. 87, and 26 *Vict.* c. 29; 2 *Step. Com.* 393.

Petition de droit (*petition of right*), one of the common law methods of obtaining possession or restitution from the Crown of either real or personal property. It is said to owe its origin to Edward I. It may be preferred or prosecuted either on the common law side of the Court of Chancery, or in the Exchequer. It is of use when the Crown is in full possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the Crown, grounded on facts disclosed in the petition; the petitioner must be careful to state truly the whole title of the Crown, otherwise the petition will abate; upon the answer being endorsed or underwritten by the Crown, *soit droit fait al partie* (let right be done to the party), a commission shall issue to inquire into the truth of the suggestion, after the return to which the Queen's attorney is at liberty to plead in bar, and the merits are determined upon issue or demurrer, as in suits between subject and subject. If the right be determined against the Crown, the judgment is that of *ouster le main*, or *amoveas manus*.—*Chitty's Prerog. of the Crown*, 345.

By the 23 & 24 Vict. c. 34, a petition of right may, if the suppliant think fit, be instituted in any one of the superior courts of law or equity in which the subject matter of the petition would have been cognizable if it had been in dispute between subject and subject; and such petition shall be left with the Secretary of State for the Home Department for her Majesty's consideration, who, if she shall think fit, may grant her fiat that right be done, whereupon after service of the fiat on the Solicitor to the Treasury, an answer, plea, or demurrer, shall be made on behalf of the Crown, and the sub-

sequent proceedings assimilated as far as practicable to the course of an ordinary action or suit. A judgment that the suppliant is entitled to the whole or some portion of the relief sought by his petition, or to such other relief, and in such terms and conditions as the court may think right, shall have the same effect as a judgment of *amoveas manus*. Costs are made payable both to and by the Crown, and nothing in the Act is to prevent any suppliant from proceeding as he might have done before the Act passed.

Petition of Right, 3 Car. I. c. 1, a parliamentary declaration of the liberties of the people, assented to by Charles I. in the beginning of his reign.

In the first parliament of Charles I. which met in 1626, the Commons refused to grant supplies until certain rights and privileges of the subject, which they alleged had been violated, should have been solemnly recognised by a legislative enactment. With this view they framed a petition to the king, in which, after reciting various statutes by which their rights and privileges were recognised, they prayed the king 'that no man be compelled to make or yield any gift, loan, benevolence, tax, or such-like charge, without common consent by Act of Parliament; that none be called upon to make answer so to do; that freemen be imprisoned or detained only by the law of the land, or by due process of law, and not by the king's special command, without any charge; that persons be not compelled to receive soldiers and mariners into their houses against the laws and customs of the realm; that commissions for proceeding by martial law be revoked: all which they pray as their rights and liberties, according to the laws and statutes of the realm.'

To this petition the king at first sent an evasive answer: 'The king willeth that right be done according to the laws and customs of the realm, and that the statutes be put in due execution, that his subjects may have no cause to complain of any wrongs and oppressions contrary to their just rights and liberties, to the preservation whereof he holds himself in conscience obliged as of his own prerogative.' This answer being rejected as unsatisfactory, the king at last pronounced the formal words of unqualified assent, *Soit droit fait comme est desiré*, 'Let right be done as it is desired' (3 Car. I. c. 1). Notwithstanding this, however, the ministers of the Crown caused the petition to be printed and circulated with the first insufficient answer.

Petitioning Creditor, one who applies for an adjudication in bankruptcy against his trading debtor.

By 24 & 25 Vict. c. 134, it is enacted, that the amount of the debt of any creditor, petitioning for adjudication of bankruptcy, against a debtor, whether a trader or not, shall be as follows: that is to say, the single debt of such creditor, or of two or more persons being partners so petitioning, shall amount to 50*l.* or upwards, and the debt of two creditors shall amount to 70*l.* or upwards, and the debt of three or more creditors shall amount to 100*l.* or upwards. Every person who has given credit to any debtor, upon valuable consideration for any sum payable at a certain time, which time shall not have arrived when such debtor committed an act of bankruptcy, may so petition or join in petitioning, whether he shall have any security in writing for such sum or not (s. 89). The debt of the petitioning creditor of any debtor not being a trader, and not being at the time a prisoner, against whom such creditor would have been entitled to obtain a vesting order in insolvency, if this Act had not passed, must be a debt contracted after the passing of this Act, and the judgment debtor summons must be a summons in respect of a debt contracted or of a liability incurred after the passing of this Act (s. 90). If the debt stated by the petitioning creditor in his affidavit or in his petition for adjudication to be due to him from any debtor, shall not be really due, or if after a petition for adjudication filed, it shall not have been proved that the person against whom such petition has been filed was liable to an adjudication at time of the filing of such petition, and it shall also appear that such petition was filed fraudulently or maliciously, the Court shall and may, upon petition of any person aggrieved by such petition, examine into the same, and order satisfaction to be made to him for the damages by him sustained (s. 91). It must, however, be a debt for which, if payable at the time, an action at law could be maintained by and in the name of the petitioning creditor. An equitable debt is not sufficient. Interest, even on a bill of exchange, cannot be the subject of a petitioning creditor's debt, unless expressed to be payable on the face of the instrument; for otherwise it is merely damages to be recovered in an action, and not a debt in law. The personal attendance of the petitioning creditor, and of the witness or witnesses to prove the trading and act of bankruptcy, upon the adjudication, shall in no case be dispensed with, except upon special cause, proved to the satisfaction of the commissioner.

Petitio principii, begging the question, which is the taking of a thing for true or for granted, and drawing conclusions from it as such, when it is really dubious, perhaps false, or at least wants to be proved, before any inferences ought to be drawn from it. For a discussion on the question, 'Is the syllogism a *petitio principii*?' see 1 *Mill's Log.* b. 2, c. iii., s. 1, p. 206.

Petit jury, a jury in criminal cases who try the bills found by the grand jury.

Petit larceny, stealing of goods to the value of a shilling or under. The distinction between grand and petit larceny was abolished by 7 & 8 Geo. IV. c. 29, s. 2. See 24 & 25 *Vict.* c. 96, s. 2.

Petit serjeanty, holding lands of the Crown by the service of rendering annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. See TENURE.

Petit treason, treason of a lessor kind, as if a servant killed his master, a wife her husband, a secular or religious man his prelate. But by the 9 Geo. IV. c. 31, s. 2, every offence which, before the passing of the Act, would have amounted to petit treason, shall be deemed murder only. See 24 & 25 *Vict.* c. 100, s. 8.

Petra, a stone-weight.—*Cowel.*

Petroleum. For its statutory definition and safe keeping, see 25 & 26 *Vict.* c. 66.

Pettifogger [fr. *petit*, Fr., little, and *voqueur*, a rower], a lawyer in a mean way of business; a pretender to law, without knowledge or honesty.—*Cant term.*

Petty-bag-office, an office belonging to the common law jurisdiction of the Court of Chancery, for suits for and against solicitors and officers of that court, and for process and proceedings by extents on statutes, recognizances, *ad quod damnum*, *scire facias*, to repeal letters-patent, &c.—*Termes de la Ley.* See 11 & 12 *Vict.* c. 94; 12 & 13 *Vict.* c. 109; and *Orders* of 26th Dec. 1848, and 3rd August, 1849.

Petty constables, inferior officers in every town and parish, subordinate to the high constable of the hundred. See CONSTABLE.

Petty sessions, sittings of one or two justices of the peace, who are empowered by statute to try in a summary way, and without jury, certain minor offences. See 10 & 11 *Vict.* c. 82; 13 & 14 *Vict.* c. 37; and 19 & 20 *Vict.* c. 126. As to Ireland, see 14 & 15 *Vict.* c. 93; 21 & 22 *Vict.* c. 100; 26 & 27 *Vict.* c. 96.

Pew [fr. *puye*, Dut.; *appui*, Fr.], an enclosed seat in a church. It is somewhat in the nature of an heir-loom, and may descend by immemorial custom, without any ecclesiastical concurrence, from an ancestor to his heir.

The right to sit in a particular pew in the church arises either from prescription as appurtenant to a messuage, or from a faculty or grant from the ordinary, for he has the disposition of all pews which are not claimed by prescription. All other pews and seats in the body of a church are the property of the parish; and the churchwardens, as the officers of the ordinary, and subject to his control, have authority to place the parishioners therein. See 3 *Step. Com.* 42, 69, 449; 3 *Hagg. Ec. Rep.* 733; 1 *Phil. Rep.* 324.

Pharmaceutical Society of Great Britain, as to examinations by, see 15 & 16 *Vict.* c. 56.

Pharos, a watch-tower or sea-mark, which cannot be erected without lawful warrant and authority.—3 *Inst.* 204.

Phatuk, a gaol or prison.—*Indian.*

Pheasant, a fowl of warren.

Phylasist [fr. φυλάσσω, Gk., to keep], a jailor.

Physician, one who professes the art of healing.

The necessity of placing under supervision the practitioners of physic and surgery appears from our statute-book to have been early acknowledged, for we find in the third year of Henry VIII. a statute intituled 'An Act for the appointing of Physicians and Surgeons,' in which, after reciting the inconveniences, and grievous hurt, damage, and destruction of many of the king's liege people, forasmuch as common artificers, as smiths, weavers, and women, boldly take upon them great cures, in which they partly use sorcery and witchcraft, it is enacted, that no person within London or seven miles thereof, shall practice as a physician or surgeon without examination and license of the Bishop of London or Dean of St. Paul's (duly assisted by the faculty); or beyond these limits without license from the bishop of the diocese or his vicar-general similarly assisted. There is a saving, however, of the privileges of the Universities of Cambridge and Oxford. The superintendence of the bishops was taken away by a royal charter, dated 23rd Sept., 10 Hen. VIII. which incorporated the physicians.

By 14 & 15 Hen. VIII. c. 5, this charter was confirmed, and in virtue of such act and charter, a perpetual college of physicians was established, with a constitution of eight elects, to be renewed as need should require, of whom was to be annually elected a president; and it was ordained that this college should choose four physicians quarterly, to supervise all others within London and seven miles thereof, as also their medicines and receipts, so that such as offended should be punished with fines, imprisonment, and other means, and that no person should be at liberty to practise within that circle, except by the license of the college, under a penalty of 5*l.* per month. All persons were likewise forbidden to practise even beyond that circle, unless they should have been first examined and approved by the president, and three elects; or should be graduates of Cambridge or Oxford. They were also allowed to practise surgery as part of the general science of physic by 32 Hen. VIII., c. 40.

The charter of the college was subsequently confirmed and enlarged by 1st Mar. sess. 2, c. 9, and by certain other charters of later dates, viz. 8th Oct. 15 Jac. I., and 26th Mar. 15 Car. II., by which many important privileges and im-

munities are further secured to that body. See 17 & 18 *Vict.* c. 114.

At common law, a physician could not maintain an action for his fees.—4 *T. R.* 317; 3 *Q. B.* 928. But by the Medical Act, 21 & 22 Vict. c. 90, a physician who is registered under the Act may do so if not precluded by any bye-law of the College of Physicians. That college has passed a bye-law prohibiting *fellows* of the college from suing, but does not apply to *members*.—*Gibbon* v. *Budd*, 32, *L. J.* (*Excheq.*) 182. See MEDICAL ACT.

The stamp-duty on licenses to practise as a physician is repealed by 22 & 23 Vict. c. 36, s. 2.

Piacle, an enormous crime. Obsolete.

Picaroon [fr. *picare*, Ital.], a robber; a plunderer.

Pick of land, a narrow strip of land running into a corner.

Pickage [fr. *picagium*, low Lat.], money paid at fairs for breaking ground for booths.

Pick-lock, an instrument by which locks are opened without a key.

Pick-pocket, or **Pick-purse,** a thief who steals by putting his hand privately into the pocket or purse of another.

Pickery, petty theft, or stealing things of small value.—*Scotch word.*

Pickle, Pycle, or **Pightel** [fr. *piccolo*, Ital.], a small parcel of land enclosed with a hedge, which in some countries is called a pingle.—*Encyc. Lond.*

Piedpoudre, *Court of* [*curia pedis pulverizati*, Lat., so called, either from the dusty feet of the suitors, or because justice is there done as speedily as dust can fall from the foot, or derived fr. *pied puldreaux*, old Fr., a pedlar or petty chapman, such as resorts to fairs or markets], a court of record incident to every fair and market, though fallen into disuse, and now in a manner forgotten; of which the steward of him who owns, or has the toll of the market, is the judge; its jurisdiction extends to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one; so that the injury must be done, complained of, heard and determined, within the compass of one and the same day, unless the fair continue longer. The court has cognizance of all matters of contract that can possibly arise within the precinct of that fair or market, and the plaintiff must make oath that the cause of action arose there. A writ of error lies in the nature of an appeal to the courts at Westminster. 3 *Reeves*, c. xx., p. 293.

Pierage, the duty for maintaining piers and harbors.

Piers and Harbours. As to the formation, management, and maintenance of piers and harbours in Great Britain and Ireland, see *The General Pier and Harbour Act*, 1861, 24 & 25 *Vict.* c. 45. See also 26 & 27 *Vict.* c. 104.

Pietantia, a pittance, a portion of victuals distributed to the members of a college.—*Encyc. Lond.*

Pietantiarius, the officer in a college who distributed the *pietantia*.

Pightel, a little enclosure.

Pignoration [fr. *pignus*, Lat.], the act of pledging.

Pignorative, Pignorary, pledging; pawning.

Pignus, a pledge or security for a debt or demand, is derived, says Gaius (*Dig.* 50, tit. 16, s. 238), fr. *pugnus*, '*quia quæ pignori dantur, manu traduntur.*' This is one of several instances of the failure of the Roman jurists when they attempted etymological explanation of words. The element of *pignus* (*pig*) is contained in the word *pa(n)go* and its cognate forms. A pledge was called *pignus* when the possession of the thing was transferred to the pledgee, and *hypotheca*, when the pledger retained it in his possession.—See *Sand. Just.* 227.

Pigott's Act, 14 Geo. II. c. 20, relating to recoveries which are abolished.

Pila, that side of money which was called *pile*, because it was the side on which there was an impression of a church built on piles.—*Fleta*, l. 1, c. xxxix.

Pilettus [fr. *pila*, Lat., a ball], in our ancient forest-laws, an arrow which had a round knob a little above the head, to hinder it from going far into the mark.

Pileus supportationis (*the cap of maintenance*).—*Cowel.*

Pilferer, one who steals petty things.

Pillery, rapine; robbery. Obsolete.

Pillory [the etymology of this word has been variously assigned by different writers; Spelman derives it fr. the French, *pilleur*, a thief; Cowel fr. πύλη, a door, and ὁράω, I look through; Du Cange, fr. *pila*, a pillar], a frame erected on a pillar, and made with holes and movable boards, through which the heads and hands of criminals were put.

The punishment of the pillory, which had been abolished in all other cases, by 56 Geo. III. c. 138, was retained for the punishment of perjury and subornation; but it is now altogether abolished by 7 Wm. IV. and 1 Vict. c. 23.

Pilot, a particular officer serving on board a ship during the course of a voyage, and having the charge of the helm and the ship's route; or a person taken on board at any particular place for the purpose of conducting a ship through a river, road, or channel, or from or into a port. It is to the latter description of persons that the term pilot is now usually applied, and pilots of this sort are established in various parts of the country, by ancient charters of incorporation or by particular statutes. The most important of these incorporations are those of the Trinity

House, Deptford, Stroud, the fellowship of the Pilots of Dover, Deal, and the Isle of Thanet, commonly called the Cinque Port Pilots, and the Trinity Houses of Hull and Newcastle. The 5 Geo. IV. c. 73, established a corporation for the regulation and licensing of pilots in Liverpool. The statute 6 Geo. IV. c. 125, consolidated the laws with respect to the licensing, employment, &c., of pilots. See the *Merchants' Shipping Act*, 1854, 17 & 18 *Vict.* c. 104, ss. 330–388, pt. v. '*Pilotage*;' 25 & 26 *Vict.* c. 63, ss. 39–42; and *Maude and Pollock on Shipping*.

Pilotage, the compensation of a pilot.

Pimp-tenure, a very odious and singular kind of tenure mentioned by our old writers, '*Wilhelmus Hoppeshort tenet dimidiam virgatam terræ, per servitium custodiendi sex damisellas, scil. meretrices, ad usum domini regis.*'—12 *Ed. I.*

Pin money, an annual sum settled on a wife to defray her personal expenses, in dress and pocket-money.

Courts of equity refuse to call upon a husband to pay beyond the arrears of a year, although stipulated for by a marriage settlement, for the money is meant to dress the wife during the year, so as to keep up the dignity of the husband, and not for the accumulation of the fund. The personal representatives of the wife are not allowed to make any claim for the arrears of pin-money, not even for arrears of a year. If, however, the wife live separate, and have no allowance, an account of the arrears of pin-money will be decreed.—*Aston* v. *Aston*, 1 *Ves.* 269; *Spect.* No. 295; *Jodrell* v. *Jodrell*, 9 *Beav.* 45.

There is a very ancient tax in France for providing the Queen with pins.

Pinnage [fr. *pin* or *pen*], poundage of cattle.

Pinner, a pounder of cattle, a pound-keeper.

Pint, a measure of half a quart, or the eighth part of a gallon.

Pipe, a roll in the Exchequer; otherwise called the *Great Roll*. The Pipe-office was abolished by 3 & 4 Wm. IV. c. 99.

Piracy [fr. *pirata*, Lat.], the commission of those acts of robbery and violence upon the sea, which if committed upon land would amount to felony. Pirates hold no commission or delegated authority from any sovereign or state empowering them to attack others. They can, therefore, be only regarded in the light of robbers or assassins. They are, as Cicero has truly stated, the common enemies of all (*communes hostes omnium*); and the law of nations gives to everyone the right to pursue and exterminate them without any previous declaration of war; but it is not allowed to kill them without trial, except in battle. Those who surrender or are taken prisoners must be brought before the proper magistrates, and dealt with according to law. By the ancient common law of England, piracy, if committed by a subject, was held to be a species of treason, being contrary to his natural allegiance; if by an alien, to be felony only; but since the statute of treason, 25 Edw. III. c. 2, it is held to be only felony in a subject. Formerly this offence was only cognisable by the Admiralty courts, which proceed by the rules of the civil law, but it being inconsistent with the liberties of the nation that any man's life should be taken away, unless by the judgment of his peers, the statute 28 Hen. VIII. c. 15, established a new jurisdiction for this purpose, which proceeds according to the course of the common law. Piracy was almost universally practised in the heroic ages. Instead of being esteemed infamous, it was supposed to be honorable.—*Latrocinium maris gloriæ habebatur.*—*Justin*, lib. x. l. 3, c. iii. Menelaus, in the Odyssey, does not hesitate to inform his guests, who admired his riches, that they were the fruits of his piratical expeditions, lib. iv. v. 90; and such indeed was the way in which most of the Greek princes amassed great wealth.—*Goguet, Origin of Laws*, v. i., p. 383; *Eng. Laws.* See 4 *Step. Com.* 299.

Piracy of works, literary theft.

The remedies for piracy are, an action at law for damages, and an injunction to restrain its continuance. See INJUNCTION.

Pirata est hostis humani generis.—3 *Inst.* 113. (A pirate is an enemy of the human race.)

Piscary, *Common of*, a right or liberty of fishing in the waters of another person. See FISHERY.

Pit, a hole wherein the Scots used to drown women-thieves.—*Skene.*

Pitching-pence, money; commonly a penny, paid for pitching or setting down every bag of corn or pack of goods in a fair or market.

Pittance, a slight repast or refection of fish or flesh more than the common allowance; and the pittancer was the officer who distributed this at certain appointed festivals.

Pitt Press, the University Press at Cambridge.

Pixing the Coin, ascertaining whether coin is of the proper standard. The trial of the pix takes place before a jury of members of the Goldsmiths' Company.

Placard, or **Placart** [fr. *plakaert*, Dut.; *placard*, Fr.; fr. *plaque*, a flat piece of metal, stone, or wood; πλάξ, Gk.], an edict, a declaration, a manifesto; also an advertisement or public notification.

Placeman, one who exercises a public employment, or fills a public station.

Places of amusement. It is provided by 25 Geo. II. c. 36, s. 2, made perpetual by 28 Geo. III. c. 19, s. 1, that every house, room, garden, or other place kept for public dancing, music, or other public entertainment of the like kind in London and Westminster, or within

twenty miles thereof, without a license from the quarter sessions, shall be deemed a disorderly house, and the keeper thereof shall forfeit the sum of 100*l.*, and be otherwise punishable as the law directs in the case of disorderly houses. And it is further enacted, that over the door or entrance of all such licensed places there shall be affixed and kept up the words, 'Licensed, pursuant to Act of Parliament of the twenty-fifth of Geo. II.' and that no house of this description is to be opened for the purpose of amusement before five o'clock in the afternoon.

But this Act has no application to the Theatre Royal in Drury Lane, the Opera House in Covent Garden, or the Italian Opera in the Haymarket; nor to any patent theatre licensed by the Crown or the Lord Chamberlain of the Household.

Placit, or **Placitum,** decree, determination.

Placita, the public assemblies of all degrees of men where the sovereign presided, who usually consulted upon the great affairs of the kingdom. Also, pleas, pleadings, or debates, and trials at law; sometimes penalties, fines, mulcts, or emendations; also, the style of the court at the beginning of the record at *nisi prius;* but this is now omitted.—*Cowel.*

Placita concernentia chartas, seu scripta liberum tenementum tangentia, in aliquibus curiis quæ recordum non habent secundum legum et consuetudinem regni Angliæ, sine brevi regis placitari non debent.—2 *Inst.* 311.—(Pleas relating to charters or writings touching freehold ought not to be pleaded in courts not of record, by the law and custom of England, without the king's writ.)

Placita de catallis, debitis, &c., quæ summam 40*s. attingunt, vel eam excedunt secundum legem et consuetudinem Angliæ sine brevi regis placitari non debent.*—2 *Inst.* 312.—(Pleas of chattels, debts, &c., which amount to 40*s.* or exceed it, by the law and custom of England, ought not to be pleaded without the king's writ.)

Placita de transgressione contra pacem regis, in regno Angliæ vi et armis facta, secundum legem et consuetudinem Angliæ sine brevi regis placitari non debent.—2 *Inst.* 311.—(Pleas of trespass against the peace of the king in the kingdom of England, made with force and arms, ought not, by the law and custom of England, to be pleaded without the king's writ.)

Placitare, to plead.

Placitator, a pleader.

Placitory, relating to pleas or pleading.

Placitum nominatum, the day appointed for a criminal to appear and plead and make his defence.—*Leg. H.* 1, c. xxix. *Placitum pactum,* when the day is past.

Placitum aliud personale, aliud reale, aliud mixtum.—*Co. Litt.* 284.—(Pleas are personal, real, and mixed.)

Plaga, a wound.

Plagiarist, or **Plagiary,** a thief in literature; one who publishes the thoughts and writings of another as his own.

Plagiarius, one who knowingly kept in irons, or confined, sold, gave, or bought a citizen (whether freeborn or a freedman), or the slave of another; the offence being called *plagium.*—*Civ. Law.*

Plagiary [fr. *plagiarius,* Lat.], a man-stealer.

Plagii crimen, or **Plagium,** the stealing and retaining the children of freemen and slaves.—*Civ. Law.*

Plague [fr. πληγή, Gk., a wound], pestilence; a contagious and malignant fever.

By 1 Jac. I. c. 31, if any person infected with the plague, or dwelling in any infected house, should be commanded by the mayor or constable, or other head officer of his town or place, to keep his house, and should wilfully and contemptuously disobey such direction, he should be enforced with violence, by the watchmen appointed to obey such necessary command; and if any hurt ensued by such enforcement, the watchmen were not to be impeached. And further, if such person so commanded to confine himself went abroad and conversed in company, if he had any infectious sore upon him uncured he should suffer death as a felon; but if no such sore should be found upon him, he should be punished as a vagabond, and moreover bound to his good behaviour. This Act was abolished, however, by 7 Wm. IV. and 1 Vict. c. 91, s. 4. See QUARANTINE.

Plaideur, an attorney who pleaded the cause of his client; an advocate. Obsolete.

Plainant, a plaintiff.

Plaint [fr. *plainte,* Fr.; *querela,* Lat.], the statement in writing of a cause of action. It is the first process in an inferior court, in the nature of an original writ, because therein is briefly set forth the plaintiff's cause of action; and the judge is bound, of common right, to administer justice therein without a special mandate from the Crown.

Plaintiff [abbrev. *plt.,* or *plff.,* fr. *plaintif,* Fr.], he who commences a suit in law or equity against another, who is called defendant.

Plant, the fixtures, tools, machinery, and apparatus which are necessary to carry on a trade or business.—*Ogil. Imp. Tech. Dict.*

Plantation, a colony.

With respect to their internal policy, our colonies are of three sorts: (1) provincial establishments; (2) proprietary governments; (3) charter governments.—1 *Step. Com.* 103.

Play-debt, debt contracted by gaming.

Play-grounds, to facilitate grants of land for, see 22 *Vict.* c. 27; and 23 & 24 *Vict.* c. 30.

Plea [fr. *plée*, Fr.], a defendant's answer of fact to a plaintiff's declaration; anciently a suit or action.

Pleas are divided into *common pleas*, relating to civil causes, and *pleas of the Crown*, relating to criminal prosecutions.

At *common law* pleas are divided into—

(1) Dilatory; which are subdivided into—
- (*a*) To the jurisdiction of the court.
- (*b*) In suspension of the action.
- (*c*) In abatement of the writ or declaration, and—

(2) Peremptory, i. e. in bar of the action.

The distinction between these two classes of *pleas* is, that the dilatory show some ground for quashing the declaration, the peremptory, for defeating the action.

The invariable order of pleading is as follows:—

(1) To the jurisdiction of the court.
(2) To the disability of the person
- (*a*) Of plaintiff.
- (*b*) Of defendant.

(3) To the count or declaration.
(4) To the writ.
(5) To the action itself in bar thereof.

In *equity*, a plea is resorted to by a defendant when an objection is not apparent on the bill itself, or, as the technical phrase is, where it arises from matter *dehors* the bill. If the defendant means to take advantage of it, he ought to show the matter which creates the objection to the court, either by plea or by answer. A plea is a special answer, showing or relying upon one or more things, as a cause why the suit should either be dismissed, delayed, or debarred. Pleas are divided into two sorts: (1) pure pleas, which rely wholly on matter *dehors* the bill, such as a release or a settled account; and, (2) anomalous or negative pleas, which consist mainly of denials of the substantial matters set forth in the bill.

(1) To original bills praying relief, the appropriate defences by pleas may be thus divided:—
- (*a*) To the jurisdiction.
- (*b*) To the person.
- (*c*) To the frame or form of the bill.
- (*d*) In bar to the bill.

(*a*) Pleas to the jurisdiction are either—

(1) That the subject of the bill is not within the cognizance of any municipal court of justice.

(2) That it is not within the jurisdiction of a court of equity.

(3) That some other court of equity is invested with the proper jurisdiction.

(4) That some court other than a court of equity possesses the proper jurisdiction.

(*b*) Pleas to the person are either—

(1) To the person of the plaintiff, as
- (α) Outlawry.
- (β) Excommunication.
- (γ) Popish-recusant-convict.
- (δ) Attainder.
- (ε) Alienage.
- (ζ) Infancy.
- (η) Coverture.
- (ϑ) Idiocy or lunacy.
- (ι) Bankruptcy or insolvency.
- (κ) Want of the character in which the plaintiff sues.

(2) To the person of the defendant, as that he does not possess the character in which he is sued.

(*c*) Pleas to the bill are either—
- (1) The pendency of another suit.
- (2) Proper parties.
- (3) Multiplicity.
- (4) Multifariousness.

(*d*) Pleas in bar are either—

(A) Founded on some bar created by statute, as—
- (α) A statute of limitation.
- (β) The Statute of Frauds.
- (γ) Any other public or private statute.
- (δ) The plea of a statute, fine, and non-claim.

(B) Founded on matter of record, or as of record in some court, as—
- (α) A common recovery
- (β) Judgment at law in a court of record. } of record.
- (γ) The sentence or judgment of a foreign tribunal (which is deemed to be a court not of record) upon the same matter put in controversy by the bill } as of record.
- (δ) A decree in a court of equity

(C) Of matter purely *in pais*, i. e. upon matter of fact, not of record, as—
- (α) Release.
- (β) Stated account.
- (γ) Settled account.
- (δ) Award.
- (ε) Purchase for valuable consideration.
- (ζ) Title in the defendant, generally founded on a will, conveyance, or long peaceable and adverse possession.

(2) To bills of discovery, the most usual pleas are:—
- (*a*) That the discovery may subject the defendant to pains or penalties, or a criminal prosecution.
- (*b*) That it will subject him to a forfeiture, or something in the nature of a forfeiture.
- (*c*) That it will betray the confidence reposed in him as counsel, attorney, solicitor, or arbitrator.
- (*d*) That he is a purchaser for a valuable consideration, without notice of the plaintiff's title.

(3) To bills not original, a plea must be resorted to, when the objection is not on the face of the bill; or the want of proper parties or a statute of limitations may be pleaded.

(*a*) To cross bills, the same pleas are applicable as to original bills.

(*b*) To bills of review, and bills in the nature of bills of review, a plea of the decree may be resorted to. And where any matter beyond the decree, as length of time, a purchase for a valuable consideration, or any other matter, is to be offered against opening the enrolment, it must be pleaded.

(*c*) The proper defence to a bill seeking to impeach a decree on the ground of fraud, is a plea of the decree, denying the fraud, supported by an answer also, meeting the charges of fraud.

(*d*) To bills to carry decrees into execution, the defendant may plead no right or interest, if the matter be not apparent on the bill, so as to admit of a demurrer.—*Story's Eq. Plead.* 492, and *Smi. Ch. Pr.* 300.

The defendant's pleas in *ecclesiastical* causes are called allegations.

The order of a prisoner's pleas in *criminal* law is as follows:—

(1) To the jurisdiction.
(2) In abatement.
(3) Special pleas in bar, as
  (*a*) *Auterfois acquit.*
  (*b*) *Auterfois convict.*
  (*c*) *Auterfois attaint.*
  (*d*) Pardon.
(4) General issue of not guilty.

Plead, to make an allegation in a cause; also to argue a cause in court.

Pleadable briefs, precepts directed to the sheriffs, who thereupon cite parties, and hear and determine.—*Scotch phrase.*

Pleader [fr. *narrator*, Lat.], one who draws pleadings.

Pleading, in its general sense, the proceedings from the declaration to issue joined, i. e. the adverse statements of the parties; in its specific sense, a defendant's answer to a plaintiff's declaration.

The science of pleading was no doubt derived from Normandy. The use of stated forms of pleading is not to be traced among the Anglo-Saxons. Pleading was cultivated as a science in the reign of Edward I. The object of pleading is to ascertain, by the production of an issue, the subject for decision.

I. The rules which tend simply to the production of an issue are—

(*a*) That after declaration, the parties must at each stage demur, or plead, either by way of traverse, or by way of confession and avoidance; and as to the nature and property of pleadings in general, without reference to their being by traverse or by confession and avoidance, the properties are:—

(*a*) That every pleading must be an answer to the whole of what is adversely alleged.

(*β*) That every pleading is taken to confess such traversable matters alleged on the other side as it does not traverse, but dilatory pleas and pleas by estoppel are exceptions, as also a new assignment.

(*b*) That upon a traverse issue must be tendered.

(*c*) That an issue well tendered must be accepted.

II. The rule which tends to secure the materiality of the issue is—

(*a*) That all pleadings must contain matter pertinent and material; for a traverse must not be taken of an immaterial point, and a traverse must be neither too large nor too narrow.

III. The rules which tend to produce singleness or unity in the issue are—

(*a*) That pleadings must not be double.

(*b*) But it is allowable both to plead and to demur to the same matter by leave of the courts or a judge.—*C. L. P. A.* 1852, s. 80.

IV. The rules which tend to produce certainty or particularity in the issue are—

(*a*) That the pleadings must have certainty of place.

(*b*) That the pleadings must have certainty of time.

(*c*) That the pleadings must specify quality, quantity, and value.

(*d*) That the pleadings must specify the names of persons, whether parties to the suit, or parties of whom mention is made in the pleading.

(*e*) That the pleadings must show title.

(*f*) That the pleadings must show authority.

(*g*) That in general whatever is alleged in pleading must be alleged with certainty.

The rules which tend to certainty are limited and restricted by the following subordinate rules:—

(*a*) It is not necessary in pleading to state that which is merely matter of evidence.

(*β*) It is not necessary to state matter of which the court takes notice *ex officio.*

(*γ*) It is not necessary to state matter which would come more properly from the other side.

(*δ*) It is not necessary to allege circumstances necessarily implied.

(*ε*) It is not necessary to allege what the law will presume.

(*ζ*) A general mode of pleading is allowed where great prolixity is thereby avoided.

(*η*) A general mode of pleading is often sufficient, where the allegation on the other side must reduce the matter to certainty.

(*θ*) No greater particularity is required than the nature of the thing pleaded will conveniently admit.

(*ι*) Less particularity is required when the

facts lie more in the knowledge of the opposite party than of the party pleading.

(κ) Less particularity is necessary in the statement of matters of inducement or aggravation than in the main allegations.

(λ) With respect to acts valid at common law, but regulated as to the mode of performance by statute, it is sufficient to use such certainty of allegation as was sufficient before the statute.

V. The rules which tend to prevent obscurity and confusion in pleading are—

(*a*) That the pleadings must not be insensible or repugnant.

(*b*) That the pleadings must not be ambiguous or doubtful in meaning; and when two different meanings present themselves, that construction shall be adopted which is the more unfavorable to the party pleading.

(*c*) That the pleadings must not be argumentative.

(*d*) That the pleadings must not be hypothetical or in the alternative.

(*e*) That the pleadings must not be by way of recital, but must be positive in their form.

(*f*) That things are to be pleaded according to their legal effect or operation.

(*g*) That the pleading should observe the ancient and known forms of expression as contained in approved precedents.

(*h*) But formal commencements and conclusions are dispensed with.

(*i*) That a pleading which is bad in part is bad altogether.

VI. The rules which tend to prevent prolixity and delay in pleading are—

(*a*) That there must be no departure in pleading.

(*b*) That where a plea amounts to the general issue it should be so pleaded.

(*c*) That surplusage is to be avoided.

VII. The other miscellaneous rules are—

(*a*) That the declaration must be conformable to the writ.

(*b*) That the declaration shall have its proper commencement, and should in conclusion lay damages and allege production of suit.

(*c*) That pleas must be pleaded in due order. See PLEA.

(*d*) That pleas in abatement must give the plaintiff a better writ or declaration.

(*e*) That dilatory pleas must be pleaded at a preliminary stage of the suit.

(*f*) But pleadings do no longer conclude to the country or with a verification.

(*g*) And profert of a deed is dispensed with.

h) That all pleadings must be properly entitled.

(*i*) That all pleadings ought to be true.—*Step. Plead.* 148–490.

The order of the pleadings at *common law* in all actions (except replevin) is as follows:—

(1) Declaration.
(2) Plea.
(3) Replication.
(4) Rejoinder.
(5) Surrejoinder.
(6) Rebutter.
(7) Surrebutter; after which the pleadings have no distinctive names, for beyond this stage they are very seldom found to extend.

The pleadings numbered 1, 3, 5, 7, emanate from the plaintiff, the remainder from the defendant. See DEMURRER and NEW ASSIGNMENT.

The pleadings in replevin are as follow:—

(1) Plaint or declaration.
(2) Avowry, cognizance, or plea of *non cepit*.
(3) Plea in bar.
(4) Replication, &c., the ordinary name of each pleading being postponed by one step. See REPLEVIN.

The pleadings in *equity* are thus arranged:—

(1) Bill or information.
(2) Answer, plea, demurrer, or disclaimer.
(3) Replication.

The pleadings in *criminal* law are—

(1) Indictment or information.
(2) Plea or demurrer.
(3) *Similiter* or joinder.

The pleadings in *ecclesiastical* causes are—

I. In criminal causes:
(*a*) The articles.
II. In plenary causes, not criminal:
(*a*) The libel.

The pleadings in testamentary causes are—

(1) Declaration.
(2) Plea.
(3) Replication.
(4) Rejoinder.
(5) Surrejoinder.
(6) Rebutter.
(7) Surrebutter, &c. Also demurrer.

The pleadings in divorce and matrimonial causes are—

(1) Petition.
(2) Answer.
(3) Replication.
(4) Rejoinder.
(5) Surrejoinder.
(6) Rebutter.
(7) Surrebutter, &c. Also demurrer.

Pleas of the Crown, the criminal law department of our jurisprudence; so called, because the Sovereign, in whom centres the majesty of the whole community, is supposed by the law to be the person injured by every wrong done to that community, and is, therefore, in all cases the proper prosecutor for every such offence.

Pleasure grounds. As to those on Kennington Common, see 15 & 16 *Vict.* c. 29.

Plebania, a mother-church.—*Old Record.*

Plebanus, a rural dean.

Plebeity, or **Plebity**, the common or meaner sort of people; the plebeians.

Plebiscite, or **Plebiscitum**, among the Romans, a law enacted by the common people, at the request of the tribune or some other plebeian magistrate, without the intervention of the senate; more particularly applied to the law which the people made, when, upon some misunderstanding with the senate they retired to the Aventine mount.

Pledge, anything put to pawn or given by way of warrant or security; also a surety, bail, or hostage. See PAWN.

There are two kinds of estate held in pledge, *vifgage and mortgage*.

Pledgee, one who pledges; a pawnee.

Pledger, one who offers a pledge, a pawner.

Pledgery, suretyship, or an undertaking or answering for another.

Plegiis acquietandis, a writ that anciently lay for a surety against him for whom he was surety, if he paid not the money at the day.—*F. N. B.* 137.

Plegii de prosequendo, pledges to prosecute with effect an action of replevin.

Plegii de retorno habendo, pledges to return the subject of distress, should the right be determined against the party bringing the action of replevin.

Plena forisfactura, a forfeiture of all that one possesses.

Plena probatio, testimony by two witnesses. *Civ. Law.*

Plena et celeris justitia fiat partibus.—4 *Inst.* 67.—(Let full and speedy justice be done to the parties.)

Plenarty, said of a benefice when full or possessed by an incumbent, opposed to *vacancy*.

Plenary, full, complete; an ordinary proceeding through all its gradations and formal steps, opposed to *summary*.

Plenary causes in the ecclesiastical courts are reduced to the following:—

(1) Suits for ecclesiastical dilapidations.

(2) Suits relating to seats or sitting-places in churches.

(3) Suits for tithes.

Plene administravit (*he has fully administered*). If an executor or administrator plead that he has fully administered all the assets that have come to his hands, the plaintiff, if he cannot dispute the plea, and there are other assets to be received, should sign judgment of assets *quando acciderint*, and then, when assets afterwards come to the executor's hands, the plaintiff should sue out a *scire facias*, or writ of revivor against the executor, and proceed to realize the judgment.—*C. L. P. A.* 1854, s. 91. See *Williams on Executors*, 1767.

Plene administravit præter (*he has fully administered, except*). When an executor or administrator pleads that he has fully administered the assets that have come to his hands, except, &c., the plaintiff, if he cannot dispute the plea, should sign judgment presently of the assets acknowledged to be in the defendant's hands, and of assets *in futuro* for the residue. See *Williams on Executors*, 1770.

Plene computavit (*he has fully accounted*).

Plenipotentiary, a person who has full power and commission to do anything.

Plenum dominium, a title combining the right and the corporal possession of property, which possession could not be acquired without both an actual intention to possess, and an actual seisin or entry into the premises, or part of them, in the name of the whole.—*Civ. Law.*

Plevin [fr. *plevina*, low Lat.], a warrant or assurance.

Plight, signifieth an estate, with the habit and quality of the land; it extends to a rent-charge and to a possibility of dower.—*Co. Litt.* 221 *b*.

Plok-penin, a kind of earnest used in public sales at Amsterdam.

Plough-alms [*eleemosynæ aratrales*, Lat.], the ancient payment of a penny to the church from every plough-land.

Plough-bote, a tenant's right to take wood for the repairs of ploughs, carts, and harrows, and for making rakes, forks, &c.

Plough-land, a hide of land, a carucate, which see.—*Co. Litt.* 69 *a*; 86 *b*.

Plough-Monday, the Monday after Twelfth-Day.

Plough-silver, money formerly paid by some tenants, in lieu of service to plough the lord's lands.

Plowden's (Edm.) Commentaries or **Reports**, first published in 1571. They contain cases from 4 Edw. VI. to 20 Eliz. The manner in which Plowden has reported the decisions of courts is peculiarly his own, no one having either set him a model or attempted to rival him. After having stated, in a clear manner, the case and matters of doubt to be resolved, he gives the arguments of the counsel on both sides at length, always following the course of reasoning precisely, with the topics and precedents quoted by each, in the exact style of a formal debate. In reporting the judgment of the court, he gives severally the opinions of the judges at length. A case discussed in this ample way, with all the argument of each side considered, distinguished, and commented on by the experience and learning of the bench, must be so thoroughly sifted as to make it impossible for the reader not to discern the true points involved in it, and the ground upon which it was determined. Most of the cases in this book are upon demurrers or special verdicts, and there are generally the pleadings annexed. Whether

all arguments and opinions were delivered in court precisely in the detail in which we have found them in Plowden; or whether the reporter, who says that his practice was to make himself master of the case in all its points, before he heard it argued, re-touched them according to his own fancy afterwards, it is certain that the principles and great leading rules of law are opened and explained with an acuteness rarely discovered in other books; and points are maintained and canvassed with a certain wary closeness of reasoning peculiar to this writer, so that altogether it is one of the most instructive and most entertaining books in the law.—5 *Reeves*, c. xxxv., p. 241.

Plunderage, embezzling goods on shipboard. *Mar. Law.*

Pluralist, one that holds more than one ecclesiastical benefice, with cure of souls.

Pluralis numerus est duobus contentus.—1 *Rol. Rep.* 476.—(The plural number is contained in two.)

Pluralitas idem sentientium semper superat, quia facilius invenitur quod à pluribus quæritur. (A multitude of persons thinking the same always prevails, because that which is sought by many is more easily found out.)

Plurality, two or more benefices.

By 1 & 2 Vict. c. 106 (repealing the former statute against pluralities, 21 Hen. VIII. c. 13), and by 13 & 14 Vict. c. 98, it is enacted, that in future (and subject to exception in the case of rights already vested) no spiritual person shall take and hold together any two benefices, except in the case of two benefices the churches of which are within three miles of one another by the nearest road, and the annual value of one of which does not exceed 100*l.*; that no spiritual person holding a benefice, with cure of souls, with a population of more than 3,000, shall take to hold therewith any other, having a population of more than 500, nor *vice versâ*; that no spiritual person holding more than one benefice, with cure of souls, shall take to hold therewith any other or any cathedral preferment; and that upon every admission to a new benefice or preferment contrary to the acts, every benefice previously held shall be void *ipso facto*. These prohibitions, however, in respect of population and yearly value, are subject to a provision enabling the Archbishop of Canterbury to grant a dispensation therefrom in certain cases, on recommendation of the bishop of the diocese. And see 18 & 19 *Vict.* c. 127.

Plures cohæredes sunt quasi unum corpus, propter unitatem juris quod habent.—Co. Litt. 163.—(Several coheirs are, as it were, one body, by reason of the unity of right which they possess.)

Plures participes sunt quasi unum corpus, in eo quod unum jus habent.—Co. Litt. 164.—(Several parceners are as one body, in that they have one right.)

Pluries (*as often*), a writ that issues in the third instance after the first and the *alias* have been ineffectual.)

Plus exempla quam peccata nocent.—(Examples hurt more than crimes.)

Plus peccat auctor quam actor.—5 *Co.* 99.—(The causer offends more than the performer.)

Plus-petitio, or **Pluris-petitio**, when a demandant includes in his demand (in the *intentio* of the formula) more than his due. It happens in four ways. See *Com. C. L.*, p. 347; *Sand. Just.* 551.

Plus valet unus oculatus testis quam auriti decem.—4 *Inst.* 279.—(One eye witness is better than ten ear witnesses.)

Plus valet quod agitur quam quod simulatè concipitur.—(What is done more avails than what is feignedly conceived.)

Plus valet vulgaris consuetudo quam regalis concessio.—Co. Cop. s. 31.—(Common custom is better than royal grant.)

Plus vident oculi quam oculus.—4 *Inst.* 160. (Eyes see more than one eye.)

Poach [fr. *pocher*, Fr., to thrust or dig, to *poch* into or encroach upon another man's employment, practice, or trade.—*Cot.* To thrust into, *scil.* another man's ground, another man's property, and hence to purloin, to steal, to plunder. *Rich. Dict.*], to steal game on a man's land.

Poacher, one who poaches.

Poaching, stealing game.

By 9 Geo. IV. c. 69, s. 1, extended by 7 & 8 Vict. c. 29, it is provided, that if any person shall by night unlawfully take or destroy any game or rabbits in any land (whether open or enclosed), or on any public road, highway, or path, or the sides thereof, or at the openings, outlets, or gates from any such lands into such roads, or shall, by night, be in such places with any gun, net, engine, or other instrument, for the purpose of taking or destroying game, he shall be liable to imprisonment, for the first offence, for any period not exceeding three months, with hard labor, and at the expiration of such period to be bound over to his good behaviour by sureties for a year, or in default thereof, to be further imprisoned for six months, or until such sureties are found. For a second offence he shall be liable to imprisonment for six months, and then to be bound in sureties for two years; and in default thereof to be further imprisoned for one year, or until such sureties are found. And if such person shall offend a third time, he shall be guilty of a misdemeanor, and be liable to penal servitude for not more than seven nor less than three years, or imprisoned with hard labor, for any time not exceeding two years. It is moreover provided that when any person shall be found committing such offence, it shall be lawful for the owner or

occupier of the land, or for any person having a right of free warren or free chase therein, or for the lord of the manor, or for the gamekeeper or servant of such persons, or their assistants, to seize and apprehend such persons so offending; and in case such offender shall assault or offer any violence with any offensive weapon whatsoever towards such person so authorized to apprehend him, he shall be guilty of a misdemeanor, and be liable to penal servitude for not more than seven nor less than three years, or imprisoned with hard labor for any term not exceeding two years.

It is also enacted (s. 9), that if any persons, to the number of three or more, shall by night unlawfully enter such lands or roads, for the purpose of taking or destroying any game or rabbits (any of them being armed with any gun or other offensive weapon), each of such persons shall be guilty of a misdemeanor, and be liable to penal servitude for any term not more than fourteen years nor less than seven years, or imprisonment with hard labor for not more than three years.

By 25 & 26 Vict. c. 114, 'An Act for the Prevention of Poaching,' power is given to any constable or police officer, in any highway, street, or public place, to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding and abetting such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game, or any such article or thing is being carried by any such person, and should there be found any game, or any such article or thing as aforesaid, upon such person, cart, or other conveyance, to seize and detain such game, article, or thing; and such constable or police officer shall in such case apply to some justice for a summons, citing such person to appear before two justices in England and Ireland, and before a sheriff or two justices in Scotland; and if such person shall have obtained such game by unlawfully going on any land in search or pursuit of game, or shall have used any such article or thing as aforesaid for unlawfully killing or taking game, or shall have been accessory thereto, such person shall, on being convicted thereof, forfeit and pay any sum not exceeding 5*l*., and shall forfeit such game, guns, parts of guns, nets, and engines (s. 2). An appeal against a summary conviction is given to the quarter-sessions (s. 6). The word 'game' includes hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game (s. 1).

Pocket-judgment, a statute-merchant which is enforceable at any time after non-payment on the day assigned, without further proceedings.

Pocket-Sheriff, when the sovereign appoints a person sheriff who is not one of the three nominated in the Exchequer, he is called a pocket-sheriff.—1 *Bl. Com.* 342.

Pœnâ, ex delicto defuncti, hæres teneri non debet.—2 *Inst.* 198.—(The heir ought not to be bound in a penalty for the crime of the defunct.)

Pœna gravior, ultra legem posita æstimationem conservat.—4 *Inst.* 66.—(A heavier punishment, put beyond the law, preserves esteem.)

Pœna non potest, culpa perennis erit.—(Punishment cannot be, crime will be lasting.)

Pœnæ potius molliendæ quam exasperandæ sunt.—3 *Inst.* 220.—(Punishments should rather be softened than aggravated.)

Pœnæ sint restringendæ.—*Jenk. Cent.* 29.—(Let punishments be restrained.)

Poet-laureate. See LAUREATE.

Poinding, the Scotch term for taking goods, &c., in execution, or by way of distress. It is defined to be 'the diligence (process) which the law has devised for transferring the property of the debtor to the creditor in payment of his debt.' It is either real or personal; not that any inheritance is conveyed by poinding, but real poinding is a power of carrying off the effects on the land in payment of such debts as are *debita fundi*, or heritable; personal poinding is the poinding of movables for debt or for rent, &c. There is also a species of poinding by attaching cattle trespassing.—33 *Geo. III.* c. 74, s. 5.

Poison [*poison*, Fr.; *ponzoña*, Sp.; fr. *potio*, Lat., a drink, applied originally to a medicated drink or draught; a drink in which some venomous morsel or deadly ingredient is mixed; and now to any venomous morsel or deadly ingredient. See *Rich. Dict.*], a substance which, on being applied to the human body, internally or externally, is capable of destroying the action of the vital functions, or of placing the solids and fluids in such a state as to prevent the continuance of life.

The means of ascertaining the traces of poison, either on the living or dead body, is one of the most important subjects in legal medicine, and its importance is only equalled by its difficulty.

Poisons may be introduced into the system in various ways; through the nose, in the form of odours; through the lungs, by inspiration by the mouth and œsophagus; in the form of food; by the rectum, in the form of injection; through the skin, in some instances, by absorption.

The rapidity of the action of poisons varies

considerably. Concentrated hydrocyanic acid destroys an adult man almost in an instant, while other poisons take away life within an hour, a few hours, a day, or a longer period. Some prove fatal after months, or a year.

It is deemed murder, if the person poisoned die within the year; but, in Scotland, a person may be punished, although death take place at a period indefinitely remote, provided the operation of the poison can be distinctly traced as causing it.

Professor Christison considers poisons under the three grand classes of

(A) Irritants,

(B) Narcotics, and

(C) Narcotico-acrids, or nicotico-irritants.

There is a fourth class, viz. Septics, consisting of animal poisons, such as the bites of rabid animals and snakes, stings of insects, and the effects of pestilential carbuncle. For another classification of poisons, see *Dung.* 732–740, and *Wharton's Articled Clerks' Manual*, p. 606, 8th edit.

(1) Signs of poison on the living body.

A person is supposed to be poisoned, if, being in perfect health, he is attacked, after having taken some food or drink, with violent pain, cramp in the stomach, nausea, vomiting, convulsive action, and a sense of suffocation; or if he be seized, under the same circumstances, with vertigo, giddiness, delirium, or unusual drowsiness.

The class of irritant poisons comprehends both those symptoms which have a purely local irritating action, and likewise many which also act remotely, but whose most prominent feature of action still is the inflammation they excite wherever they are applied.

A narcotic poison produces the following effects: stupor, numbness, a great inclination to sleep, coldness, and stiffness of the extremities, a cold sweat of a fœtid or greasy nature, swelling of the neck and face, protrusion of the eye, with a haggard cast of countenance, thickening of the tongue, frequent vertigo, weakened eyesight, or objects presented to it in a fantastic manner, coma, delirium, general debility, palpitation of the heart, the pulse at first full and strong, but afterwards unequal and intermittent, paralysis of the lower extremities, retraction of the lips, general swelling of the body, and dilatation of the anus.

The narcotico-acrid poisons are distinguished by a combination of several of the above symptoms: they are agitation, pain, acute cries, sometimes stupor and convulsive motions of the muscles of the face, jaws, and extremities; vertigo, and occasionally extreme stiffness of the limbs and contraction of the muscles of the thorax; the eyes red and starting from their sockets, the pupils frequently dilated, insensibility to external impressions, mouth full of foam, tongue and gums hard, nausea, vomiting, frequent stools; often these symptoms attack in paroxysms.

It is a very difficult question to determine whether poisoning is the result of suicide or homicide. An opinion can only be formed from moral consideration, and a notice of the following is recommended by Foderé. The previous state of the mind of the deceased—whether he has been subject to delirium, also if he have not met with losses—have been disappointed in his hopes, or suffering under disgrace. Also, whether any of the persons with whom he lived or associated had any interest in his death. The season of the year also deserves consideration, for suicides are most frequent during the period of the solstices and the equinoxes. It should be ascertained whether the patient, instead of complaining, remains quiet, seeks solitude, and refuses the aid of medical men, &c. Any kind of writing left by the individual to express his last wishes, as it is the most common, so it is also the most certain proof of self-destruction. But finding a part of the poison in the room or in his pockets, is evidently a very equivocal proof, since it may quite as easily be put there by others as by himself.

(2) Signs of poisons on the dead body.

The irritant poisons generally produce inflammation of the first passages, and occasionally constrictions of the intestinal canal, perforations or preternatural softness of the interior coats, and sometimes, though rarely, gangrene and sphacelus. The inflammation varies as to extent and intensity.

The effects of narcotic poisons are far from being marked or even peculiar. Dr. Christison observes, that the morbid appearances left by them on the dead body are commonly insignificant. Sometimes, however, the veins of the brain are much gorged with blood, and the ventricles and membranes contain serosity. The blood appears to be sometimes altered in its nature, but these changes are by no means invariable, and are sometimes not remarked at all.

Some of the narcotico-acrid poisons are capable of exciting severe inflammation, accompanied occasionally with ulceration, whilst others do not inflame. The lungs, blood, brain, and other organs, present, in general, the same alterations as are induced by the narcotics.

A poisonous substance is sometimes introduced after death, with a view of accusing an innocent person of the crime. Orfila ascertained that when poisons were introduced into the alimentary canal twenty-four hours after death, they did not excite redness or inflammation, because life is entirely destroyed in the capillary vessels. It is only when they are employed an

hour or two after death that the inflammatory phenomena, accompanied with the line of demarcation, are capable of occurring.

(A) Irritant poisons have been divided into seven orders or groups:—

(α) The acids and their bases, as sulphuric acid, nitric acid, muriatic acid, acetic acid, oxalic acid, phosphorus, iodine, hydriodate of potash, bromine, hydrobromate of potash.

(β) The alkalies and their salts, as potash, sub-carbonate of potash, nitrate of potash, soda, ammonia, muriate of ammonia, quicklime, oxy-muriate of lime, chloride of soda, liver of sulphur, sulphuret of soda. The alkalies and their salts should be placed amongst the metallics according to strict chemistry.

Dr. Tartra arranges the cases of poisoning by nitric acid into four classes:—1st, when the death is speedy, for it is never sudden, it commonly takes place from the primary effects in about twenty-four hours, varying from six to forty-eight hours; 2nd, when it proves fatal from its secondary effects, at various distances of time, from fifteen days to some years; 3rd, when death does not take place, but the recovery is imperfect; 4th, when a perfect cure is sooner or later obtained.

(γ) The metallic compounds, as arsenic, mercury, the most important compound of which, in its relation to legal medicine, is corrosive sublimate, antimony, copper, zinc, tin, silver, gold, platina, bismuth, iron, lead, chrome, barytes, and its salts.

(δ) The vegetable acrids or irritants, of which the following is a botanical arrangement:—

Cucurbitaceæ.—Bryonia, Momordica, Cucumis.

Euphorbiaceæ.—Euphorbia, Ricinus, Jatropha, Hippomane, Croton.

Ranunculaceæ.—Ranunculus, Anemone, Caltha, Delphinium, Clematis.

Papaveraceæ.—Chelidonium.

Thymelææ.—Daphne.

Convolvulaceæ.—Convolvulus.

Amaryllidæ.—Narcissus.

Scrophularineæ.—Pedicularis, Gratiola.

Guttiferæ.—Stalagmites.

Coniferæ.—Juniperus.

Anacardiaceæ.—Rhus.

Ficoideæ.—Sedum.

Ericeæ.—Rhododendron.

Primulaceæ.—Cyclamen.

Plumbagineæ.—Plumbago.

Lobeliaceæ.—Lobelia.

Umbelliferæ.—Pastinaca, Hydrocotyle.

Phytolacceæ.—Phytolacca.

Aroideæ.—Calla, Arum.

Caprifoliaceæ.—Sambucus.

(ε) Animal irritants, as cantharides, lytta vittata. *Poisonous serpents*, as the viper, rattlesnake, scorpion, tarantula, spider, bee, wasp, hornet. *Poisonous fishes*, as the mussel, oyster, crab, lobster, mackerel, at certain seasons of the year; and several in the Indies.

(ζ) Mechanical irritants, as glass and enamel in powder.

(η) Irritant gases, as chlorine, nitrous acid vapour, muriatic acid gas, sulphurous acid gas, seleniuretted hydrogen gas.

(B) Narcotic poisons, defined by Orfila to be those which produce stupor, drowsiness, paralysis, or apoplexy, and convulsions. 'The term *narcotism*,' says Dr. Christison, 'has been used by different writers with different significations, but is now generally understood to denote the effects of such poisons as bring on a state of the system like that caused by apoplexy, epilepsy, or other disorders commonly called nervous. Narcotic poisons, therefore, are such as produce chiefly or solely symptoms of a disorder of the nervous system.' Under this division the following substances are commonly arranged:—

VEGETABLE NARCOTICS.

Papaveraceæ.—Papaver, Morphine, Narcotine.

Solaneæ.—Hyoscyamus, Solanum, Physalis.

Compositæ.—Lactuca.

Coniferæ.—Taxus.

Smilaceæ.—Paris.

Ranunculaceæ.—Actæa.

Rutaceæ.—Peganum.

Ericeæ.—Azalea.

Amygdaleæ.—Prunus, Cerasus, Amygdalus Persica.

Pomaceæ.—Sorbus.

PRUSSIC ACID (hydrocyanic acid).

CARBAZOTIC ACID.

NARCOTIC GASES.—Nitrogen, carbonic oxide, carburetted hydrogen, nitrous oxide, cyanogen gas, oxygen gas, hydrogen, sulphuretted hydrogen, carbonic acid gas.

(C) Narcotico-acrid poisons include those which possess a double action, the one local and irritating, like that of the irritants, the other remote, and consisting of an impression on the nervous system. Sometimes they cause narcotism, which is generally of a comatose nature, often attended with delirium; but in one very singular group there is neither insensibility nor delirium, but merely violent spasms. At other times they excite inflammation where they are applied; this effect, however, is by no means constant. Those which inflame the tissues where they are applied, rarely occasion death in this manner. Some of them may produce very violent local symptoms, but they generally prove fatal through their operation on the nervous system.

Orfila divides this class of poisons into six groups, which may be thus stated, although it must be added, that they pass insensibly into each other, and therefore cannot sometimes be well distinguished.

(1) Those whose principal symptom is delirium, as atropa, datura, stramonium, &c.

(2) Those whose principal symptom is tetanus, as nux vomica, strychnine, &c.

(3) Those which also excite convulsions, but at the same time cause impaired sensibility and sleep, as cocculus indicus, camphor, upas antiar.

(4) Poisonous mushrooms.

(5) Poisonous grain.

(6) Alcohol, ether, and empyreumatic oils. *Beck's Med. Jurisp.; Taylor's Med. Jur.; and Christison on Poisons.*

As to the administering or causing to be administered poison or other destructive thing, if the offence is committed with intent to commit murder, it is a felony, punishable with penal servitude for life or any term not exceeding three years, or with imprisonment for any term not exceeding two years (24 & 25 Vict. c. 100, s. 11), and so is the attempt to administer with a like intent, whether any bodily injury be effected or not (s. 14).

The unlawful and malicious administering, or causing to be administered, any poison or other destructive or noxious thing, so as thereby to endanger life or to inflict grievous bodily harm, is a felony punishable by penal servitude for any term not exceeding ten nor less than three years, or imprisonment (s. 23).

The unlawful and malicious administering, or causing to be administered, any poison or other destructive or noxious thing with intent to injure, aggrieve, or annoy, is a misdemeanor, punishable by penal servitude for three years, or imprisonment (s. 24).

If the jury be satisfied that a person charged with felony under the 23rd sec. is guilty of misdemeanor under the 24th sec., but not guilty of felony, he may be found guilty of misdemeanor accordingly (s. 25).

Sec. 22 enacts that whosoever shall administer to or cause to be taken by, or attempt to apply or administer to, or attempt to cause to be administered to or taken by any person any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent thereby to enable himself or any other person to commit, or to assist any other person in committing, any indictable offence, shall be guilty of felony, and on conviction shall be liable to penal servitude for life, or any term not less than three years, or to imprisonment.

As to the taking or administering poison or other noxious thing, with intent to procure miscarriage, see s. 58, and ABORTION.

By 14 & 15 Vict. s. 13, certain restrictions are placed upon the sale of arsenic.

Poisoned Grain or Seed. The Poisoned Grain Prohibition Act (26 & 27 Vict. c. 113) imposes penalties upon persons selling or exposing for sale, and upon persons sowing or causing to be sown, poisoned grain, seed or meal (ss. 2 & 3), but solutions, or infusions, or materials for preparing any grain or seed for *bonâ fide* use in agriculture are not within the Act (s. 4).

Pole, a measure of five and a half yards.

Police [fr. πόλις, Gk., a city]. The regulation and government of a country or city, so far as regards its inhabitants. See 2 & 3 *Vict.* c. 93; 3 & 4 *Vict.* c. 88; 12 & 13 *Vict.* c. 65; 13 & 14 *Vict.* c. 87; 19 & 20 *Vict.* c. 69; 22 & 23 *Vict.* c. 32; and 25 & 26 *Vict.* c. 101. See METROPOLITAN POLICE ACTS.

Police office, a metropolitan court, where the stipendiary magistrates, who are chosen from barristers of a certain standing, sit from day to day for the despatch of business. Their general duties and powers are precisely the same as those pertaining to the unpaid magistracy, except that one of them may sometimes act in cases which would require to be heard before two other justices.

There are several police offices in the neighbourhood of the metropolis, severally situated in Bow Street, Covent Garden; Queen Street, Westminster; Great Marlborough Street; Clerkenwell; Worship Street, Shoreditch; Lambeth; High Street, Marylebone; Southwark; Stepney; Greenwich and Woolwich; Hammersmith and Wandsworth; and Metropolitan Police-office, Whitehall.

Policies of insurance, *Court of.* It was erected in pursuance of 43 Eliz. c. 12, which recites the immemorial usage of policies of assurance, 'by means whereof it cometh to pass, upon the loss or perishing of any ship, there followeth not the undoing of any man, but the loss lighteth rather easily upon many than heavy upon few, and rather upon them that adventure not than upon those that do adventure; whereby all merchants, especially those of the younger sort, are allured to venture more willingly and more freely, and that heretofore such assurers had used to stand so justly and precisely upon their credits, as few or no controversies had arisen thereupon; and if any had grown, the same had from time to time been ended and ordered by certain grave and discreet merchants, appointed by the Lord Mayor of the city of London, as men by reason of their experience fittest to understand and speedily decide those causes;' but that of late years divers persons had withdrawn themselves from that cause of arbitration, and had driven the assured to bring separate actions at law against the assurer; it therefore enables the Lord Chancellor yearly to grant a standing commission to the Judge of the Admiralty, the Recorder of London, two doctors of the civil law, two common lawyers, and eight merchants; any three of whom, one being a

civilian or a barrister, are thereby, and by 13 & 14 Car. II. c. 23, empowered to determine in a summary way all causes concerning policies of assurance in London, with an appeal by way of bill to the Court of Chancery; but the jurisdiction being somewhat defective, as extending only to London, and to no other assurances but those on merchandise, and to suits brought by the assured only, and not by the insurers, such commissions have been long wholly disused; and insurance-causes are now usually determined by the verdict of a jury of merchants, and the opinion of judges in case of any legal doubts; whereby the decision is more speedy, satisfactory, and final.—3 *Bl. Com.* 74.

Policy, the general principles by which a government is guided in its management of public affairs.

Policy of insurance, a contract between A. and B., that upon A.'s paying a premium equivalent to the hazard run, B. will indemnify or insure him against a particular event.

Upon a policy of marine or fire-insurance, the remedy of the assured in case of breach of contract by the insurer, is by covenant, where the policy is under seal; by assumpsit, where it is not. On a policy of life-insurance under seal, the remedy is by debt or covenant; on one not under seal, debt or *indebitatus assumpsit.* See INSURANCE.

Politicæ legibus non leges politiis adaptandæ. Hob. 154.—(Politics are to be adapted to the laws, and not the laws to politics.)

Political arithmetic, the art of making calculations on matters relating to a nation; the revenues, the value of land and effects, the produce of lands or manufactures, the population, and the general statistics of a country.

Political economy, the science which treats of the administration of the revenues of a nation; or the management and regulation of its resources, and productive property and labor. See *Adam Smith's Wealth of Nations,* and *Mill's Pol. Eco.*

Political, or **Civil liberty,** natural liberty, restrained by human law so far as is necessary and expedient for the public advantage.

Politics [fr. πολιτική, Gk.], the science of government; the art or practice of administering public affairs.

Polity [fr. πολιτεία, Gk., the government of a city], a form of government; civil constitution.

Poll [fr. *polle, pol,* Dut., the top; fr. the Su. Goth, *bollur,* a globe], the head; a catalogue or list of persons; a register of heads. Also the art of registering votes at an election. See DEED POLL.

Pollah, a Government lease granted to a cultivator, either written on paper or engraved with a style on a leaf of the Fan-palmyra tree. *Indian.*

Pollards, or **Pollengers,** trees which have been lopped, distinguished from timber-trees. *Plowd.* 469.

Pollicitation, an unaccepted promise.—*Civil Law.*

Polligar, Polygar, the head of a village or district; also a military chieftain in the peninsula answering to a hill *zemindar* in the northern Circars.—*Indian.*

Polling places. As to these, for the election of Members of Parliament, see 2 *Wm. IV.* c. 45; 6 & 7 *Wm. IV.* c. 102; 16 & 17 *Vict.* c. 68; and 25 & 26 *Vict.* c. 95.

Poll-money, Poll-silver, Poll-tax, a capitation-tax. It was formerly assessed by the head on every subject according to rank.

Polls, *Challenge to the.* See CHALLENGE.

Polyandry, the state of a woman who has several husbands.

Polygamia est plurium simul virorum uxorumve connubium.—3 *Inst.* 88.—(Polygamy is the marriage with many husbands or wives at one time.)

Polygamy [fr. πολὺς, Gk., many, and γάμος, marriage], plurality of wives or husbands. See BIGAMY.

It is prohibited by the Christian religion, but it is permitted by some others.

Polygamy was condemned by that primæval institution which, in order to secure the propagation of the species, joined in marriage one man and one woman.—*Gen.* i. 27. The old and pious patriarchs religiously observed this institution. But before the time of Moses, morals had become very much corrupted, and the prostitution not only of females but of boys was very common among many nations, and was even made a part of divine worship. To prevent these evils, to which the Greek and Roman philosophers refused, in progress of time, to oppose any decided resistance, Moses made many regulations, which may be found in several parts throughout the Pentateuch. Lameck is the first mentioned as having two wives, and the example which he set found no lack of imitation. After the deluge, the example of Noah and his sons was a good one, but it was not followed. Polygamy very much prevailed in the time of Moses, as we may gather from the fact, that the first born of 603,550 men, above twenty years of age, amounted merely to the number of 22,373.—*Numb.* iii. 42; *Jahn's Bib. Antiq.* pt. 1, c. x., ss. 150, 151.

Polygarchy [fr. πολύς, Gk., many, and ἀρχή, government], that kind of government which is in the hands of many.

Pondus, poundage, i. e. a duty paid to the Crown according to the weight of merchandise.

Pondus regis, the standard weight appointed by our ancient kings.—*Cowel.*

Pone. If goods had been replevied by virtue of a *replegiari facias* (which was rarely if ever the case) the plaint in a county-court was removed by writ of *pone.* It was an original writ obtained from the cursitor, bearing *teste* after the entry of the plaint in the county-court, and returnable on a general day in term, wheresoever, &c. It was also the proper writ to remove all suits which were before the sheriff by writ of *justicies.* Obsolete.

Pone per vadium, an obsolete writ to the sheriff to summon the defendant to appear and answer the plaintiff's suit, on his putting in sureties to prosecute: it was so called from the words of the writ, *pone per vadium et salvos plegios*—'put by gage and safe pledges, A. B., the defendant.' It issued out of the Common Pleas, being grounded on the non-appearance of the defendant, at the return of the original writ; and thereby the sheriff was commanded to attach him by taking gage, i. e. certain of his goods which he should forfeit if he did not appear; or by making him find safe pledges or sureties, who should be amerced in case of his non-appearance.—3 *Bl. Com.* 210.

Previous to the Uniformity of Process Act (2 Wm. IV. c. 39), it was also the first and immediate process, without any previous summons upon actions of trespass, *vi et armis*, or for other injuries which, though not forcible, were yet trespasses against the peace, as deceit and conspiracy, where the violence of the wrong required a more speedy remedy; and therefore the original writ commanded the defendant to be at once attached without any precedent warning. These actions are now commenced by a writ of summons.—1 & 2 *Vict.* c. 110.

Ponendis in assisis, an abolished writ to empannel juries.

Ponendum in ballium, a writ commanding that a prisoner be bailed in cases bailable.—*Reg. Orig.* 133.

Ponendum sigillum ad exceptionem, a writ by which justices are required to put their seals to exceptions exhibited by a defendant against a plaintiff's evidence, verdict, or other proceedings before them, according to the Stat. *West.* 2, 13 *Ed. I.* st. 1, c. 31. See BILL OF EXCEPTIONS.

Pontage [fr. *pons*, Lat., a bridge], duty paid for the reparation of bridges; also, a due to the lord of the fee for persons or merchandises that pass over rivers, bridges, &c.

Pontibus reparandis, a writ directed to the sheriff, &c., requiring him to charge one or more to repair a bridge.—*Reg. Orig.* 153.

Pool, a small lake of standing water. By the grant of a pool, both the land and water will pass.—*Co. Litt.* 5.

Poor Law Amendment Act, 4 & 5 Wm. IV. c. 76.

Poor Laws. The poor of England, till the time of Henry VIII., subsisted entirely upon private benevolence, and the charity of well-disposed Christians. See 5 *Reeves*, 18.

The poor in Ireland had, till of late years, no relief but from private charity. But by 1 & 2 Vict. c. 56, intituled 'An Act for the more effectual Relief of the destitute Poor in Ireland,' the authority of the poor law commissioners was extended to that part of the realm. There is now an Irish board of commissioners. This Act has been amended by 2 & 3 Vict. c. 1; 4 & 5 Vict. c. 41; 6 & 7 Vict. c. 92; 10 & 11 Vict. c. 31, 90; 11 & 12 Vict. c. 25; 14 & 15 Vict. c. 68; 15 & 16 Vict. c. 37. As to the relief of the poor in Scotland, see 8 & 9 *Vict.* c. 83; 17 & 18 *Vict.* c. 86, s. 6; 19 & 20 *Vict.* c. 117.

By 43 Eliz. c. 2, which is generally considered as the foundation of the modern poor law, overseers of the poor were appointed in every parish. It is provided by this statute, that the churchwardens of every parish shall be overseers of the poor; and that, besides these, there shall be appointed, as overseers in each parish, two, three, or four, but not more, of the inhabitants, such last-mentioned overseers to be substantial householders, and to be nominated yearly on the 25th March, or within 14 days after, by two justices dwelling near the parish.—54 *Geo. III.* c. 91.

Their office and duty, according to the same statute, were principally these: 1st, to provide work for all persons who had no means to maintain themselves, and used no ordinary trade; and 2ndly, to raise competent sums for the necessary relief of the lame, impotent, old, blind, and such others being poor, and not able to work. For these joint purposes they were empowered to make and levy rates upon the several inhabitants of the parish.

By 4 & 5 Wm. IV. c. 76 (the Poor Law Amendment Act), the administration of the parochial funds, and the management of the poor throughout the country, were placed, for a period of five years, under the superintendence and control of a central board of three persons (the Crown being empowered to appoint a fourth, by 1 & 2 Vict. c. 56, s. 119), called 'The Poor Law Commissioners,' who had power to make such regulations as they thought proper, for guidance of the parochial authorities (whether consisting of guardians, select vestries, or overseers), and who were aided in their operations by a certain number of assistant commissioners.

This commission was subsequently extended to the year 1847, and was then superseded. But in lieu thereof a new board of Commissioners was established (for five years), by 10

& 11 Vict. c. 109, under the style of 'Commissioners for administering the Laws for the Relief of the Poor in England,' to consist of the Lord President of the Council, the Lord Privy Seal, the principal Secretary of State for the Home Department, and the Chancellor of the Exchequer, for the time being, in virtue of their offices, and of such other persons as her Majesty by letters-patent or commission shall appoint; and to this board (which has since received the appellation of the 'Poor Law Board,' (12 & 13 Vict. c. 103, s. 21), and been continued for further periods (17 & 18 Vict. c. 41; 23 & 24 Vict. c. 101; and 26 & 27 Vict. c. 55), all the powers and duties of the former poor law commissioners are transferred. The person first named in such letters-patent or commission is 'President;' and all general rules—a term which for the purposes of this Act is declared to extend to all rules directed to affect more than one union—promulgated by this commission, must be under the seal of the body, and under the hands of a quorum, of whom the president must be one, and any such rule may be disallowed by her Majesty in council. They are, moreover, directed once in every year, to submit to both houses of Parliament a general report of their proceedings. By the Poor Law Amendment Act in connection with the new Act of 10 & 11 Vict. c. 109, the commissioners are empowered, when they think it desirable, to direct that the relief of the poor in any parish shall be administered by a board of guardians, to be elected by the owners of property and rate-payers in such parish, in such manner as in the Acts particularised. And they are directed to appoint a certain number of Inspectors, for the purpose of exercising a visitorial power over workhouses, and of being present at meetings of guardians, or other local meetings held for the relief of the poor. They are also entrusted by the legislature with the important power of consolidating at their own discretion, so far as the relief and management of the poor is concerned, several parishes into one united body or union, under the government of a single board of guardians, to be elected by the owners and rate-payers of the component parishes; and the united parishes are to have a common workhouse provided and maintained at their common expense, though each is to remain separately chargeable with the expense of its own poor, whether relieved in or out of such workhouse. The principle of consolidation may indeed be carried further, if such a measure shall appear expedient to those who represent the different parochial interests; for by consent of the guardians in any union (whether under the Act, or previously existing), the component parishes may (under sanction of the commissioners) be united for the purpose of settlement and of rating, as well as that of relief and management. On the other hand, however, it is provided that no union shall in future take place under Gilbert's Act, without the previous consent of the commissioners. The following statutes have been passed since the 4 & 5 Wm. IV. c. 76, for the continuation and amendment of the modern poor-law system: 5 & 6 Wm. IV. c. 69; 6 & 7 Wm. IV. c. 107; 7 Wm. IV. and 1 Vict. c. 50; 1 & 2 Vict. cc. 25 & 56; 2 & 3 Vict. cc. 83 & 84; 3 & 4 Vict. c. 42; 5 & 6 Vict. c. 57; 7 & 8 Vict. c. 101; 10 & 11 Vict. c. 109; 11 & 12 Vict. cc. 81, 82, 110 & 111; 12 & 13 Vict. cc. 13 & 103; 13 & 14 Vict. cc. 11 & 101; 14 & 15 Vict. c. 105; 15 & 16 Vict. cc. 14 & 59; 20 Vict. c. 13, which expired in 1860.

According to the present law, a settlement is acquired by the following methods:—1st, By birth; for wherever a child is first known to be, that is always *primâ facie*, and until some other can be shown, the place of its settlement. But if its parents can be proved to have acquired a settlement, either by birth or otherwise in another parish, then the *primâ facie* settlement of the child will be superseded by a derivative one, viz. the settlement by parentage. 2nd, By parentage; for all legitimate children take the last settlement of the father, and after his death, of the mother, till they are emancipated from parental authority by marriage, or by attaining the age of twenty-one, and living permanently separate from the parent, or contracting some relation inconsistent with domestic subjection. And when emancipated, they retain the parental settlement last acquired before that event took place. A bastard child, on the other hand, having in the eye of the law no parent, was formerly held incompetent to claim a derivative settlement. By a provision, however, in the Poor Law Amendment Act, an illegitimate child, born since the Act passed, is now to follow the settlement of his mother until he attains the age of sixteen, or gains another for himself. But besides those of birth or parentage, there are also settlements acquired by the party's own act. For a female gains a derivative settlement, 3rd, by marriage, i. e., she may claim the settlement which belongs to her husband, and she retains that after his death. If the man have no settlement, being born abroad, and having acquired none, or his settlement is unknown, she retains that which belonged to her before marriage. But she cannot in any case acquire one in her own right during the marriage. A settlement may also be acquired, 4th, by renting a tenement coupled with residence in the same parish for forty days. For this purpose, however, it is requisite that the party should have *bonâ fide* rented a tenement, consisting of a separate or distinct dwelling-house, or building, or of land,

or of both, for the sum of 10*l.* a year, at the least for the term of one whole year; and that he should have occupied the same under such hiring, and actually paid the rent, to the amount of 10*l.*, for the term of one whole year at the least, and that for the same period he should have been assessed to and paid the poor rate in respect thereof. 5th. A settlement may also be gained by being bound apprentice, under indenture or other deed, and inhabiting for forty days under such binding, either in the same parish where the service takes place, or a different one. But no settlement can be acquired by being apprenticed in the sea-service, or to a householder exercising the trade of the seas, as a fisherman or otherwise. The deed must in all cases be executed by the apprentice, except in the case of parish apprentices. 6th. A settlement is gained of a temporary kind in any parish, by having an estate of one's own there, of whatever value, and whether the interest be legal or equitable. This particular species of settlement is founded on the principle of the common law, that a man shall not be removed from his own property. It is provided, however, that no person shall retain a settlement gained by virtue of any estate or interest in a parish for any longer time than he shall inhabit within ten miles thereof; and in case he shall cease to inhabit within that distance, and shall afterwards become chargeable, he shall be liable to be removed to the parish in which he was settled previously to such inhabitancy, or if he have gained a settlement in some other parish since the inhabitancy, then to such other parish. Lastly, a settlement may be gained by being charged to and paying the public taxes and levies of the parish, excepting those for scavengers and highways, and the duties on houses. But it is provided, by 35 Geo. III. c. 101, s. 4, that no person shall gain a settlement on this ground in respect of any tenement or tenements not being of the yearly value of 10*l.*; and by 6 Geo. IV. c. 57, that a settlement shall not be acquired by paying parochial rates for any tenement, not being the person's own property, unless it consists of a separate and distinct dwelling-house, or building, or land, or both, *bonâ fide* rented by him for 10*l.* a year, at the least, for a whole year, and be occupied under such hiring for a year at least. This title to a settlement is, therefore, nearly merged in that of renting a tenement.

The 9 & 10 Vict. c. 66 and 11 & 12 Vict. c. 111; 25 & 26 Vict. c. 113; and 26 & 27 Vict. c. 89; amend the laws relating to the removal of the poor. By the temporary Act of 25 & 26 Vict. c. 110, continued by 26 & 27 Vict. cc. 4 & 91, the guardians of certain unions in the counties where great distress is existing, in consequence of the failure in the cotton supply, are enabled, in certain cases, to throw a portion of the rates of a particular parish upon the Union in which it is situated; and power is given to the Poor Law Board to authorize the borrowing of a sum of money on the credit of the common fund of the union; or to call on the several unions in the county for contributions. See also 26 & 27 *Vict.* cc. 70 & 81.

The duty of making and levying the poor-rate or parochial fund, out of which the relief is to be afforded, still belongs, as before the late changes in the law of relief, to the churchwardens and overseers; and the concurrence of the inhabitants is not necessary. But for the better execution of these duties, the recent Acts relating to the amendment of the poor law authorize the appointment of collectors and assistant overseers. The rate is raised prospectively for some given portion of the year, and upon a scale adapted to the probable exigencies of the parish; and the Act of Elizabeth directs that it should be raised by 'taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the parish.' As an occupier, a man is rateable for all lands which he occupies in the parish, whether he is resident or not; but the tenant and not the landlord is considered as the occupier within this statute. As an inhabitant, a man was formerly liable to be rated according to his apparent ability, that is, according to the value of the local and visible personal property he had within the parish, and of which he made profit; but by 3 & 4 Vict. c. 89; 19 & 20 Vict. c. 42; and 23 & 24 Vict. c. 44; the liability to taxation, in regard to inhabitancy, was suspended until October 1862, and thence to the end of the next session. These Acts were not renewed in 1863.

By 43 Eliz. c. 2, s. 1, no rate can be deemed valid unless it be allowed by two justices, and by 17 Geo. II. c. 3, public notice thereof is to be given at the parish church on the Sunday next after the same has been allowed. The allowance by the justices is a mere matter of form; but after allowance and publication, any person aggrieved by the rate, and having reasonable objection to it, as irregular or unequal, may appeal against it to the next practicable quarter sessions of the county, riding, or division, or, in some cases, of the corporation or franchise in which the parish is situate. As to the recovery of poor rates, see 25 & 26 *Vict.* c. 82.—3 *Step. Com.* 165.

Pope [anciently *pape*, fr. *πάππας*, Gk., father], the bishop of Rome and supreme head of the Roman Catholic Church. He is also sovereign of the Papal States.

Pope Nicholas's taxation, the first fruits (*primitiæ* or *annates*) were the first year's pro-

fits of all the spiritual preferments in the kingdom according to a rate made by Walter, Bishop of Norwich, in the time of Pope Innocent II. and afterwards advanced in value in the time of Pope Nicholas IV. This last valuation was begun A.D. 1288, and finished 1292, and is still preserved in the Exchequer. The taxes were regulated by it till the survey made in the 26th year of Henry VIII.

Popery, the religious doctrines and practises adopted and maintained by the Church of Rome. See CORONATION OATH.

Populace or **Populacy** [fr. *populus*, Lat.], the vulgar; the multitude.

Popular action, brought by one of the public to recover some penalty given by statute to anyone who chooses to sue for it. See QUI TAM ACTION.

Populous parishes, for their spiritual improvement, see 6 & 7 *Vict.* c. 37; 7 & 8 *Vict.* c. 94; and 19 & 20 *Vict.* c. 104.

Porrecting, producing for examination or taxation, as porrecting a bill of costs, by a proctor.

Portatica, port-duties charged on ships.

Porter, an officer who carries a white or silver rod before the justices in *eyre*, so called *à portando virgum*; also, a person employed to carry messages, parcels, &c. Porters in the City of London are regulated by the corporation.

Porterage, a kind of duty formerly paid at the custom-house to those who attended the water-side, and belonged to the package-office; but it is now abolished; also, the charge made for sending parcels.

Portgreve, or **Portreeve,** a magistrate in certain sea-coast towns.

Portion, that part of a person's estate which is given or left to a child.

There are two ways of raising portions, one by sale or mortgage, the other by perception of profits. Interest is payable on portions from the time they become due.

Portioner, a minister, who serves a benefice, together with others, so called, because he has only a portion of the tithes or profits of the living; also, an allowance which a vicar commonly has out of a rectory or impropriation.

Portmen, the burgesses of Ipswich and of the Cinque Ports.—*Camden.*

Portmote, a court held in haven towns or ports, and sometimes in inland counties.

Portoria, duties paid in ports on merchandise. *Civil Law.*

Ports, harbours; safe stations for ships.—16 & 17 *Vict.* c. 107. See HAVENS.

Portsale, a public sale of goods to the highest bidder.

Portsoka or **Portsoken,** the suburbs of a city, or any place within its jurisdiction.

Portuas, a breviary.—*Cowel.*

Portus est locus in quo exportantur et importantur merces.—2 *Inst.* 148.—(A port is a place where goods are exported or imported.)

Positive evidence, proof of the very fact.

Posito uno oppositorum negatur alterum.—3 *Rol. Rep.* 422.—(One of two opposite positions being affirmed, the other is denied.)

Posse, a possibility. A thing is said to be *in posse* when it may possibly be; *in esse* when it actually is.

Posse comitâtus, the power of a county, including the aid and attendance of all knights and other men above the age of fifteen within the county; but ecclesiastical persons, peers, and such as labor under any infirmity, are not compellable to attend. It is called out when a riot is committed, a possession is kept on a forcible entry, or any force is used or rescue made contrary to the commandment of the Queen's writ, or in opposition to the execution of justice.

Possessio. Paulus (*Dig.* 41, tit. 2, s. 1) observes, '*Possessio appellata est, ut et Labeo ait, à pedibus, quasi positio; quia naturaliter tenetur ab eo qui insistit.*' The absurdity of the etymology and of the reason are equal. The elements of *possidere* are either *pot* (*pot-is*) and *sedere*; or the first part of the word is related to *apud*, and the cognate Greek form of *ποτί* (*πρός*).

Possessio, in its primary sense, is the condition or power by virtue of which a man has such a mastery over a corporeal thing as to deal with it at his pleasure, and to exclude other persons from meddling with it. This condition or power is detention; and it lies at the bottom of all legal senses of the word possession. This possession is no legal state or condition, but it may be the source of rights, and it then becomes *possessio* in a juristical or legal sense. Still, even in this sense, it is not in any way to be confounded with property (*proprietas*). A man may have the juristical possession of a thing without being the proprietor, and a man may be the proprietor of a thing without having the juristical possession of it, and consequently without having the detention of it (*Dig.* 41, tit. 2, s. 12). Ownership is the legal capacity to operate on a thing according to a man's pleasure, and to exclude everybody else from doing so. Possession, in the sense of detention, is the actual exercise of such a power as the owner has a right to exercise. The term *possessio* occurs in the Roman jurists in various senses. There is *possessio* generally, and *possessio civilis*, and *possessio naturalis*.

Possessio denoted, originally, bare detention; but this detention, under certain conditions, becomes a legal state, inasmuch as it leads to ownership through *usucapio*. Accordingly, the word *possessio*, which required no qualification so long as there was no other notion attached to *possessio*, requires such qualification when

detention becomes a legal state. This detention, then, when it has the conditions necessary to *usucapio*, is called *possessio civilis*, and all other *possessio* as opposed to *civilis* is *naturalis*.—*Smith's Dict. of Antiq.*; *Sand. Just.* 274.

Possessio est quasi pedis positio.—3 *Co.* 42. (Possession is, as it were, the position of the foot.)

Possessio fratris, a seisin to turn the descent away from the brother of the half-blood to the sister of the whole-blood; thus, if a father had two sons, A. and B., by different wives, these two brethren were not brethren of the whole-blood, and therefore could never inherit to each other, but the estate rather escheated to the lord. Nay, even if the father died, and his lands descended to his eldest son A., who entered thereon, and died seised without issue, still B. could not be heir to this estate, because he was only of the half-blood to A., the person last seised; but it descended to a sister (if any) of the whole-blood to A.; for in such cases the maxim was, that the seisin, or *possessio fratris*, made the sister the heiress. Yet, had A. died without entry, then B. might have inherited, not as heir to A., his half-brother, but as heir to their common father, who was the person last actually seised. Abolished by 3 & 4 Wm. IV. c. 106.

Possessio fratris de feodo simplici facit sororem esse hæredem.—3 *Co.* 42.—(Possession of the brother in fee-simple makes the sister to be heir.)

The *possessio fratris* was abolished by 3 & 4 Wm. IV. c. 106.

Possessio pacifica pour ans 60 *facit jus.*—*Jenk. Cent.* 26.—(Peaceable possession for sixty years gives a right.)

Possession, the state of owning or having a thing in one's own hands or power; the thing possessed.

It is either *actual*, where a person enters into lands or tenements descended or conveyed to him; *apparent*, which is a species of presumptive title where land descended to the heir of an abator, intruder, or disseisor, who died seised; *in law*, when lands, &c., have descended to a man, and he has not actually entered into them; or *naked*, that is, mere possession, without color of right.

Possession, *Writ of*, the process of execution in an action of ejectment. See EJECTMENT; HABERE FACIAS POSSESSIONEM.

Possessory action, the action of trespass, the gist of which is the injury to the possession; a plaintiff, therefore, cannot maintain it, unless at the moment of the injury he was in actual or constructive, immediate and exclusive possession.

Possibilitas post dissolutionem executionis nunquam reviviscatur.—1 *Rol. Rep.* 321.—(Possibility is never revived after the dissolution of the execution.)

Possibilitas, an act wilfully done, as *impossibilitas* is a thing done against the will.

Possibility, expectation, an uncertain thing, which may or may not happen.

It is either *near*, or *ordinary*, as where an estate is limited to one after the death of another; or *remote*, or *extraordinary*, as where it is limited to a man, provided he marries a certain woman, and that she shall die and he shall marry another.

Possibility on a possibility, a remote possibility, as if a remainder be limited in particular to A.'s son John, or Edward, it is bad if he have no son of that name, for it is too remote a possibility that he should not only have a son, but a son of that particular name.—*Cholmley's case*, 2 *Rep.* 51.

Post, a conveyance for letters or dispatches. The word is derived from *positi*, the horses carrying the letters or despatches being kept or placed at fixed stations. The word is also applied to the person who conveys the letters to the houses where he takes up and lays down his charge, and to the stages or distances between house and house. Hence the phrases post-boy, post-horse, post-house, &c.

Post, *suborned*, hired to do an improper action. See KNIGHTS OF THE POST.

Post, *Writ of entry in*, an abolished writ given by statute of Marlbridge, 52 Hen. III. c. 30, which provided, that when the number of alienations or descents exceeded the usual degrees, a new writ should be allowed, without any mention of degrees at all.

Postage, the duty or charge imposed on letters or parcels conveyed by post. See 3 & 4 *Vict.* c. 96; 10 & 11 *Vict.* c. 85. As to the postage on letters to seamen and soldiers whilst on active service, see 23 & 24 *Vict.* c. 65. See POST-OFFICE.

Post and Per. See PER AND POST.

Post Conquestum (*after the Conquest*).

Post-date, to date later than the real date. A penalty of 100*l.* is imposed by s. 12 of the 55 Geo. III. c. 184, for post-dating bills, notes, &c., on stamps which do not cover the real term for which they were drawn. Bankers' checks must not be post-dated without being on a bill stamp, under a penalty of 100*l.*—9 *Geo. IV.* c. 49. See BANKERS' CHECKS.

Post Diem (*after the day*).

Post-Disseisin, a writ that lay for him who, having recovered lands or tenements by force of *novel disseisin*, was again disseised by the former disseisor.

Postea (*afterwards*), the return of the judge before whom a cause was tried, after a verdict, of what was done in the cause. It is endorsed on the *nisi prius* record by the associate.—1 *Chit. Arch. Prac. by Pren.* 467.

Post entry. When goods are weighed or measured, and the merchant has got an account

thereof at the Custom-House, and finds his entry already made too small, he must make a post or additional entry for the surplusage, in the same manner as the first was done. As a merchant is always in time, prior to the clearing of the vessel, to make his post, he should take care not to over-enter, to avoid as well the advance as the trouble of getting back the overplus. However, if this be the case, and an over-entry has been made, and more paid or bonded for customs than the goods really landed amount to, the land-waiter and surveyor must signify the same upon oath made and subscribed by the person so over-entered, that neither he nor any other person, to his knowledge, had any of the said goods over-entered on board the said ship, or anywhere landed the same without payment of custom; which oath must be attested by the collector or comptroller, or their deputies, who then compute the duties, and set down on the back of the certificate, first in words at length, and then in figures, the several sums to be paid.—*McCull. Comm. Dict.*

Posteriora derogant prioribus.—(Things subsequent supersede things prior.)

Posteriority, coming after, the correlative of *priority*.

Posterity, succeeding generations, descendants, opposed to *ancestry*.

Post executionem statûs lex non patitur possibilitatem.—3 *Buls.* 108.—(After the execution of the estate, the law suffers not a possibility.)

Post-fine, a duty formerly paid to the king for a fine acknowledged in his court; it was paid by the cognisee after the fine was fully passed. See FINE.

Posthumous child, a child born after its father's death; or taken out of the body of a dead mother. See 10 & 11 *Wm. III.* c. 16.

Posting, registering methodically; transcribing from one book to another, and especially carrying accounts from the waste-book or journal to the ledger.

Postliminium, the return of a person to his own country, after having sojourned abroad. The right of *Postliminy* is that by virtue of which persons and things taken by an enemy in war are restored to their former state, upon coming again under the power of the nation to which they belonged.—*Internation. Law.*

Post litem motam, *depositions*. Where they relate to the subject of suit, they are not admissible when made after the litigation has commenced.—1 *Stark. Evid.* 319.

Postman, a barrister in the Court of Exchequer, who has precedence in motions; also, a letter-carrier.—3 *Bl. Com.* 28.

Post-Master, one who has charge of the conveyance of letters at a certain place; also, a portionist.

Post-Master-General, he who is at the head and has the chief control of the Post-office. He is usually one of the Ministry. There were two before 1822, when one was abolished.

Post mortem (*after death*), as a *post mortem*, or necroscopic examination.

Postnate, subsequent.

Post-natus, the second son, or one born afterwards.

Post-note, a bank-note, intended to be transmitted to a distant place by the public mail, and made payable to order; differing in this from a common bank-note, which is payable to the bearer.

Post nuptial settlement, a settlement made after marriage; it is generally deemed voluntary unless made pursuant to written articles entered into before the marriage. See FRAUDULENT CONVEYANCES.

Post-obit bond. A bond, conditioned to be void on the payment by the obligor of a sum of money upon the death of another person. In most cases the person upon whose death it is so payable is one from whom the obligor expects to derive some property. *Post-obit* bonds, and other securities of a like nature, are set aside, when made by heirs and expectants, as frauds upon the parents and other ancestors, unless the obligee or person dealing with such heir can prove satisfactorily that the stipulated payment is not more than a just indemnity for the hazard. Even the sale of a *post-obit* bond at public auction will not necessarily give it validity, or free it from the imputation of being obtained under the pressure of necessity. See BOND.

Post-office. The post-office, or duty of carrying letters, owes its establishment to the Parliament of 1643. There existed postmasters in much earlier times, but their business was confined to the furnishing of post-horses to persons who were desirous to travel expeditiously, and to the despatching of extraordinary packets upon special occasions. King James I. originally erected a post-office under the control of one Mathew de Quester, or de l'Equester, for the conveyance of letters to and from foreign parts, which office was afterwards claimed by Lord Stanhope, but was confirmed and continued to William Frizell and Thomas Witherings by King Charles I., A.D. 1632, for the better accommodation of the English merchants. In 1635 the same prince erected a letter office for England and Scotland, under the same direction of Thomas Witherings, and settled certain rates of postage, but this extended only to a few of the principal roads. The times of carriage were uncertain, and the postmasters on each road were required to furnish the mail with horses at the rate of two and a half per mile. Witherings was superseded for abuses in the execution of both his offices, in 1640, and they were sequestered into the hands of Philip Burlamachy,

to be exercised under the care and oversight of the King's principal Secretary of State. On the breaking out of the civil war, great confusions and interruptions were necessarily occasioned in the conduct of the letter office, and about that time the outline of the present more extended and regular plan seems to have been conceived by Prideaux, who was appointed Attorney-General to the commonwealth after the murder of King Charles. He was chairman of a committee in 1643 for considering what rates should be set upon inland letters, and afterwards appointed postmaster by an ordinance of both the Houses, in the execution of which office he established a *weekly* conveyance of letters into *all* parts of the nation, thereby saving to the public the charge of maintaining postmasters, and his own emoluments being probably very considerable, the Common Council of London endeavoured to erect another post-office in opposition to his, till checked by a resolution of the House of Commons, declaring that the office of postmaster is and ought to be in the sole power and disposal of the Parliament. This office was afterwards farmed by one Manly, in 1654, but in 1657 a regular post-office was erected by the authority of the Protector and his Parliament, upon nearly the same model as has been ever since adopted, and with the same rates of postage as continued till the reign of Queen Anne. After the restoration a similar office, with some improvements, was established by statute 12 Car. II. c. 35, but, by subsequent statutes, the rates of letters were altered, and some farther regulations added, and penalties were enacted in order to confine the carriage of letters to the public office only, except in some few cases.—1 *Bl. Com.* 321. The more recent statutes relating to the Post-office are 1 & 2 Vict. cc. 97 & 98; 2 & 3 Vict. c. 52; 3 & 4 Vict. c. 96 (the Penny Postage Act); 7 & 8 Vict. c. 49 (as to Colonial posts); 10 & 11 Vict. c. 85; 11 & 12 Vict. cc. 88, 117; 12 & 13 Vict. c. 66 (enabling Colonial legislature to establish inland posts); 18 & 19 Vict. c. 27; 23 & 24 Vict. c. 65. As to offences relating to the Post-office, see LARCENY.

Post-office Lands Act, 1863, 26 & 27 Vict. c. 43. This Act enables the Postmaster-General to sell or otherwise dispose of land.

Post-office Savings Banks Act, 24 & 25 Vict. c. 14, amended by 26 & 27 Vict. c. 14. See SAVINGS BANKS.

Postponement of trial. It is ground for a new trial if a common law judge improperly refuse to put off a trial.—2 *Chit. Arch. Prac. by Pren.* 1508.

No person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery; provided always, that if the court, upon the application of the person so indicted, or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms as to bail or otherwise as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly; in which case the prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent session without entering into any fresh recognizance for that purpose.—14 & 15 *Vict.* c. 100, s. 27.

Postremo-geniture, Borough-English, which see.

Post terminum (*after the term*).

Postulation, a petition.

Postulatio, the first act in a criminal proceeding.—*Civ. Law.*

Post-vene, to come after.

Potentia propinqua (*common possibility*).

Potentia debet sequi justitiam, non antecedere. 3 *Buls.* 199.—(Power ought to follow, not precede, justice.)

Potentia est duplex, remota et propinqua; et potentia remotissima et vana est quæ nunquam venit in actum.—11 *Co.* 51.—(Possibility is of two kinds, remote and near; that which never comes into action is a power the most remote and vain.)

Potentia inutilis frustra est.—*Office of Exec.* 220.—(Useless power is vain.)

Potestas regis est facere justitiam.—2 *Inst.* 374.—(The power of the king is to execute justice.)

Potestas regis juris est, non injuriæ.—3 *Inst.* 236.—(The king's power is of right, not of injury.)

Potestas strictè interpretatur.—*Jenk. Cent.* 17.—(A power is strictly interpreted.)

Potestas suprema seipsum dissolvere potest, ligare non potest.—*Bacon.*—(Supreme power can dissolve, but cannot bind itself.)

Potior est conditio defendentis.—(The condition of a defendant is the better.)

Potior est conditio possidentis.—(The condition of one possessing is the better.—2 *Wms. Exors.* 836.

Potwallers, or **Potwallopers,** persons who cooked their own food, and were on that account in some boroughs entitled to vote for Members of Parliament.—See 3 *Step. Com.* 376.

Pound [fr. *pund,* Sax.; *pondo,* Lat.] a certain weight, consisting, in troy weight, of 12, in avoirdupois, of 16 ounces; the sum of 20*s.*, which formerly weighed a pound.

Pound [fr. *pindan,* Sax.], a penfold, an enclosure, a prison in which beasts are en-

closed, for any damage or trespass done by them, until they are replevied or redeemed. It is either *overt*, i. e. open over-head; or *covert*, i. e. close. A pound-keeper is bound to receive everything offered to his custody, and is not answerable if the thing be illegally impounded.—1 *T. R.* 62. See 1 & 2 *P. & M.* c. 12; 11 *Geo. II.* c. 19; and as to feeding cattle impounded, 12 & 13 *Vict.* c. 92, ss.5 & 6.

Pound of land, an uncertain quantity of land, said to be about 52 acres.

Poundage, a certain sum deducted from a pound. Sheriff's poundage on writs of *ca. sa.* is abolished by 5 & 6 Vict. c. 98, s. 3. The amount of their poundage upon a *fi. fa.* is 1*s.* for every 20*s.* if the sum levied does not exceed 100*l.*, and 6*d.* for every 20*s.* over and above that sum. The penalty is 40*l.* if more is exacted.—28 *Eliz.* c. 4; 7 *Wm. IV.* and 1 *Vict.* c. 55.

Pound-breach, breaking open a pound in order to take cattle; it is an indictable offence, because the cattle are deemed to be in the possession of the law.

Pour faire proclaimer, an ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, &c. — *Fitzherbert's Nat. Brev.* 176.

Pourparty, to divide the lands which fall to parceners.—*O. N. B.* 11.

Pourpresture [fr. *pourpris*, Fr., an enclosure], anything done to the nuisance or hurt of the Queen's demesnes, or the highways, &c., by enclosure or building, endeavouring to make that private which ought to be public.

The difference between a *pourpresture* and a public nuisance is that *pourpresture* is an invasion of the *jus privatum* of the Crown; but where the *jus publicum* is violated, it is a nuisance.

Skene makes three sorts of this offence: (1) against the Crown; (2) against the lord of the fee; (3) against a neighbor.—2 *Inst.* 38; 1 *Reeves*, 156.

Pour seisir terres, an ancient writ whereby the Crown seised the land which the wife of its deceased tenant, who held *in capite*, had for her dower, if she married without leave; it was grounded on the statute *De Prærogativâ Regis*, 7.—17 *Edw. II.* st. 1, c. 4. It is abolished by 12 Car. II. c. 24.

Poursuivant, a king's messenger; those employed in martial causes are called *Poursuivant-at-Arms.*

There are at present, in the Herald's Office, four pursuivants, distinguished by the names following:—

(1) *Rouge Croix*, instituted at an uncertain period, but generally considered to be the most ancient. The title was doubtless derived from the cross of St George.

(2) *Blue Mantle.* An office instituted by Edward III. or Henry V., and named either in allusion to the color of the arms of France, or to that of the robes of the Order of the Garter.

(3) *Rouge Dragon.* This poursuivancy was founded by Henry VII. on the day before his coronation, the name being derived from the ensign of his ancestor, Cadwaladyr. He also assumed a red dragon as the dexter supporter of his arms.

(4) *Portcullis.* This office was instituted by the same monarch, from one of whose badges the title was derived.

Pourveyance, or **Purveyance,** the providing necessaries for the sovereign, by buying them at an appraised valuation in preference to all others, and even without the owner's consent. Indeed it was a royal right of spoil, and was long since abolished.—12 *Car. II.* c. 24; 3 *Hall. M. A.* c. viii., part 3, p. 148; and 1 *Hall. Cons. Hist.* c. vi., p. 304.

Pourveyor, or **Purveyor,** a buyer; one who provided for the royal household.

Powdikes. Destroying them in the fens of Norfolk and Ely is felony, by 22 Hen. VIII. c. 11.

Power, an authority which one person gives to another to act for him, or to do certain acts, as to make leases, raise portions, or the like; also to modify the uses of an estate, of which he has the disposal; it is an authority enabling one person to dispose of an interest which is vested in another.—2 *Lill. Abr.* 339.

Powers are either common-law authorities, declarations, or directions, operating only on the conscience of the persons in whom the legal interest is vested, or declarations or directions deriving their effect from the Statute of Uses. A power given by a will to A., an executor, to sell an estate, to whom no estate is devised, and a power given by an Act of Parliament to sell estates, as in the instance of the Land Tax Redemption Acts, are both common-law authorities. The estate passes by force of the will or Act of Parliament, and the person who executes the power merely nominates the party to take the estate. A power of attorney is also a common-law authority. A power to dispose of an estate or sum of money of which the legal estate is vested in another, is a power of the second sort. The legal interest is not divested by the execution of the power, but equity will compel the person seised of it to clothe the estate created with the legal right. Powers deriving their effect from the Statute of Uses are either given to a person who has an estate limited to him by the deed creating the power, or who had an estate in the land at the time of the execution of the deed, or to a stranger, to whom no estate is given, but the power is to be exercised for his own benefit, or to a mere

stranger to whom no estate is given, and the power is for the benefit of others.

Powers are either—

(1) *Collateral*, which are given to strangers, i. e. to persons who have neither a present nor future estate or interest in the land. These are also called *simply collateral*, or *powers not coupled with an interest*, or *powers not being interests*. These terms have been adopted to obviate the confusion arising from the circumstance that powers in gross have been by many called *powers collateral.—Savile* v. *Blacket*, 1 *P. Wms.* 777.

(2) *Relating to the land*, which are either—

(*a*) *Appendant* or *appurtenant*, because they strictly depend upon the estate limited to the person to whom they are given. Thus, where an estate for life is limited to a man, with a power to grant leases in possession, a lease granted under the power may operate wholly out of the life-estate of the party executing it, and must in every case have its operation out of his estate during his life. Such an estate must be created, which will attach on an interest actually vested in himself; or,

(*β*) *In gross*, which are given to a person who had an interest in the estate at the time of the execution of the deed creating the power, or to whom an estate is given by the deed, but which enable him to create such estates only as will not attach on the interest limited to him. Of necessity, therefore, where a man seised in fee settles his estate on others, reserving to himself only a particular power, the power is in gross. A power to a tenant for life to appoint the estate after his death amongst his children, a power to jointure a wife after his death, a power to raise a term of years to commence from his death, for securing younger children's portions, are all powers in gross.

A power may, with reference to the particular estates in the land over which it extends, have different aspects; it may, in regard to one, be a power appendant, in respect to the other, a power in gross. Thus where an estate is settled to A. for life, remainder to B. in tail, remainder to A. in fee, and A. has a power to jointure his wife after his death, this power is in gross as to the estate for life, but appendant or appurtenant as to the remainder in fee. It may affect the latter, but never can attach on the former.

An important distinction is established between *general* and *particular* powers. By a general power, we understand a right to appoint to whomsoever the donee pleases. By a particular power, it is meant that the donee is restricted to some objects designated in the deed creating the power, as to his own children.

A power shall be expounded strictly; therefore, if a [illegible] have power to make leases generally, this extends to make leases in possession only, and not in reversion.

Powers appendant may be destroyed by release, bargain and sale, or feoffment; powers in gross, by feoffment or release; but powers simply collateral, cannot be destroyed by the act of the person to whom they are given. As the appointor is merely an instrument, the appointee shall be in by the original deed.

Appointments by will are to be executed like other wills, and to be valid, although other required solemnities are not observed.—7 *Wm. IV.* and 1 *Vict.* c. 26, s. 10.

A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing not testamentary, notwithstanding it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution, or attestation, or solemnity. Provided always, that this provision shall not operate to defeat any direction in the instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument, and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.—22 & 23 *Vict.* c. 35, s. 12.

Where under a power of sale a *bonâ fide* sale shall be made of an estate with the timber thereon, or any other articles attached thereto, and the tenant for life or any other party to the transaction shall by mistake be allowed to receive for his own benefit a portion of the purchase-money as the value of the timber or other articles, it shall be lawful for the Court of Chancery, upon any bill or claim or application, in a summary way, as the case may require or permit, to declare that upon payment by the purchaser, or the claimant under him, of the full value of the timber and articles at the time of sale, with such interest thereon as the Court shall direct, and the settlement of the said principal moneys and interest under the direction of the Court upon such parties as in the opinion of the Court shall be entitled thereto, the said sale ought to be established; and upon such payment and settlement being made accordingly the Court may declare that the said sale is valid, and thereupon the legal

estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application as between solicitor and client shall be paid by the purchaser or the claimant under him (s. 13).

Where by any will which shall come into operation after the passing of this Act the testator shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid, by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper (s. 14).

The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will, or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid (s. 15).

If any testator who shall have created such a charge as is described in the fourteenth section shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested; but any sale or mortgage under this Act shall operate only on the estate and interest whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate (s. 16).

Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections 14, 15, and 16 of this Act, or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof (s. 17).

The provisions contained in sections 14, 15, and 16, shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made, under or in pursuance of any will coming into operation before the passing of this Act, 13th August, 1859, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do (s. 18).

Consult *Lord St. Leonards* or *Chance*, on '*Powers*;' and see ILLUSORY APPOINTMENT ACT; and MISTAKE.

Power of Attorney. See LETTER OF ATTORNEY.

Poynding. See POINDING.

Poyning's Law, or STATUTE OF DROGHEDA, an Act of Parliament made in Ireland, 10 Hen. VII. c. 22, A.D. 1495; so called, because Sir Edward Poyning was lieutenant there when it was made, whereby all general statutes before then made in England were declared of force in Ireland, which, before that time, they were not.—12 *Rep.* 109; 3 *Hall. Cons. Hist.* c. xviii., p. 361.

Practice, the form and manner of conducting and carrying on suits, actions, or prosecutions at law or in equity, civil or criminal, through their various stages, from the commencement to final judgment and execution, according to the principles and the rules laid down by the several courts.

As to the practice of the Courts of Common Law, see *Chitty's Archbold by Prentice*; of Courts of Equity, *Daniel* and *Smith*.

Practice Court. See BAIL COURT, and QUEEN'S BENCH.

Practitioner, he who is engaged in the exercise or employment of any art or profession.

Præbenda dicitur à præbendo, quia præberet auxilium episcopo.—3 *Rep.* 75.—(A prebendary is called from *præbendo*, because he should give assistance to the bishop.)

Præceptores, a kind of benefices, so called because they were possessed by the more eminent Templars, whom the chief master by his authority created and called *Præceptores Templi.*—*Mon. Angl.* ii. 543.

Præcipe (*command*), a slip of paper upon which the particulars of a writ are written; it is lodged in the office out of which the required writ is to be issued.

Also, an original writ, commanding the defendant, in the alternative, to do the thing required, or show the reason why he has not

done it; and the writ is drawn up in the form of a *præcipe* or command, to do something, or show cause to the contrary, giving the defendant his choice to redress the injury or stand the suit.—3 *Bl. Com.* 273. It is abolished.

Præcipe in capite, a writ out of Chancery for a tenant holding of the Crown *in capite*, viz. in chief.—*Mag. Chart.* c. 24.

Præcipe quod reddat, the form of a writ which extended as well to a writ of right as to other writs of entry or possession, beginning '*Præcipe, A. quod reddat, B. unum messagium,*' &c.—*O. N. B.* 13. Abolished.

Præcipe quod teneat conventionem, the writ which commenced the action of covenant in fines, which are abolished by 3 & 4 Wm. IV. c. 74.

Præcipe, *Tenant to the*, a person having an estate of freehold in possession, against whom the *præcipe* was brought by a tenant in tail, seeking to bar his estate by a recovery. If the latter was tenant in tail in possession, it was usual for him to convey a freehold estate to any indifferent person against whom the præcipe was brought. See RECOVERY.

Præcipitium, the punishment of casting headlong from some high place.

Præcognita, things to be previously known, in order to the understanding of something which follows.

Prædia bella, booty, property seized in war.

Prædia stipendiaria, provincial lands belonging to the people.—*Civ. Law.*

Prædia tributaria, provincial lands belonging to the emperor.—*Ibid.*

Prædia volantia. In the duchy of Brabant, certain things movable, such as beds, tables, and other heavy articles of furniture, are ranked amongst immovables, and are called *prædia volantia*, or volatile estates.—2 *Bl. Com.* 428.

Prædial tithes [fr. *prædium*, Lat., ground], such as arise merely and immediately from the ground; as grain of all sorts, hops, hay, wood, fruit, herbs.—2 *Bl. Com.* 23.

Prædict (*aforesaid*).—*Hob.* 6.

Prædium domini regis est directum dominium, cujus nullus auctor est nisi Deus.—Co. Litt. 1. (The estate of our lord the king is a direct dominion derived from God.)

Prædium dominans, an estate to which a servitude is due; the ruling estate.—*Civ. Law.*

Prædium rusticum, heritage which is not destined for the use of man's habitation; such, for example, as lands, meadows, orchards, gardens, woods, even though they should be within the boundaries of a city.—*Ibid.*

Prædium serviens, an estate which suffers or yields a service to another estate.—*Ibid.*

Prædium urbanum, a building or edifice intended for the habitation and use of man, whether built in cities, or in the country.—*Civ. Law.*

Præfectus Urbi, he was, from the time of Augustus, an officer who had the superintendence of the city and its police, with jurisdiction extending one hundred miles from the city, and power to decide both civil and criminal cases. As he was considered the direct representative of the emperor, much that previously belonged to the *prætor urbanus* fell gradually into his hands.—*Ibid.*

Præfectus vigilum, the chief officer of the night watch. His jurisdiction extended to certain offences affecting the public peace, and even to larcenies. But he could inflict only slight punishments.—*Ibid.*

Præfectus villæ (*the mayor of a town*).

Præfine, the fee paid on suing out the writ of covenant, on levying fines, before the fine was passed.—2 *Bl. Com.* 350.

Præmium pudicitiæ, the consideration given by the seducer of a chaste woman for her defilement.—2 *P. Wms.* 452.

Præmunire [a barbarous word for *præmoneri*, Lat., to be forewarned]. It is an offence so called from the words of the writ preparatory to the prosecution thereof: *præmunire facias* A. B. (cause A. B. to be forewarned) that he appear before us to answer the contempt wherewith he stands charged; which contempt is particularly recited in the preamble to the writ.

The statutes of *præmunire* were framed to encounter papal usurpation. The first of them was made in the twenty-seventh year of the reign of Edward III. (*Barr. on Stat.* 279) and was the foundation of all the subsequent statutes of *præmunire.* Subsequently several very severe Acts of Parliament were passed upon the subject, which is an offence immediately against the sovereign, because every encouragement of the papal power is a diminution of the authority of the Crown.

The original meaning of the offence is, then, introducing a foreign power into this land, and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the sovereign alone long before the Reformation. At that time the penalties of *præmunire* were indeed extended to more papal abuses than before, as the kingdom then entirely renounced the authority of the see of Rome, though not all the corrupted doctrines of the Church of Rome.

The penalties of *præmunire* were subsequently applied to other heinous offences:

(1) By 1 & 2 Ph. & M. c. 8, to molest the possessors of abbey lands, granted by Parliament to Henry VIII. and Edward VI. was a *præmunire.*

(2) To obtain any stay of proceedings, other than by arrest of judgment or error, in any suit for a monopoly, is likewise a *præmunire*, by 21 Jac. I. c. 3.

(3) To attempt to restrain the importation or making of gunpowder is also a *præmunire*, by 16 Car. I. c. 21.

(4) On the abolition by 12 Car. II. c. 24, of purveyance and the prerogative of pre-emption, or taking any victuals, beasts, or goods for the king's use, at a stated price, without the consent of the proprietor, the exercise of any such power for the future was declared to be indictable; and in any suit thereon to obtain any stay of proceedings, other than by arrest of judgment or error, is made a *præmunire*.

(5) To assert maliciously and advisedly by speaking or writing, that both or either house of Parliament have or has a legislative authority without the sovereign, is declared a *præmunire* by 13 Car. II. c. 1.

(6) By the Habeas Corpus Act, it is a *præmunire*, and incapable of the royal pardon, besides other heavy penalties, to send any subject of this realm a prisoner, under certain exceptions in the Act specified, into parts beyond the seas.

(7) By 7 & 8 Wm. III. c. 24, serjeants, counsellors, proctors, attorneys, and all officers of courts practising, without having taken the proper oaths, are guilty of a *præmunire*. See 21 & 22 *Vict.* c. 48.

(8) By 6 Anne, c. 7, to assert maliciously and directly, by preaching, teaching, or advised speaking, that any person, other than according to the acts of settlement and union, has any right to the throne of these kingdoms, or that the sovereign and Parliament cannot make laws to limit the descent of the Crown, is a *præmunire*, as writing, printing or publishing the same doctrines amounts to treason.

(9) By 6 Anne, c. 83, if the assembly of peers in Scotland, convened to elect their sixteen representatives in the British Parliament, shall presume to treat of any other matter save only the election, they incur the penalties of a *præmunire*.

(10) The 12 Geo. III. c. 11, subjects to the penalties of *præmunire* all such as knowingly or wilfully solemnise, assist, or are present at any forbidden marriage of such of the descendants of King George II. as are by that Act prohibited to contract matrimony without the consent of the Crown.

The punishment of the offence is, that, from the conviction, the defendant is out of the Crown's protection, and his lands and tenements, goods and chattels, are forfeited to the Crown; and that his body shall remain in prison during the royal pleasure, or, as some authorities have it, during life. It is not lawful, however, to kill any person attainted in a *præmunire*.—5 *Eliz.* c. 1; 4 *Step. Com.* 252, *et seq.*

Præmuniti, i. e. *prænoniti*.—*Co. Litt.* 129. (Forearmed, that is, forewarned.)

Prænomen, the name of an individual.—*Civ. Law.*

Præpositus, an officer next in authority to the alderman of a hundred, called *præpositus regius*; or a steward or bailiff of an estate, answering to the *wicnere*.—*Anc. Inst. Eng.*

Also the person from whom descents are traced under the old canons.

Præpositus ecclesiæ, a church-reeve or churchwarden.

Præpositus villæ, a constable of a town, or petty constable.

Præpropera consilia rarò sunt prospera.—4 *Inst.* 57.—(Overhasty counsels are seldom good.)

Præscriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis.—*Co. Litt.* 113.—(Prescription is a title by authority of law, deriving its force from use and time.)

Præscriptio in feodo non acquirit jus.—*Doct. and Stud.*—(Prescription in fee acquires not a right.)

Præsentare nihil aliud est quam præsto dare seu offerre.—*Co. Litt.* 120.—(To present, is no more than to give or offer on the spot.)

Præsentia corporis tollit errorem nominis : et veritas nominis tollit errorem demonstrationis. Bac. Max. 224.—(The presence of the body cures error in the name : the truth of the name cures an error of description.)

Præstat cautela quam medela.—*Co. Litt.* 304.—(Caution is better than cure.)

Præsumitur pro negante.—(It is presumed for the negative.) The rule of the House of Lords when the numbers are equal on a motion.

Præsumitur rex habere omnia jura in scrinio pectoris sui.—*Co. Litt.* 99.—(The sovereign is presumed to have all the laws in the casket of his own bosom.)

Præsumptio, intrusion, or the unlawful taking of anything.—*Leg. Hen. I.* c. 11.

Præsumptio violenta, plena probatio.—(Strong presumption is full proof.)

Præsumptio violenta valet in lege.—*Jenk. Cent.* 56.—(Strong presumption avails in law.)

Prætextu liciti non debet admitti illicitum.—10 *Co.* 88.—(Under pretext of legality, what is illegal ought not to be permitted.)

Prætor Fidei Commissarius, the judge at Rome, who enforced the performance of all fiduciary obligations and confidences.

Pragmatic sanction, a rescript or answer of the sovereign, delivered by advice of his council to some college, order, or body of people, who consult him in relation to the affairs of the community. A similar answer

given to an individual is simply called a *rescript.—Civ. Law.*

Pratique [fr. *pratica*, Ital.], a license for the master of a ship to traffic in the ports of Italy upon a certificate that the place whence he came is not annoyed with any infectious disease.—*Encyc. Lond.*

Pratum bovis, or **carucæ,** a meadow for oxen employed in tillage.

Praxis, use, practice.

Praxis judicum est interpres legum.—Hob. 96.—(The practice of the judges is the interpreter of the laws.)

Pray in aid, a petition made in a court of justice for the calling in of help from another that has an interest in the cause in question.

Preamble, introduction, preface; also, the beginning of an Act of Parliament, &c. serving to portray the intents of its framers, and the mischiefs to be remedied.

Preaudience, the right of one to be heard before another.

The preaudience of the bar is as follows:

(1) The Queen's attorney-general.
(2) The Queen's solicitor-general.
(3) The Queen's premier-serjeant (so constituted by special patent).
(4) The Queen's ancient serjeant or the eldest amongst the Queen's serjeants.
(5) The Queen's advocate-general.
(6) The Queen's serjeants.
(7) The Queen's counsel, and those who have patents of precedence from the Crown, with a Queen consort's attorney and solicitor.
(8) Serjeants-at-law.
(9) The recorder of London.
(10) Advocates of the civil law.
(11) Barristers.

It was by a Royal Warrant issued on the 14th day of December, 1814, that the attorney-general and solicitor-general acquired precedency and priority of rank over the premier and ancient serjeants. See 2 *Man. and Sel.* 254. Before the appointment of the present Queen's advocate (Sir R. J. Phillimore), in 1862, the Queen's advocate always retained his precedency before the attorney and solicitor-general, since this warrant as well as before it. He was invariably addressed first when the Secretaries of State, the Lord President of the Council, and other public functionaries communicated with the three law officers; he always signed all cases and reports first; he requested the assistance of the attorney and solicitor-general whenever he thought fit; they never refused to attend consultations at his chambers; and he often appeared with them for the Crown in various courts, and constantly led one or both of them since 1814, as well as before that date. But on the appointment of the present Queen's advocate, the Crown directed that for the future the attorney-general and solicitor-general should have precedency over the Queen's advocate.

Consult the copy of the correspondence relating to the precedence of the law officers of the Crown presented to the library of Lincoln's Inn, in 1857, by Sir F. D. Harding, the then Queen's advocate.

Prebend, a stipend granted in cathedral churches; also, but improperly, a prebendary.

A simple prebend is merely a revenue; a prebend, with dignity, has some jurisdiction attached to it.

The term prebend is generally confounded with canonicate; but there is a difference between them. The former is the stipend granted to an ecclesiastic in consideration of his officiating and serving in the church; whereas the canonicate is a mere title or spiritual quality which may exist independently of any stipend.

Prebenda, or **Probanda,** provisions, provender.

Prebendary, a stipendiary of a cathedral.

Precariæ, or **Preces,** day-works, which the tenants of certain manors are bound to give their lords in harvest time. *Magna precaria* was a great or general reaping day.

Precarious, a kind of trade carried on between two nations at war, by the intervention of a third at peace with them.

Precarious jurisprudence, applied to a fund or stock, of which a person has not the full property, whereof he cannot dispose absolutely, and which is most of it borrowed.—*Encyc. Lond.*

Precarious loan [fr. *precarium*, Lat.], a bailment at will.

Precarium, a contract by which the owner of a thing, at another's request, gives him the thing to use as long as the owner shall please. *Civ. Law.*

Precatory words, expressions in a will, praying or recommending that a thing be done.

Prece partium, the continuance of a suit by consent of both parties.

Precedence, or **Precedency,** the act or state of going before; adjustment of place.

The rules of precedence may be reduced to the following list, in which those marked * are entitled to the rank here allotted them by 31 Hen. VIII. c. 10; marked † by 1 W. & M. c. 1; marked ‖ by letters-patent, 9, 10, & 14 Jac. I. which see in *Seld. Tit of Hon.* ii. 5, 46; marked ‡ by ancient usage and established custom.—*Camden's Brit.* tit. 'Ordines;' *Milles's Cat. of Hon.* 1610; and *Chamberlayne's Prest. St. of Eng.* b. 3, c. iii.

* The Queen's children and grandchildren.
* ———— consort.
* ———— uncles.
* ———— nephews.
* Archbishop of Canterbury.
* Lord High Chancellor or Keeper, if a baron.
* Archbishop of York.
* Lord Treasurer. } if barons.
* Lord President of the Council. } if barons.
* Lord Privy Seal. } if barons.
* Lord Great Chamberlain. But see *Private Stat.* 1 *Geo. I.* c. 3. } above all peers of their own degree.
* Lord High Constable. } above all peers of their own degree.
* Lord Marshal. } above all peers of their own degree.
* Lord Admiral. } above all peers of their own degree.
* Lord Steward of the Household. } above all peers of their own degree.
* Lord Chamberlain of the Household. } above all peers of their own degree.
* Dukes.
* Marquesses.
‡ Dukes' eldest sons.
* Earls.
‡ Marquesses' eldest sons.
‡ Dukes' younger sons.
* Viscounts.
‡ Earls' eldest sons.
‡ Marquesses' younger sons.
* Secretary of State, if a bishop.
* The Bishop of London.
* ———— Durham.
* ———— Winchester.
* Bishops.
* Secretary of State, if a baron.
* Barons.
† Speaker of the House of Commons.
† Lords Commissioners of the Great Seal.
‡ Viscounts' eldest sons.
‡ Earls' younger sons.
‡ Barons' eldest sons.
‖ Knights of the Garter.
‖ Privy Counsellors.
‖ Chancellor of the Exchequer.
‖ Chancellor of the Duchy of Lancaster.
‖ Chief Justice of the Queen's Bench.
‖ Master of the Rolls.
‖ Chief Justice of the Common Pleas.
‖ Chief Baron of the Exchequer.
‖ Two Lord Justices of Appeal in Chancery, 14 & 15 Vict. c. 83.
‖ The three Vice-Chancellors, 53 Geo. III. c. 24; 5 Vict. c. 5, s. 25.
‖ Judges and Barons of the Coif. The Judge of the Court of Probate has rank and precedence with them, according to the date of his appointment (20 & 21 Vict. c. 77, s. 8). When sitting in the full court of divorce and matrimonial causes as judge ordinary, he ranks after the Chief Baron (20 & 21 Vict. c. 85, s. 3).
‖ Commissioners of the Court of Bankruptcy, 5 & 6 Vict. c. 122, ss. 59, 62.
‖ Knights Bannerets, royal
‖ Viscounts' younger sons.
‖ Barons' younger sons.
‖ Baronets.
‖ Knights Bannerets.
‡ Knights of the Bath.
‡ Attorney-General.
‡ Solicitor-General.
‡ The Queen's Advocate-General.
‡ Serjeants-at-Law.
‡ Knights Bachelors.
‖ Baronets' eldest sons.
‖ Knights' eldest sons.
‖ Baronets' younger sons.
‖ Knights' younger sons.
‡ Colonels.
‡ Doctors, with whom, it is said, rank barristers.
‡ Esquires.
‡ Gentlemen.
‡ Yeomen.
‡ Tradesmen.
‡ Artificers.
‡ Laborers.

Married women and widows are entitled to the same rank among each other as their husbands would respectively have borne between themselves, except such rank is merely professional or official; and unmarried women to the same rank as their eldest brothers would bear among men during the lives of their fathers.—2 *Step. Com.* 636.

Precedence, *Patent of,* a grant from the Crown to such barristers as it thinks proper to honor with that mark of distinction, whereby they are entitled to such rank and pre-audience as are assigned in their respective patents.

Precedent condition, such as must happen or be performed before an estate can vest or be enlarged.

Precedents, authorities or examples to be followed by courts of justice; also, forms of proceeding to be followed in similar cases.

Precedents sub silentio. Silent uniform course of practice, uninterrupted though not supported by legal decisions.—*Eunomus Dial.* iii.

Precept, a rule authoritatively given; a mandate; a command in writing by a justice of the peace or other officer, for bringing a person or record before him; the direction of a sheriff to the proper officer to proceed to the election of members of Parliament; a command to a sheriff to empanel a jury; also, a provocation whereby one incites another to commit a felony.—*Cowel.*

Preces primariæ, or **Primæ,** a right of the Crown to name to the first prebend that becomes vacant after the accession of the sovereign, in every church of the empire. This right was exercised by the Crown of England in the reign of Edward I.

Precinct, a constable's district.

Precipe. See PRÆCIPE.

Precludi non (*not to be barred*), the technical name of the commencement of a replication to a plea in bar (1 *Chit. Pl.* 627, 752), abolished by C. L. P. Act, 1852, 15 & 16 Vict. c. 76, s. 66.

Precognition, the examination of witnesses who were present at the commission of a criminal act, upon the special circumstances attending it, in order to know whether there is ground for a trial, and to serve for direction to the prosecutor. But the persons examined may insist on having their declarations cancelled before they give testimony at the trial.—*Scotch law.*

Preconizaton [fr. *præconium*, Lat., the office of a cryer], proclamation.

Pre-contract. Where one of the parties to a marriage was under a prior agreement to marry a third person, such prior agreement was called a pre-contract. It was a canonical impediment to the marriage of either party to the agreement except with the other party. The ecclesiastical courts would formerly enforce this agreement, by compelling the parties to it to enter into a public marriage, and if one of them had already married another, such prior marriage would thereby be rendered void *ab initio*; but until thus avoided it was good.—*Bishop on Marriage and Divorce*, s. 53.

Predecessor, one who has preceded another. *Burt Comp. pl.* (378).

Predial. See PRÆDIAL.

Pre-emption, the first buying of a thing; it was a privilege formerly allowed to the royal purveyor, but abolished by 12 Car. II. c. 24.

Prefer, to apply; to move for; as, 'to prefer for costs,' is a phrase to apply for costs.

Preferential shares, new shares in a company, created as a means of raising money, and which have priority as to payment of dividends over the original shares.

Pregnancy, *Plea of,* when a woman is capitally convicted, and pleads her pregnancy, execution will be respited until she be delivered. See JURY-WOMEN.

Pregnancy, an important question in legal medicine, since on its proper decision may depend the property, the honor, or the life of a woman.

In the ordinary practice of medicine, little difficulty occurs in ascertaining the presence of pregnancy. A woman when she consults a physician is frank in her avowal of the symptoms present; and from her narrative an opinion sufficiently accurate can generally be formed. The reverse, however, takes place in legal medicine. Here pregnancy may be concealed by unmarried women and even by married women, under certain circumstances, to avoid disgrace, and to enable them to destroy their offspring in its mature or immature state. It may be pretended to gratify the wishes of relatives, to deprive the legal successor of his just claims, to extort money, or to delay the execution of punishment.

Mahon has suggested a useful division of the signs of pregnancy, viz. those which affect the system generally, and those which affect the uterus.

The changes observed in the system, from conception and pregnancy, are principally the following:—Increased irritability of temper; melancholy; a languid cast of countenance; nausea; heartburn; loathing of food; vomiting in the morning, and increased salivary discharge; feverish heat, with emaciation and costiveness; occasional depravity of appetite; a congestion in the head, which gives rise to spots on the face, to headache, and erratic pains in the face and teeth. The pressure of increasing pregnancy occasions protrusion of the umbilicus, and sometimes varicose tumors, or anasarcous swellings of the lower extremities. The breasts also enlarge, an areola, or brown circle, is observed around the nipples, and a secretion of lymph, composed of milk-and-water, takes place.

All of these changes do not occur in every case of pregnancy, but in most cases many of them take place.

The changes affecting the uterus are a suppression of the menses, which generally, though not invariably, do not return at their accustomed period.

An augmentation in the size of the womb. This is not perceptible until between the eighth and tenth weeks. At that time the fœtus, with the surrounding membranes and the waters contained in them, so enlarge it, that it may be felt lower down in the vagina than formerly; nor does it ascend until it becomes so large as to arise out of the pelvis, and this is accomplished at about the fourth month. In the intermediate space an examination *per vaginam* will discover the uterus to be heavier and more resisting; and by raising it on the finger, this indication will be particularly remarked between the third and fourth months. In general, in the fourth month, the *fundus* of the *uterus* may be felt, especially in a thin person, above the anterior walls of the pelvis. The enlargement continues, and becomes visible during the fifth month: it arises to half way between the *symphysis pubis* and the *umbilicus*; in the sixth month (seventh, according to some authors) it is as high as the *umbilicus*; at the seventh, half way between the *umbilicus* and *scrobiculus cordis*, and at the eighth it has reached the latter, its highest elevation. A short time before delivery it somewhat subsides. About the middle of the pregnancy, or

between the seventeenth and twenty-second weeks, the female feels the motion of the child, and this is called *quickening*. The *vagina* is also subject to alteration, as its glands throw out more mucus, and apparently prepare the parts for the passage of the fœtus.

These, as now stated, are the signs of pregnancy usually enumerated. It would not, however, be doing justice to the subject, if it were supposed that all or most of them are the invariable attendants on pregnancy. Some may accompany diseases; others may be altogether wanting in a state of true pregnancy.—*Beck's Med. Jurisp.* 124.

Prelate, an ecclesiastic of the highest honor and dignity.

Prelector, a reader; a lecturer.

Premier, a principal minister of state; the prime minister.

Premier Serjeant, The Queen's, so constituted by letters-patent, has pre-audience over the bar after the Attorney and Solicitor-General and Queen's Advocate.

Premises, propositions antecedently supposed or proved; also houses or lands; also, that part in the beginning of a deed, which sets forth the grantor or grantee, and the land or thing granted or conveyed.

Premium, a consideration; something given to invite a loan or a bargain; the annual payment upon insurances, &c.

Premunire. See PRÆMUNIRE.

Prender [fr. *prendre*, Fr.], to take anything as of right before it is offered.

Prender de baron (*to take a husband*).

Prepense, forethought, preconceived, contrived beforehand. See MALICE.

Prerogative, a peculiar or exclusive privilege. See QUEEN.

Prerogative Court. The two archbishops have each of them a prerogative court. The appeal is to the Privy Council.—2 & 3 *Wm. IV.* c. 92. But see 20 & 21 *Vict.* c. 77, s. 4, which destroyed their jurisdiction in testamentary matters.

Prerogative Writs, processes issued upon extraordinary occasions on proper cause shown. They are the writs of *procedendo*, *mandamus*, prohibition, *quo warranto*, *habeas corpus*, *certiorari*.

Presbyter, a priest, elder, or honorable person.

Presbyterian, a member of the Church of Scotland.

Presbyterium, a presbytery; that part of the church where divine offices are performed, applied to the choir or chancel; because it was the place appropriated to the bishop, priest, and other clergy; while the laity were confined to the body of the church.—*Mon. Ang.* i. 243.

Prescription [fr. *præscribo*, Lat.], rules produced and authorized by long usage. It is known in the Roman law as *usucapio*.

Title by prescription arises from a long-continued and uninterrupted possession of property, and is thus defined by Sir Edward Coke (1 *Inst.* 113 *b.*)—*præscriptio est titulus, ex usu et tempore substantiam capiens, ab auctoritate legis.*

Every species of prescription, by which property is acquired or lost, is founded on the presumption, that he who has had a quiet and uninterrupted possession of anything for a long period of years, is supposed to have a just right, without which he would not have been suffered to continue in the enjoyment of it. For a long possession may be considered as a better title than can commonly be produced, as it supposes an acquiescence in all other claimants; and that acquiescence also supposes some reason for which the claim was forborne.—1 *Cruise's Dig.* tit. xxxi. 'Prescription,' c. i., s. 4, p. 421.

There are two kinds of prescription, viz.: (1) *negative*, which relates to realty or corporeal hereditaments, whereby an uninterrupted possession for a given time gives the occupier a valid and unassailable title, by depriving all claimants of every stale right and deferred litigation, now mainly governed by 3 & 4 Wm. IV. c. 27; and (2) *positive*, which relates to incorporeal hereditaments, and originated at the common law from immemorial or long usage only. Positive prescription is subdivided into (1) that which has been exercised by a person and his ancestors, or by a body corporate and their predecessors, and is a personal right; or (2) that which has been attached to the ownership of a certain estate, and is only exercisable by those seised of the fee-simple of such estate, technically denominated a prescription in a *que* estate.

Positive prescription has been greatly modified by the statutes 2 & 3 Wm. IV. c. 71; 2 & 3 Wm. IV. c. 100; and 4 & 5 Wm. IV. c. 88.

Prescription and custom are frequently confounded in common parlance, arising perhaps from the fact that immemorial usage was essential to both of them; but, strictly, they materially differ from one another, in that, custom is properly a local, impersonal usage, such as Borough-English, or Postremo-geniture, which is annexed to a given estate, while prescription is simply personal, as that a certain man and his ancestors, or those whose estate he enjoys, have immemorially exercised a right of pasture-common in a certain parish. Again, prescription has its origin in a grant, evidenced by usage, and is allowed on account of its loss, either actual or supposed, and therefore only those things can be prescribed for which could be raised by a grant previously to 8 & 9 Vict. c. 106, s. 2; but this principle does not necessarily hold in the case of a custom.

The common law laid down the following rules concerning *positive* prescription :—

(1) The only property claimable by positive prescription is an incorporeal hereditament.

(2) It must be founded on actual usage or enjoyment; for a mere claim will not establish the right.

(3) The use or enjoyment must have been continuous and peaceable; although an interruption of comparatively short duration will not destroy it.

(4) The usage must have been from time immemorial, or from time whereof the memory of man runneth not to the contrary, which is held to be from the beginning of the reign of Richard I.

Richard's predecessor (Henry II.) died on the 6th of July 1189, and Richard was crowned on the 3rd (or, as some say, 11th) of September 1189. It is a disputed point whether Richard's reign commenced at his own coronation, or at his predecessor's death.

This rule has been altered by 2 & 3 Wm. IV. c. 71.

(5) The prescription must be certain and reasonable.

(6) It must be laid either in a man and those whose estate he enjoys in certain property, called, as we have just seen, prescribing in a *que* estate, or in a man and his ancestors, or in a body corporate and their predecessors.

Here, a distinction should be marked :—

If a person prescribe in a *que* estate (that is, in himself and those whose estate he holds), nothing is claimable by this prescription, but such things as are incident, appendant, or appurtenant to lands; for it would be absurd to claim anything as the consequence, or appendix of an estate, with which the thing claimed has no connection; but, if he prescribe in himself and his ancestors, he may prescribe for anything whatsoever that lies in grant; not only for things appurtenant, but also such as may be in gross.

(7) A prescription in a *que* estate must always be laid in him that is tenant in fee.

(8) It cannot be for a thing which cannot be raised by grant.

(9) That which arises by matter of record cannot be prescribed for, but must be claimed by grant entered on record; such as, for instance, the royal franchise of felons' goods, and the like. These, not being forfeited till the matter on which they arise is found by the inquisition of a jury, and so made a matter of record, the forfeiture itself cannot be claimed by an inferior title. But the franchises of treasure-trove, waifs, estrays, and the like, may be claimed by prescription; for they arise from private contingencies, and not from any matter of record.

(10) A person cannot prescribe to do a wrong, or anything that would be a nuisance to others; *or* against an Act of Parliament, for that is the highest proof and matter of record in law; *or* against another's prescription.

(11) Where a man prescribes for anything in himself and his ancestors, the prescription will descend only to the blood of that line of ancestors in whom he so prescribes; but if he prescribe for it in a *que* estate, it will be inheritable precisely in the same manner as that estate, since *accessorius sequitur naturam sui principalis*. See 1 *Step. Com.* 693, and *Gale on Easements, by Willes.*

Prescription, *Corporations by*, those which have existed beyond the memory of man, and therefore are looked upon in law to be well created, such as the city of London.

Presentation, the showing or delivering of a thing to be presented (1 *C. L. Rep.* 166). It is also equivalent to corporal seisin of land, and is the offering a person to the ordinary to be instituted to a benefice. It must be in writing (29 Car. II. c. 3), and is in the nature of letters-missive to the ordinary.

The Sovereign, as *protector ecclesiæ*, is the patron paramount of all benefices which do not belong to other patrons, and usually presents by letters-patent (26 Hen. VIII. c. 1; 1 El. c. 1). The Crown possesses the right of revoking its presentation at any time before induction. A revocation may be the consequence either of a formal act, or of the demise of the Crown, or the death of the presentee before induction. The Lord Chancellor, or Lord Keeper of the Great Seal, for the time being, has the right to present to all benefices appertaining to the Crown, of or below the value of twenty pounds, in the books of first fruits, according to the valuation in the time of Henry VIII. There is no difference in the form of a presentation by the Crown or Chancellor, except that, for the most part, the one is *mandantes*, the other *rogantes*.

With regard to other patrons, it is to be noted that the right of presentation is sometimes confounded with the right of nomination; but presentation is the offering a person to the bishop, while nomination is the offering such a person to the patron. These two rights may co-exist in different persons; thus, where an advowson is vested in trustees, they have the right of presentation, while the right of nomination is in the *cestui que* trust. So, in the case of a mortgage of an advowson, the mortgagee has the right of presentation, while the mortgagor has the right of nomination. Yet the trustees or the mortgagee must judge of the qualification of the nominee. The right of nomination is not to be prejudiced by the corrupt conduct of the presentor, and *e converso*. Where one has the nomination, and another the presentation, if such right of presentation

accrue to the Crown, this shall not prejudice the inheritance of him that has the nomination, but he may still nominate to the Chancellor, who, in the name of the Sovereign, must present to the Ordinary. Should the Crown present without any such nomination, the nominator may bring his suit against the incumbent only, because the Sovereign cannot be termed an usurper.—*Mirehouse on Advow.* p. 136.

All persons seised in fee, in tail, or for life, or possessed of a term for years of a manor to which an advowson is appendant, or of an advowson in gross, may present; and this right descends by course of inheritance from heir to heir, or passes to a devisee or purchaser, unless the benefice become vacant in the lifetime of the patron, when the void turn devolves upon the personal representatives (*Mirehouse* v. *Rennell*, 7 *Bli.* 241), being, indeed, a personal right or interest disannexed from the estate in the advowson, and vested in the patron simply as an individual. And where the incumbent is also patron, if he die seised of the advowson, without having devised it, his heir is entitled to present, and not his executor, the reason being that, in this case, the descent to the heir, and the fall of the avoidance to the executor happening at the same time, the elder right prevails. If a bishop die, a church being vacant in his lifetime, the Crown exercises its prerogative to present.—*Co. Litt.* 388 *b.*

Where a person has a grant of the next presentation to a church, it is considered as a chattel-real, which, if not disposed of, will vest in his personal representatives.

When a married woman has an advowson, her husband and herself present together, and should he survive and become tenant by the courtesy, he has the right of presentation for his life. Should the benefice become void during his life, and he die before presentation, the right devolves upon his executor.—*Mirehouse on Advows.* p. 140.

Joint-tenants and tenants in common should present jointly; and if co-parceners cannot agree, the eldest sister is entitled to have the first turn, the second sister the second turn, *et sic de cæteris*, every one in turn according to seniority, and this part which the oldest thus takes by virtue of her priority of age is called the *enitia pars.*

By 7 Anne, c. 18, s. 2, if co-parceners, or joint-tenants, or tenants in common, be seised of an estate of inheritance in the advowson of any church or vicarage, or other ecclesiastical promotion, and a partition is or shall be made between them, to present by turns, that thereupon every one shall be taken and adjudged to be seised of his or her separate part of the advowson, to present in his or her turn, as if there be two, and they make such partition, each shall be said to be seised, the one of the one moiety to present in the first turn, the other of the other moiety to present in the second turn. In like manner, if there be three, four, or more, every one shall be said to be seised of his or her part, and to present in his or her turn.

An infant at any age may nominate or present.—*Hearle* v. *Greenbank*, 3 *Atk.* 710; *Arthington* v. *Coverley*, 3 *Abr. Cas. E.* 518.

A corporation aggregate presents by the corporate name under their common seal.

Should the patron become a bankrupt, and the church be void before the sale of the advowson by his assignees, the bankrupt has the right of nomination.—12 & 13 *Vict.* c. 106, s. 147; *Charman* v. *Charman*, 14 *Ves.* 580.

The same rule prevails when the patron seeks relief in the Insolvent Debtors' Court.—1 & 2 *Vict.* c. 110, s. 49.

A presentation may be revoked or varied before admission and institution, since it does not vest any right, and does not confer, before institution, any interest whatever.

The following persons cannot present: A lunatic (the Lord Chancellor then presents); an alien (the Crown has, in such a case, the right); an outlaw, during the outlawry; municipal corporations (5 & 6 Wm. IV. c. 76, s. 139; 6 & 7 Wm. IV. c. 77, s. 26; 1 & 2 Vict. c. 81); and a papist (the right devolving upon the two Universities).—10 *Geo. IV.* c. 7, ss. 16, 17, 18.

Presentative advowson. See ADVOWSON.

Presentee, one presented to a benefice.

Presenter, one that presents.

Presentment, generally taken, a very comprehensive term, including not only presentments, properly so called, but also inquisitions of office, and indictments by a grand jury; properly speaking, the notice taken by a grand jury of any offence, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the Crown; as the presentment of a nuisance, a libel, and the like, upon which the officer of the court must afterwards frame an indictment before the party presented can be put to answer it.—4 *Step. Com.* 438.

Presentments are also made in courts-leet and courts-baron, before the stewards.—1 *Step. Com.* 652.

Presentment of Bills of Exchange.

(1) For *acceptance.* A bill drawn, payable after date, need not be presented for acceptance, but if payable after sight, it is necessary to present or pay it away in some reasonable time. Foreign bills, however, payable after sight, may be kept back, according to the convenience of the holder, for any period, or circulated to an indefinite extent; they are regarded as unlimited letters of

credit. It is usual to leave a bill for acceptance twenty-four hours with the drawee during business hours. If the bill is refused acceptance, notice should be sent to the drawer and endorsers; and in the case of a foreign bill, it should be protested, and notice of the non-acceptance and the protest sent by the same post, otherwise the drawer is exonerated.

(2) For *payment*. Where the acceptance is general, the holder need not present it for payment at any particular place or time, for such omission will not exonerate the acceptor, but if the words 'but not otherwise or elsewhere' are added, it is a special acceptance, and the non-presentation at the specified time and place exonerates all parties to the bill. Bills of exchange need not be presented to acceptors *supra protest*, for honour, or to the referees in case of need, till the day following the day on which they become due, but if such day be a *dies non*, then upon the day following (6 & 7 Wm. IV. c. 58). Promissory notes must be presented for payment. The holder of a bank-note has the whole of the banking-hours of the day after he receives it, to present or forward it for payment; if he retain it after that period, he cannot return it to the previous holder. The holder of a check is allowed one clear day to present or forward it for payment; after that time he holds it at his own risk.

Presentment in Copyholds. The 4 & 5 Vict. c. 35, s. 89, enacts, that every surrender and deed of surrender to be accepted by the lord, and every will and codicil, a copy whereof shall be delivered to the lord, to the steward, or his deputy, either at a court to be holden without the presence of homages (under s. 86), or out of court, and every gift and administration by the lord or the steward, or his deputy (under ss. 87, 88), shall be forthwith entered on the rolls of the manor; and that every such entry shall for all purposes be deemed and taken to be an entry made in pursuance of a presentment at a court by the homage assembled thereat. A presentment shall not now be essential to the validity of any administration (s. 90).

When a surrender was taken out of court, the presentment, by the general custom of manors, was to be made at the succeeding general court, or, if there were a special custom for it, at the second or third court day, or within a year, or alternatively at the next court, or at the next court after a year.—1 *Scriv. Cop.* 222.

The surrender, and every other document relating to the title, on being presented in court, should have been endorsed thus:—'Presented and enrolled at a court held for the manor of ——, the —— day of ——,' and then undersigned by at least two of the homage. But presentments are now, as we have seen, abolished.

Presents, the thing then actually made or spoken of.

Present use, one which has an immediate existence, and is at once operated upon by the statute of uses.

President, one placed in authority over others; one at the head of others; a governor; a chairman.

President of the Council, a great officer of state; a member of the Cabinet. He attends on the sovereign, proposes business at the council-table, and reports to the sovereign the transactions there.—1 *Bl. Com.* 230.

Press, the. As to the laws relating to it, see 39 *Geo. III.* c. 79, amended by 51 Geo. III. c. 65, and 2 & 3 Vict. c. 12. As to newspapers and pamphlets, see 60 *Geo. III.* & 1 *Geo. IV.* c. 91; 11 *Geo. IV.* & 1 *Wm. IV.* c. 73, and 6 & 7 *Wm. IV.* c. 76. There is no censorship over the press, but the author, the printer, and the publisher of a libel are liable to an action for damages at the suit of the party injured, or to an indictment, or in certain cases to a criminal information. See LIBEL.

Pressing seamen. See IMPRESSING MEN.

Prest, a duty in money that was to be paid by the sheriff on his account, in the Exchequer, or for money left or remaining in his hands.

Prestation-money, a sum of money paid by archdeacons yearly to their bishop; also purveyance.

Prest-money, a payment which binds those who receive it.

Prestimony, or **Præstimonia**, a fund or revenue appropriated by the founder for the subsistence of a priest, without being erected into any title or benefice, chapel, prebend, or priory. It is not subject to the ordinary; but of it the patron, and those who have a right from him, are the collators.—*Canon Law.*

Presumption, a supposition, opinion, or belief previously formed.—*Wood's Inst.* 599.

Presumptions are said to be either (1) *juris et de jure*, or (2) *juris*, or (3) *hominis vel judicis*. (1) The presumption *juris et de jure* is that where law or custom establishes the truth of any point, on a presumption that cannot be overcome by contrary evidence; thus a minor or infant, with guardians, is deprived of the power of acting without their consent, on a presumption of incapacity, which cannot be rebutted. (2) The *præsumptio juris* is a presumption established in law till the contrary be proved, as the property of goods is presumed to be in the possessor; every presumption of this kind must necessarily yield to contrary proof. (3) The *præsumptio hominis vel judicis* is the conviction arising from the circumstances of any particular case. See *Best on Presumptions.*

Presumption of life or death. Where a

person is once shown to have been living, the law will in general presume that he is still alive, unless after a lapse of time considerably exceeding the ordinary duration of human life, but if there be evidence of his continuous unexplained absence from home, and of the non-receipt of intelligence concerning him for a period of seven years, the presumption of life ceases. But although a person who has not been heard of for seven years under such circumstances, is presumed to be dead, the law raises no presumption as to the time of his death. And, therefore, if anyone has to establish the precise time during those seven years at which such person died, he must do so by evidence.—*Doe* v. *Nepean*, 5 *B. & Ad.* 86; *Nepean* v. *Doe*, 2 *M. & W.* 894; *Taylor on Evidence*, s. 157.

Presumption of survivorship. The devolution of property frequently depends upon the survivorship of one of two or more persons who perish by the same calamity, such as shipwreck, battle, fire, collision of trains, &c., when there is no direct evidence as to the survivorship. In such cases the law of some countries has recourse to artificial presumptions, based upon the probabilities of survivorship resulting from age and sex; but the law of England recognizes no such presumption, but requires proof of survivorship from the person who relies upon it, and, in the absence of evidence, it considers that both or all of the persons so dying perished at the same time, and that neither transmitted his rights to the other or others. In such cases, though medical science cannot solve the difficulty, it may sometimes assist in forming a conclusion. See *Fearne's Posthumous Works*, 37, 72; *Wing* v. *Angrave*, 8 *H. L. C.* 183; *Taylor on Evidence*, 178; *Best on Presumptions*; and *Beck's Med. Jurisp.*, where the laws and regulations of the continental nations are stated.

Presumptive evidence. See CIRCUMSTANTIAL EVIDENCE.—3 *Stark. Evid.* 927.

Presumptive heir, one who, if the ancestor should die immediately, would be his heir; but whose right of inheritance may be defeated by the contingency of some nearer heir being born.

Presumptive title. A barely presumptive title, which is of the very lowest order, arises out of the mere occupation or simple possession of property (*jus possessionis*, Lat.), without any apparent right, or any pretence of right, to hold and continue such possession. This may happen where one man disseises another; or where, after the death of the ancestor, and before the entry of the heir, a stranger abates and holds out the heir. The law assumes that the actual occupant of land has the fee-simple in it, unless there be evidence rebutting such presumption, or his possession be properly explained and shown to be consonant with the right of the true proprietor of the reversionary fee. Such a presumption, in the absence of any satisfactory proof to the contrary, will sustain an action for a trespass by a wrongdoer, and will indeed be strengthened, by lapse of time, into a title complete and indefeasible.

This assumption is based on the well-known feudal maxim, that seisin must be the basis or stand-point in the deduction of every title, except in the case of descent.

Pret à usage [Fr.], loan for use; *commodatum.*

Pretensed right, where one is in possession of land, and another, who is out of possession, claims and sues for it; here the pretensed right or title is said to be in him who so claims and sues for the same.—*Mod. Cas.* 302.

Pretensed Title Statute, 32 Hen. VIII. c. 9, s. 2. It enacts that no one shall sell or purchase any pretended right or title to land, unless the vendor hath received the profits thereof for one whole year before such grant, or hath been in actual possession of the land, or of the reversion or remainder, on pain that both purchaser and vendor shall each forfeit the value of such land to the king and the prosecutor.

Preter legal, not agreeable to law.

Preterition, the entire omission of a child's name in the father's will, which rendered it null: exheredation being allowed, but not preterition.—*Civ. Law.*

Pretium affectionis, an imaginary value put on a thing by the fancy of the owner in his affection for it.—*Bell.*

Pretium sepulchri, mortuary, which see.

Pretium succedit in loco rei.—2 *Buls.* 321.—(The price succeeds in the place of the thing.)

Prevarication, a collusion between an informer and a defendant, in order to a feigned prosecution; also, any secret abuse committed in a public office or private commission.

Prevention [fr. *prævenio*, Lat.], the right which a superior person or officer has to lay hold of, claim, or transact, an affair prior to an inferior one, to whom otherwise it more immediately belongs, as when the judges prevent subaltern ones.—*Canon Law Term.*

Preventive Service, the body of armed police-officers engaged in watching the coasts for the purpose of preventing smuggling and other illegal acts. It is sometimes termed the Coast Blockade Force.

Price, equivalent paid for anything.

Price Current, a list or enumeration of various articles of merchandise, with their prices, the duties (if any) payable thereon, when imported or exported, with the drawbacks occasionally allowed upon their exportation, &c.

Lists of this description are published peri-

odically, generally once or twice a week, in most great commercial cities and towns.

Pride-gavel, a rent or tribute.

Priest, a minister of a church (13 & 14 Car. II. c. 4, s. 14). A person under 24 years of age cannot be ordained a priest.—13 *Eliz.* c. 12, and 44 *Geo. III.* c. 43.

Primæ, or **Primariæ Preces,** the right of the sovereign to name to the first prebend which becomes vacant in the church, after his accession.

Primâ facie evidence, that which not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability in its favor that it must prevail if it be credited by the jury, unless it be rebutted, or the contrary proved; *conclusive* evidence, on the other hand, is that which excludes, or at least tends to exclude, the possibility of the truth of any other hypothesis than the one attempted to be established.—1 *Stark. Evid.* 544.

Prima tonsura (*the first crop*).

Primage, a certain allowance paid by the shipper or consignee of goods to the master of a vessel for loading them.

The amount varies according to the custom of the place.

Primaria Ecclesia, the mother-church.

Primary conveyances, original conveyances; they are—

(1) Feoffments. (2) Grants. (3) Gifts.
(4) Leases. (5) Exchanges. (6) Partitions.

Primary evidence, the best evidence as distinguished from secondary evidence. See *Taylor on Evid.* 357.

Primate, a chief ecclesiastic; part of the style and title of an archbishop, thus the Archbishop of Canterbury is styled Primate of all England; the Archbishop of York is Primate of England; the Archbishop of Armagh is Primate of all Ireland; and the Archbishop of Dublin is Primate of Ireland.

Primer election, first choice.

Primer fine. On suing out the writ or *præcipe*, called a writ of covenant, there was due to the Crown, by ancient prerogative, a *primer fine*, or a noble for every five marks of land sued for; that was, one-tenth of the annual value.

Primer seisin, a feudal burthen, only incident to the king's tenants *in capite*, and not to those who held of inferior or mesne lords. It was a right which the king had, when any of his tenants *in capite* died seised of a knight's fee, to receive of the heir (provided he were of full age) one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if they were in reversion, expectant on an estate for life. It was incident to socage-tenants *in capite*, as well as those who held by knight-service. It is, however, abolished by 12 Car. II. c. 24.

Primer Serjeant, the Queen's first serjeant at law.

Primicerius, the first of any degree of men.

Primitiæ, the first fruits which were presented to the gods by the ancients; also, the profits of a living during the first year after avoidance, which formerly were taken by the Crown.

Primo beneficio, the first benefice in the sovereign's gift.

Primo excutienda est verbi vis, ne sermonis vitio obstruetur oratio, sive lex sine argumentis.—Co Litt. 68.—(The force of a word is to be first examined, lest by the fault of the diction the sentence is destroyed or the law be without arguments.)

Primogeniture, seniority, eldership, state of being first-born.

The right of primogeniture was not acknowledged by the Romans; sons and daughters all shared equally the property of their parents. In France, until the reign of Capet, even the kingdom was subject to division among the sons. In England, the custom of gavelkind and Borough-English are almost the only exceptions to this Norman rule of heritage.

Primum decretum, a provisional decree.

Prince [fr. *princeps*, Lat.], a sovereign, a chief ruler of either sex. 'Queen Elizabeth, a *prince* admirable above her sex for her princely virtues.'—*Camden.*

Princeps et respublica ex justâ causâ possunt rem meam auferre.—12 *Co.* 13.—(The prince and the republic, in a just cause, can take away my property.)

Princeps mavult domesticos milites quam stipendiarios bellicis apponere casibus.—Co. Litt. 69.—(A prince, in warlike chances, had rather employ domestic than foreign troops.)

Prince Consort, the late husband of the Queen. The husband of a queen regnant is her subject. The Act of Naturalisation of Prince Albert, 3 & 4 Vict. c. 2, required that he should take the oaths of allegiance and supremacy. It was provided by 3 & 4 Vict. c. 52, that if there should be issue of her Majesty, who at her demise should become king or queen of this realm, his royal highness should, until such issue should attain the age of eighteen, be the guardian of such issue, and should be entitled in his or her name, and under the style of Regent of the United Kingdom, to exercise the royal power. The Act, however, restrained him from giving the royal assent to any bill for varying the course of succession to the Crown as established by 12 & 13 Wm. III. c. 2, or for altering the Act of Uniformity, 13 & 14 Car. II. c. 4, relative to the services and ceremonies of the Church of England. And it further provided, that if after

becoming guardian and regent he should profess, or marry a person who professed, the popish religion, or should cease to reside in the United Kingdom, all the authorities so vested in him should determine. See QUEEN REGNANT.

Prince of Wales, the eldest son of the sovereign. He is the heir-apparent to the Crown; he is created Earl of Chester, and is Duke of Cornwall by inheritance (during the life of the sovereign), without any new creation.—2 *Step. Com.* 459. As to his rights to submarine mines and minerals in Cornwall, see 21 & 22 *Vict.* c. 109; see also 13 & 14 *Vict.* c. 78; and as to the provision for the establishment of His Royal Highness and of the Princess of Wales, see 26 & 27 *Vict.* c. 1.

Prince of Wales' Island, Singapore and **Malacca.** As to their Courts of Judicature, see 18 & 19 *Vict.* c. 93.

Princes of the Royal Blood, the younger sons and daughters of the sovereign, and other branches of the royal family who are not in the immediate line of succession.—4 *Step. Com.* 61. As to the provision for the Princess Alice on her marriage with the Prince of Hesse, see 24 *Vict.* c. 15.

Princess of Wales, the wife or widow of the Prince of Wales.

Princess Royal, the eldest daughter of the sovereign. An annuity of 8,000*l.* was settled upon her by 20 & 21 Vict. c. 2, upon her marriage with Prince Frederick William of Prussia.

Princess Sophia of Hanover, the youngest daughter of Elizabeth, Queen of Bohemia, who was the daughter of James I. On her and the heirs of her body, being Protestants, our Crown was settled, by 12 & 13 Wm. III. c. 2.

Principal, a head, a chief; also, a capital sum of money placed out at interest; also, an heir-loom, mortuary, or corse-present.

Principal and Accessary. (1) *Principals* in offences are of two degrees: (*a*) of the first degree, i. e. the actual perpetrators of the crime; (*b*) of the second degree, i. e. those who are present, aiding and abetting the fact to be done.

(2) *Accessaries* are not the chief actors in the offence, nor present at its performance, but are in some way concerned therein, either before or after the fact is committed. See ACCESSARY.

Principal and Agent, he who being competent and *sui juris* to do any act for his own benefit on his own account, employs another person to do it, is called the principal, constituent, or employer, and he who is thus employed is called the agent, attorney, proxy, or delegate of the principal, constituent, or employer. The relation thus created between the parties is termed an agency. The power thus delegated is called in law an authority. And the act, when performed, is often designated as an act of agency or procuration.—*Story on Agency*, 2. See AGENT.

Principal challenge, a species of challenge to the array made on account of partiality or some default in the sheriff or his under-officer who arrayed the panel. See CHALLENGE.

Principal and Surety. See GUARANTY.

Principalis debet semper excuti antequam perveniatur ad fidei jussores.—2 *Inst.* 19.—(The principal should always be exhausted before coming upon the sureties.)

Principia data sequuntur concomitantia.—(Certain things accompany and follow given principles.)

Principia probant, non probantur.—3 *Co.* 40.—(Principles prove, they are not proved.)

Principiis obsta.—(Oppose beginnings.)

Principiorum non est ratio.—2 *Buls.* 239.—(For principles there is no reason.)

Principis beneficium debet esse mansurum.—*Jenk. Cent.* 138.—(The benefit of a prince ought to be lasting.)

Principis patrimonium semper favorabile fuit in omni republicâ.—2 *Inst.* 272.—(The patrimony of a prince was always favourable in every commonwealth.)

Principium est potissima pars cujusque rei.—10 *Co.* 49.—(The principle of anything is its most powerful part.)

Prior, chief of a convent, next in dignity to an abbot.

Prior tempore potior jure.—(He who is first in time is preferred in law.)

Priority, an antiquity of tenure in comparison with another less ancient; also, that which is before another in order of time.

Prisage, or **Butlerage,** a custom whereby the prince challenges out of every bark laden with wine, two tuns of wine at his own price. Abolished by 51 Geo. III. c. 15; also, that share, usually a tenth part, which belongs to the sovereign or admiral out of such merchandises as are taken at sea, by way of lawful prize.

Priso, a prisoner taken in war.

Prison, a place of confinement for the safe custody of persons; a gaol.

The erection, maintenance, and regulation of gaols are provided for by several Acts of Parliament, of which see 4 Geo. IV. c. 64; 5 Geo. IV. cc. 12, 85; 6 Geo. IV. c. 40; 7 Geo. IV. c. 18; 5 & 6 Wm. IV. cc. 38, 76, s. 114, &c.; 6 & 7 Wm. IV. c. 105; 7 Wm. IV. & 1 Vict. cc. 55, 78; 2 & 3 Vict. c. 56; 3 & 4 Vict. c. 25; 5 & 6 Vict. cc. 53, 98; 7 & 8 Vict. c. 50; 11 & 12 Vict. c. 39; 12 & 13 Vict. c. 82; 13 & 14 Vict. c. 91; 16 & 17 Vict. c. 43; 17 & 18 Vict. c. 115; and 26 & 27 Vict. c. 79; c. 66 (Ireland), and c. 109 (Scotland).

The Acts as to Convict Prisons abroad are consolidated by 22 Vict. c. 25.

Prisonam frangentibus, *Statute de,* 1 Edw. II.—2 *Reeves,* c. xii., p. 290.

Prisoner, one who is deprived of his liberty. A prisoner on *matter of record* is he who, being present in court, is by the court committed to prison; a prisoner *on arrest* is one apprehended by a sheriff or other lawful officer.

Prius vitiis laboravimus, nunc legibus.—4 *Inst.* 76.—(We labored first with vices, now with laws.)

Private Acts of Parliament, Acts operating upon particular persons and private concerns of which the courts are not bound to take notice if they are not formally pleaded, so called to distinguish them from public or general acts which apply to the whole community, and of which the courts must take judicial notice. See ACT OF PARLIAMENT.

A private Act of Parliament is a mode of transferring an estate frequently resorted to in order to disentangle an estate from a mass of confusion, to unfetter its owner, or to supply careless omissions which the judicature cannot cope with. An estate-act, rarely, if ever, meddles with the title; thus, inclosure acts, while they change the land, do not change the title, for the title which an owner has to his lands or common rights, at the time of allotment or exchange, is communicated to the land he receives under the allotments or exchanges, while, under a mere private act of exchange between individuals, each holds the land under the title which attached to these lands prior to the exchange. Such an one may, therefore, be evicted, though the title to the lands he gave in exchange may be perfectly good. The characteristic of inclosure-bills, acts for partition, or exchange, is understood to be to make the lands which are received upon allotment, partition, or exchange subject to the same estates and uses as the lands in respect of which the allotment, exchange, partition, or exchange was made.

The 19 & 20 Vict. c. 120, will diminish the frequency of estate-acts.

Private Bill Office, an office of Parliament where the business of obtaining private Acts of Parliament is conducted.

Privateers. See LETTERS OF MARQUE.

Privation, a taking away or withdrawing; an abbreviation, by aphæresis, of the word *deprivation.*

Privatio præsupponit habitum.—2 *Rol. Rep.* 419.—(A deprivation presupposes a possession.)

Privatum commodum publico cedit.—*Jenk. Cent.* 223.—(Private good yields to public.)

Privatum incommodum publico bono pensatur. Jenk. Cent. 85.—(Private loss is compensated by public good.)

Privement ensient, pregnancy in its earlier stages.

Privies, those who are partakers or have an interest in any action or thing, or any relation to another. They are of six kinds:—

(1) Privies of blood, such as the heir to his ancestor.

(2) Privies in representation, as executors or administrators to their deceased testator or intestate.

(3) Privies in estate, between grantor and grantee, lessor and lessee, assignor and assignee, &c.

(4) Privies, in respect of contract, are personal privities, and extend only to the persons of the lessor and lessee.

(5) Privies, in respect of estate and contract, as where the lessee assigns his interest, but the contract between lessor and lessee continues, the lessor not having accepted of the assignee.

(6) Privies in law, as the lord by escheat, a tenant by the courtesy, or in dower, the incumbent of a benefice, a husband suing or defending in right of his wife, &c.

Privilege, an exemption from some duty, burthen, or attendance, to which certain persons are entitled, from a supposition of law, that the stations they fill, or the offices they are engaged in, are such as require all their care; and that, therefore, without this indulgence, it would be impracticable to execute such offices so advantageously as the public good requires.

It is either *personal,* i. e. granted to a person either against or beyond the course of the common law in other cases, as privilege of Parliament, or *real,* i. e. granted to a place, as to the universities, that none of either may be called to Westminster Hall, or prosecuted in other courts, on any contract made within their own precincts.

The privileges of Parliament are of three kinds: (1) The privileges which appertain to members individually. (2) Those which belong to either House in its collective capacity. (3) Those of both Houses jointly. From well-known precedents it appears that the Lords and Commons, acting concurrently, can assume the supreme power whenever the throne is vacant, or the sovereign incapable of exercising the royal functions, as happened at the Revolution in 1688; in 1788, when the sovereign authority was offered to the Prince of Wales, though George III. recovered so speedily that a regency became unnecessary; in 1812, when a restricted regency was appointed; and, subsequently, when the restrictions were removed. The separate privileges of either House are extensive, but they are at the same time uncertain and indefinite. Amongst those privileges are, the power of committing per-

sons to prison; the power of publishing matters which, if not issuing from such high authority, might become the subject of proceedings in a court of law; the power of directing the Attorney-General to prosecute persons accused of offences against the law or affecting the privilege of Parliament; and finally, a power vested in each House respectively of doing anything not directly contravening an Act of Parliament which may be necessary for the vindication or protection of itself in the exercise of its own constitutional functions. In the daily proceedings of Parliament, questions of privilege take precedence of all other business. The privileges of individual members of Parliament are, freedom of speech and person, including freedom from arrest and seizures under process from the courts of law or equity; this, however, does not extend to indictable offences, to actual contempts of the courts of justice, or to proceedings in bankruptcy. Members of Parliament are exempt from serving the office of sheriff, from obeying *subpœnas*, and serving on juries. Every member can introduce one person to the strangers' gallery. 'Privilege of Parliament' continues to Peers at all times, and to Commoners for a 'convenient' time after prorogation and dissolution. Peers are entitled to be present at the coronation of the sovereign, but places were never provided for the Commons at that ceremonial until the reign of William IV. Peers cannot be outlawed in any civil action, nor can any attachment lie against their persons; they are exempt from attending courts-leet or the *posse comitatus*; when arraigned for any criminal offence it must be before their peers, who return a verdict, not upon oath, but upon honor; they have the privilege of sitting covered in courts of justice; they may vote in Parliament by proxy.—*Dod's Parl. Comp.*

Privilege, *Writ of,* a process to enforce or maintain a privilege.

Privileged communication, a communication which a witness cannot be compelled to divulge, such as that which takes place between husband and wife, between a client and his legal adviser, and which cannot be disclosed without the client's consent; secrets of state, &c. See *Taylor on Evidence,* 749–784. Also a communication which cannot be made the ground of an action for defamation, such as that which is made *bonâ fide* by a master respecting the character of a servant to a person intending to employ him. See LIBEL.

Privileged copyholds, customary copyholds, which see.

Privileged debts, debts which an executor may pay in preference to all others, such as sick-bed and funeral expenses, the expenses of mourning, servants' wages, &c.

Privileged villenage, villein socage, which see.

Privilegia, or Laws, *ex post facto,* laws which are enacted after an act is committed, declaring it for the first time to have been a crime, and inflicting a punishment upon the person who has committed it.

Of such laws the great Roman orator thus speaks:—*Vetant leges sacratæ, vetant duodecim tabulæ, leges privatis hominibus irrogari; id enim est privilegium. Nemo unquam tulit, nihil est crudelius, nihil perniciosius, nihil quod minus hæc civitas ferre possit.*—*Cicero Pro Domo* 17.

Privilegia quæ re verâ sunt in præjudicium reipublicæ, magis tamen habent speciosa frontispicia, et boni publici prætextum, quam bonæ et legales concessiones: sed prætextu liciti non debet admitti illicitum.—11 *Co.* 88.—(Privileges which are truly in prejudice of public good, have, however, a more specious front and pretext of public good, than good and legal grants; but under pretext of legality, that which is illegal ought not to be admitted.)

Privilegium clericale, the benefit of clergy, which is abolished by 7 & 8 Geo. IV. c. 28.

Privilegium, *property propter,* a qualified property in animals *feræ naturæ,* i.e. a privilege of hunting, taking and killing them, in exclusion of others.—2 *Bl. Com.* 394.

Privilegium est beneficium personale, et extinguitur cum personâ.—3 *Buls.* 8.—(A privilege is a personal benefit, and dies with the person.)

Privilegium est quasi privata lex.—2 *Buls.* 189. (Privilege is, as it were, a private law.)

Privilegium non valet contra rempublican. Bac. Max. 25.—(A privilege avails not against public good.)

Privity, participation in interest or knowledge. See PRIVIES.

Privy [fr. *privé,* Fr.], having a participation in interest or knowledge.

Privy Council, a great council of state held by the sovereign with her councillors, to concert matters for the public service, and for the honor and safety of the realm.

The sovereign nominates privy councillors, and no patent or grant is necessary. The number of the council is indefinite, and is dependent upon the royal will. It is summoned on a warning of forty-four hours, and never held without the presence of a secretary of state; the junior delivers his opinion first, and the sovereign, if present, last; it is dissolved six months after the demise of the Crown, unless sooner determined by the successor. As to deputy-clerk of the council, see 22 & 23 Vict. c. 1.

Privy Council, *Judicial Committee of the.* See JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Privy Councillors, the sovereign's advisers.

They are made by the royal nomination, without either patent or grant; and on taking the necessary oaths, they become immediately privy councillors during the life of the sovereign who chooses them, but subject to removal at the royal discretion.

Their duties are: (1) To advise the sovereign according to the best of their cunning and discretion. (2) To advise for the sovereign's honor and good of the public; without partiality through affection, love, meed, doubt, or dread. (3) To keep the sovereign's counsel secret. (4) To avoid corruption. (5) To help and strengthen the execution of what shall be resolved. (6) To withstand all persons who would attempt the contrary. (7) To observe, keep, and do all that a true and good councillor ought to do to his sovereign.—2 *Step. Com.* 477.

Privy Purse, the income set apart for the sovereign's personal use. See CIVIL LIST.

Privy Seal and **Privy Signet.** The Privy Seal (*privatum sigillum*) is a seal of the sovereign under which charters, pardons, &c., signed by the sovereign, pass before they come to the great seal, and also used for some documents of less consequence which do not pass the great seal at all, such as discharges of recognizances, debts, &c. The Privy Signet is one of the sovereign's seals, used in sealing his private letters and all such grants as pass his hand by bill signed, which seal is always in the custody of the king's secretaries. There were formerly four clerks of the signet office, but by 14 & 15 Vict. c. 82, s. 3, the offices of clerks of the signet and of the privy seal are abolished. The practice as to the passing of letters under these seals was altered and simplified by the same statute. See 1 *Step. Com.* 626. See GREAT SEAL AND LORD PRIVY SEAL. As to forgery of the Privy Seal and Privy Signet, see FORGERY.

Privy tithes, small tithes.

Privy verdict, so called when the judge has left or adjourned the court, and the jury being agreed, in order to be delivered from their confinement, obtain leave to give their verdict privily to the judge out of court; but if the judge have adjourned the court to his own lodgings, and there receive the verdict, it is a public and not a private verdict. Privy verdicts are now wholly disused.—3 *Bl. Com.* 377.

Prize Commission. See ADMIRALTY COURT.

Prize Court. This is an international tribunal, existing only by virtue of a special commission under the great seal, during war or until the litigations incident to war have been brought to a conclusion. It is frequently confounded with the Court of Admiralty, in consequence, perhaps, of the same judge usually presiding in both courts; but this is a mistake, for the whole system of litigation and jurisprudence in the prize court, though exceedingly important, is peculiar to itself, and is governed by rules not applying to the instance court of the Admiralty, which is a mere civil tribunal.

In this court are directly decided, not only questions relating to captures, prize, and booty (being prize on shore), but also questions upon the law of nations; though sometimes the latter, and even the construction of treaties, are collaterally argued, and determined in other courts.

Pro [*for*, or *in respect of*], in the grant of an annuity *pro consilio*, showing the cause of a grant amounts to a condition; but in a feoffment or lease for life, &c. it is the consideration, and does not amount to a condition; for the state of the land by the feoffment is executed, and the grant of the annuity is executory.—*Plowd.* 412.

Proamita, a great paternal aunt, the sister of one's grandfather.

Proamita magna, a great great aunt.

Proavia, a great grandmother.

Proavunculus, a great great uncle.

Proavus, a great grandfather.

Probandi necessitas incumbit illi qui agit.—(The necessity of proving lies upon him who brings the charge.)

Probate, official proof of a will. This is obtained by the executor in the Probate Court, and is either in *common form*, or *per testes*, in solemn form of law. When the will is so proved, the original must be deposited in the registry of the court, and a copy thereof on parchment is made out under its seal, and delivered to the executors, together with a certificate of its having been proved, all which together is usually styled the *probate*.—55 *Geo. Com.* 205. As to probate duty, see 2 *Step. III.* c. 184, and 22 & 23 *Vict.* c. 36, s. 1.

Probate, Court of, a tribunal recently established by 20 & 21 Vict. c. 77, amended by 21 & 22 Vict. c. 95, to which the jurisdiction of the Ecclesiastical Courts in testamentary matters has been transferred. As to a site for the court and offices, see 22 & 23 Vict. c. 16.

Probation, proof, evidence, testimony.

Probationer, one who is upon trial.

Probationes debent esse evidentes, scil. perspicuæ et faciles intelligi.—*Co. Litt.* 283.—(Proofs ought to be evident, *to wit*, perspicuous and easily understood.)

Probator, an examiner; an accuser or approver, or one who undertakes to prove a crime charged upon another.

Probatory term, a time for taking testimony.

Probatum est (*it is tried* or *proved*).

Probi et legales homines [Lat.] (*good and lawful men*).

Procedendo, a writ which issues out of the common law jurisdiction of the Court of Chancery, when judges of any subordinate court delay the parties, for that they will not give judgment either on the one side or on the other, when they ought so to do. In such a case, a writ of *procedendo ad judicium* shall be awarded, commanding the inferior court in the Queen's name to proceed to give judgment, but without specifying any particular judgment; for that, if erroneous, may be set aside by proceedings in error, or by writ of false judgment; and upon further neglect or refusal, the judges of the inferior court may be punished for their contempt by writ of attachment, returnable in the courts at Westminster. It also lies where an action has been removed from an inferior to a superior court by *habeas corpus*, *certiorari*, or any like writ, and it appears to the superior court that it was removed on insufficient grounds. A suit once so remanded shall never afterwards be removed before judgment in any court whatever.—21 *Jac. I.* c. 23.

Procedendo on Aid Prayer. If one pray in aid of the Crown in a real action, and aid be granted, it shall be awarded that he sue to the sovereign in Chancery, and the justices in the Common Pleas shall stay until this writ of *procedendo de loquelâ* come to them. So also on a personal action.—*N. N. B.* 342.

Proceeds, the sum, amount, or value of goods, &c. sold, or converted into money.

Proceres, chief magistrates.

Procès verbal [Fr.], an authentic minute of an official act, or statement of facts.

Process, it is largely taken for all the proceedings in any action or prosecution, real or personal, civil or criminal, from the beginning to the end; strictly, the summons by which one is cited into a court, because it is the beginning or principal part thereof, by which the rest is directed.—*Brit.* 138.

At *common law* the superior courts at Westminster, in personal actions, differed greatly, before the Uniformity of Process Act, in their modes of process, and even the same court admitted a considerable variety of methods, according to the circumstances of the case.

The varieties as to process in personal actions may be summed up thus:—In each of the courts the proceeding against attornies and officers—in the Queen's Bench and Exchequer, that against prisoners also—was by bill without process; and in other cases their processes or modes of commencing the suits were as follows:—

In the Queen's Bench.

By original:—
Original writ adapted to the action.

By bill:—
(1) Attachment of privilege . . { (1) With *ac etiam*, or bailable. (2) Not bailable.
(2) Bill of Middlesex { (1) Bailable. (2) Not bailable.
(3) Latitat . . { (1) Bailable. (2) Not bailable.
(4) Bill and summons.

In the Common Pleas.

By original:—
(1) Original writ adapted to the action.
(2) Original writ *quare clausum fregit.*
(3) Common capias { (1) Bailable. (2) Not bailable.

By bill:—
(1) Attachment of privilege.
(2) Bill and summons.

In the Exchequer of Pleas.

(1) *Venire ad respondendum.*
(2) *Subpœna ad respondendum.*
(3) *Quo minus capias.*
(4) *Venire* of privilege.
(5) *Capias* of privilege.
(6) Bill and summons.

1*st Com. Law Rep.* 74.

The process now for the commencement of all personal actions is the same in all the courts, and is called a writ of summons. The three real actions are commenced by original. The mixed action of ejectment by writ of ejectment.

The ordinary process, in *Chancery* suits, is service of a copy of the bill or claim, with an endorsed citation, which requires the defendant to appear on a certain day. In the case of privilege of peerage, a letter-missive, requesting the defendant to appear, is first obtained and served, and on his default, service of a copy of the bill in the ordinary way.

The mode of commencing an *ecclesiastical suit*, and bringing the parties before the court, is, by process, called a *citation* or summons, containing the name of the judge, the plaintiff and defendant, the cause of complaint, and the time and place of appearance. This citation, in ordinary cases, is obtained as a matter of course, from the registry of the court, and under its seal; but in special cases the facts are alleged in what is called an *act of court*, and upon those facts the judge or his surrogate decrees the party to be cited; to which, in certain cases, is added an *intimation*; and if the party do not appear, or appearing, do not show cause to the contrary, the prayer of the plaintiff set forth in the decree will be granted.

Some suits in the Court of Probate, and all suits in the Court for Divorce and Matrimonial Causes, are commenced by citation.

In *criminal* causes, if the offender be not in custody before indictment, the process for

treason, felony, or misdemeanor, is *capias* to bring him before the court. But in misdemeanors it is also the practice, upon an indictment found during the sessions or assizes, to issue a *bench-warrant*, signed by a judge or two justices of the peace, to apprehend the offender.

Processum continuando, a writ for the continuance of process after the death of the chief justice or other justices in the commission of *oyer* and *terminer*.—*Reg. Orig.* 128.

Processus derivatur à procedendo, ab originali ad finem.—(Process is derived from *procedendo*, proceeding from the beginning to the end.)

Processus legis est gravis vexatio; executio legis coronat opus.—*Co. Litt.* 289.—(The process of law is a heavy vexation; the execution of the law crowns the labor.)

Prochein amy [*proximus amicus*, Lat.], the next friend or next of kin to a child in his nonage, who in that respect is allowed to deal for the infant in the management of his affairs; as to be his guardian if he hold land in socage, and in the redress of any wrong done to him. See NEXT FRIEND.

Prochein avoidance, a power to present a minister to a church when it shall next become void.

Prochronism [fr. πρόχρονος, Gk., anterior], an error in chronology; a dating a thing before it happened.

Proclamation, publication by authority; a notice public. As to royal proclamations, see 1 *Edw. VI.* c. 12. Proclamation is used particularly in the beginning or calling of a court, and at the discharge or adjourning thereof, for the attendance of persons and despatch of business.

The writ of proclamation in outlawry is abolished.

Proclamation of rebellion, a writ whereby a man not appearing on his *subpœna*, or an attachment in Chancery, is deputed and declared a rebel if he render not himself by the day assigned. It is abolished. *See Consol. Ord.* 1860, xxx., r. 5.

Proclamation of recusants, a proceeding whereby such persons were formerly convicted on their non-appearance at the assizes.—29 *Eliz.* c. 6; 3 *Jac. I.* c. 4.

Proclamations, *Fine with.* To render a fine more universally public and less liable to be levied by fraud or covin, it was directed by 4 Hen. VII. c. 24 (in confirmation of a previous statute), that a fine after engrossing should be openly and solemnly read and proclaimed in court (during which all pleas should cease) sixteen times, viz. four times in the term in which it was made, and four times in each of the three succeeding terms, which was reduced to once in each term by 31 Eliz. c. 2, and these proclamations were endorsed on the record. Abolished by 3 & 4 Wm. IV. c. 74.

Proclamator, an officer of the Court of Common Pleas.

Pro confesso, where a bill is filed in Chancery, to which the defendant does not answer, the matter contained in the bill shall be taken as if it were confessed by defendant. See CONFESSO, BILL TAKEN PRO.

Proconsules, justices in eyre.—*Cowel.*

Proctor [fr. *procurator*, Lat.], a manager of another person's affairs; also, a species of constable in our universities.

Proctors in the Ecclesiastical and Admiralty courts discharge duties similar to those of solicitors and attornies in other courts. In order to entitle a person to be admitted a proctor to practise in the Court of Arches, it is required that he shall have served a clerkship of seven years, under articles, with one of the thirty-four senior proctors, who must be of five years' standing, and who, by the rules of the court, is prohibited from taking a second clerk until the first shall have served five years, except in the event of the death of a proctor to whom a clerk may have been articled before the completion of his clerkship. In this case any other of the thirty-four senior proctors may take such clerk for the remainder of the term, although he himself may at the same time have a clerk of less than five years' standing. Before a clerk is permitted to be articled, he is required to produce a certificate of his having made reasonable progress in classical education.

When the term of seven years is completed, the party is admitted a notary by a faculty from the Archbishop of Canterbury; a petition is then presented to his grace, accompanied by a certificate, signed by three advocates and three proctors, that the party applying to be admitted has served as articled clerk to a proctor of the court for the full term of seven years. If this certificate be approved, the archbishop issues his fiat, and a commission is directed to the Dean of the Arches, by whom the party is admitted, under the title of a supernumerary, with similar ceremonies to those observed on the admission of an advocate. They appear in court in black stuff gowns. From the jurisdiction of the ecclesiastical courts having been mainly abolished, the 20 & 21 Vict. c. 77, ss. 43, 105, & 106, and c. 85, s. 69, award them compensation, and admit them to practise, not only in the Probate and Divorce Courts, but also in the Courts of Equity and Common Law. See 21 & 22 *Vict.* c. 95, s. 9, and c. 108, s. 13.

Proctors of the clergy, they who are chosen and appointed to appear for cathedral or other collegiate churches; as also for the common clergy of every diocese, to sit in the convocation-house in the time of Parliament.

Procuration, an agency, the administration of the business of another; also money which

parish-priests pay yearly to the bishop or archdeacon, *ratione visitationis*; these are also called *proxies*, and it is said that there are three sorts —*ratione visitationis, consuetudinis, et pacti.*—*Hardr.* 180.

Bills of exchange may be drawn, accepted, or endorsed by procuration, i.e. by an agent who has an authority for such a purpose.

Procuration fee, a sum of money or commission taken by scriveners on effecting loans of money.

A solicitor for a mortgagee may now take any amount of procuration money on a loan by way of mortgage, the 12 Anne, st. 2, c. 16, s. 2, limiting it to 5*s.* in the pound, being abolished by 17 & 18 Vict. c. 90.

Procuratio est exhibitio sumptuum necessariorum facta prælatis, qui diœceses peragrando, ecclesias subjectas visitant.—*Dav.* 1.—(Procuration is the providing necessaries for the bishops, who, in travelling through their dioceses, visit the churches subject to them.)

Procurationem adversus nulla est præscriptio. Dav. 6.—(There is no prescription against procuration.)

Procurator, one who has a charge committed to him by any person; an agent.

Procurator Fiscal, the public prosecutor in Scotland, who institutes the preliminary inquiry into crime within his district, and acts generally under the instructions of the Lord Advocate.

Procuratores ecclesiæ parochialis, churchwardens.—*Paroch. Antiq.* 562.

Procuratorium, the instrument by which any person or community constituted or delegated their proctor to represent them in any court or cause.

Procuratory of resignation, a proceeding in the law of Scotland, by which a vassal authorises the fee to be returned to his superior, either to remain the property of the superior, in which case it is said to be a resignation *ad remanentiam*, or for the purpose of the superior's giving out the fee to a new vassal or to the former vassal and a new series of heirs, which is termed a resignation in favor. It is analogous to the surrender of copyholds in England.

Prodes homines, the barons of the realm.

Prodition, treason, treachery.

Proditor, a traitor. Obsolete.

Proditoriè (*treasonably*).

Production, the creation of objects which constitute wealth. The requisites of production are labor, capital, and the materials and motive forces afforded by nature. Of these, labor, and the raw material of the globe, are primary and indispensable. Natural motive powers may be called in to the assistance of labor, and are a help, but not an essential, of production. The remaining requisite, capital, is itself the product of labor; its instrumentality in production is therefore, in reality, that of labor in an indirect shape.—1 *Mill's Pol. Eco.* 124.

Pro eo quo (*for this that*).

Pro falso clamore suo, a nominal amercement of a plaintiff for *his false claim*, which used to be inserted in a judgment for the defendant. Obsolete.

Profaneness, irreverence of what is sacred.

Profer [fr. *proférer*, Fr.], to produce; an offer or endeavor to proceed in an action; also, the time appointed for the accounts of officers in the Exchequer, which was twice a year.—3 & 4 *Wm. IV.* c. 99, s. 2.

Profert in curiâ (*he produces in court*), where either party alleged any deed, he was generally obliged, by a rule of pleading, to make *profert* of such deed; that is, to produce it in court simultaneously with the pleading in which it was alleged. This, in the days of oral pleading, was of course an actual production in court. Since then, it consisted of a formal allegation that he showed the deed in court, it being, in fact, retained in his own custody.—*Step. Plead.* 72. See OYER. Abolished by C. L. P. A. 1852, s. 55.

Profession, calling, vocation, known employment; divinity, physic, and law are called the learned professions.

Profit and Loss, the gain or loss arising from goods bought or sold, the former of which, in book-keeping, is placed on the creditor's side, the latter on the debtor's side. *Net profit* is the gain made by selling goods at a price beyond what they cost the seller, and beyond all costs and charges.

Profits, the advantages which land yields in the shape of rent, issues, or other emoluments; also gains, pecuniary advantage, from whatever source derived.

Profits mesne. See MESNE PROFITS.

Prohibetur ne quis faciat in suo quod nocere possit alieno: et sic utere tuo ut alienum non lædas.—9 *Co.* 59.—(It is prohibited for any to do that on his own property which may injure another's; and so use your own, that you do not hurt another's.)

Prohibition, a writ to forbid any court to proceed in any cause there depending, on the suggestion that the cognizance thereof belongs not to such court. It is a remedy provided by the common law against the encroachment of jurisdiction.

This writ issues not only out of the Queen's Bench, but also out of the Courts of Chancery, Exchequer, and Common Pleas, to any inferior court of common law, or to the courts of the counties palatine, to the county courts or courts baron, or to the courts christian or ecclesiastical, the university courts, or the Court of Admiralty, when they concern themselves

with any matter not within their jurisdiction, or where they transgress the bounds prescribed to them by the laws of England. If either the judge or a party proceed after such prohibition, an attachment may be had against them for contempt, at the discretion of the court that awarded it; and an action for damages will lie against them, by the party injured. It is doubtful whether a prohibition will lie to the Court for Divorce and Matrimonial Causes. See *Forster* v. *Forster and Berridge*.—8 *Law Times*, 661.

The proceedings to obtain this writ are the following:—

The party aggrieved in the court below, applies to the superior court, setting forth the nature and cause of his complaint, in being drawn *ad aliud examen*, by a jurisdiction or manner of process disallowed by the laws of the kingdom. This used formerly to be done by filing, as of record, what was called a suggestion, containing a formal statement of the facts; but now by 1 Wm. IV. c. 21, it is provided, that it shall not be necessary to file any suggestion, but that an application for this writ may be made by affidavits only, that is, in the way of an ordinary motion, by a rule to show cause; upon which, if the matter alleged appear to the court to be sufficient, the writ immediately issues, commanding the judge not to hold, and the party not to prosecute the plea. But sometimes the point may be too nice and doubtful to be decided merely upon a motion, and then for the more solemn determination of the question, the party applying for the writ is directed by the court to declare in prohibition, that is, to deliver a declaration against the other, setting forth in a concise manner so much of the proceeding in the court below as may be necessary to show the ground of the application, praying that a writ may issue; and this used formerly to be connected with an allegation, that the party sued on behalf of the Crown, as well as of himself, and of a supposition or fiction (which was not traversable), that the defendant had proceeded in the suit below, notwithstanding a writ of prohibition. But by the statute just quoted, the use of these forms is now expressly abolished; and it is provided, that to this declaration the party defendant may demur, or plead such matters by way of traverse or otherwise as may be proper to show that the writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given that the writ do or do not issue, as justice may require; and the party in whose favor judgment shall be given, whether on nonsuit, verdict, demurrer, or otherwise, shall be entitled to the costs attending the application and subsequent proceedings, and have judgment to recover the same; and in case a verdict shall be given for the party plaintiff in such declaration, it shall be lawful for the jury to assess damages, for which judgment shall also be given; but such assessment shall not be necessary to entitle the plaintiff to costs. As to *procedendo* to a county court, see 19 & 20 *Vict.* c. 108, ss. 40–42, 44.—4 *Step. Com.* 10.

Prohibitio de vasto, directa parti, a judicial writ which used to be addressed to a tenant prohibiting him from waste, pending suit.—*Reg. Jud.* 21; *Moor*, 917.

Pro indiviso (*as undivided*), the possession or occupation of lands or tenements belonging to two or more persons, whereof none knows his several portion; as coparceners before partition.

Projet, the draft of a proposed treaty or convention.

Pro læsione fidei. See LÆSIONE FIDEI.

Prolem ante matrimonium natam, ita ut post, legitimam, lex civilis et succedere facit in hæreditate parentum; sed prolem, quam matrimonium non parit, succedere non sinit lex Anglorum.—*Fort.* c. 39.—(The civil law permits both the offspring born before, and the offspring born after marriage, to be the heirs of their parents; but the law of the English does not suffer the offspring not produced by the marriage to succeed.)

Proles, progeny.

Proletarius, a person who had no property to be taxed, but paid a tax only on account of his children.—*Civ. Law.*

Prolicide [fr. *proles*, Lat., offspring, and *cædo*, to kill], the destruction of human offspring, It is either fœticide or infanticide, which see.—*Dungl.*

Prolixity, an unnecessary, superfluous, or impertinent statement.

Prolocutor, the foreman; the speaker of a convocation.

Prolocutor of the Convocation House, an officer chosen by ecclesiastical persons publicly assembled in convocation by virtue of the sovereign's writ; at every Parliament there are two prolocutors, one of the upper house of convocation, the other of the lower house, the latter of whom is chosen by the lower house, and presented to the bishops of the upper house as their *prolocutor*, that is, the person by whom the lower house of convocation intends to deliver its resolutions to the upper house, and have its own house especially ordered and governed; his office is to cause the clerk to call the names of such as are of that house, when he sees cause, to read all things propounded, gather suffrages, &c.

Prolytæ, students of the civil law during the fifth and last year of their studies.

Promatertera, a great maternal aunt; the sister of one's grandmother.

Promatertera magna, a great great aunt.

Promise, a voluntary engagement for the performance or non-performance of some particular thing, which may be made either by deed, or without deed, when it is said to be by parol; *promise* is usually applied when the engagement is by parol only, for a promise by deed is technically called a *covenant.* See CONTRACT.

Promissee, one to whom a promise has been made.

Promissor, one who makes a promise.

Promissory note, a written engagement by one person to pay another therein named, absolutely and unconditionally, a certain sum of money at a time specified therein. It is generally negotiable by being made payable to order or to the bearer, for it is rarely made payable only to a particular person named therein. The person who makes the note is called the maker, and the person to whom it is payable is called the payee; when it is negotiated by the indorsement of the payee, he is called the indorser, and the person to whom the note is transferred is the indorsee.—*Story on Prom. Notes,* 1; *Chitty on Bills.*

Promoter, one who in popular and penal actions prosecutes offenders in his own name and that of the Queen, and is entitled to part of the fines and penalties for so doing.

These, among the Romans, were called *quadruplatores* or *delatores*; in English also, informers.

Sir Thomas Smith observes, that promoters belong chiefly to the Exchequer and Queen's Bench. My Lord Coke calls them *turpidum hominum genus.*—5 *Inst.* 191.

Promulgation, publication; open exhibition.

Promutuum, a quasi contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, delivered to him through mistake, contracts the obligation of restoring as much.

It resembles the contract of *mutuum.* (1) That in both a sum of money or some fungible things are required. (2) That in both there must be a transfer of the property in the thing. (3) That in both there must be returned the same amount or quantity of the thing received. *Civ. Law.*

Pronepos, a great grandson.

Pronotary, first notary.

Pronurus, the wife of a great grandson.

Proof, evidence, testimony, convincing token, means of conviction.

Bracton says, there is *probatio duplex* by witnesses *vivâ voce,* and *probatio mortua* by deeds, writings, &c. See EVIDENCE.

As to the proof of colonial acts of state and legal proceedings, see 14 & 15 *Vict.* c.99, s. 7.

Pro partibus liberandis, an ancient writ for partition of lands between coheirs.—*Reg. Orig.* 316.

Propatruus magnus, a great great uncle.

Proper feuds, the original and genuine feuds held by pure military service.

Property, the highest right a man can have to anything, being used for that right which one has to lands or tenements, goods or chattels, which does not depend on another's courtesy.

Property is of three sorts; absolute, qualified and possessory.

Property in realty is acquired by entry, conveyance, descent, or devise; and in personalty, by many ways, but most usually by gift, bequest, or bargain and sale.

Property qualification, for members of Parliament, abolished by 21 & 22 Vict. c. 26.

Property-tax Acts. See INCOME-TAX ACTS.

Prophecies. See FALSE PROPHECIES.

Propinqui et consanguinei, the nearest of kin to a deceased person.

Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem.—*Co. Litt.* 10.—(He who is nearer excludes him who is near; he who is near, him who is remote; he who is remote, him who is remoter.)

Propinquity, kindred, parentage.

Proponent, the propounder of a thing.—*Eccl. Law.*

Proportum, intent or meaning.—*Cowel.*

Proposal, a statement in writing of some special matter submitted to the consideration of a chief clerk in the Court of Chancery, pursuant to an order made upon an application *ex parte,* or a decretal order of the court. It is either for maintenance of an infant, appointment of a guardian, placing a ward of the court at the university, or in the army, or apprentice to a trade; for the appointment of a receiver, the establishment of a charity, &c.

Propositio indefinita æquipollet universali.—(An indefinite proposition is equivalent to a general one.)

Propositus, the person proposed; the person from whom a descent is traced.

Pro possessore habetur qui dolo injuriâve desiit possidere.—*Office of Exec.* 166.—(He is counted a possessor whose possession has been disturbed by fraud or injury.)

Proprietary, he who has a property in anything.

Proprietary chapels, those belonging to private persons who have purchased, or erected them with a view to profit or otherwise.

Proprietas verborum est salus proprietatum. Jenk. Cent. 16.—(Propriety of words is the salvation of property.)

Proprietate probandâ, *de,* a writ addressed to a sheriff to try by an inquest in whom certain property, previous to distress, subsisted.—*Finch. L.* 316.

Proprietates verborum observandæ sunt.—

Jenk. Cent. 136.—(The proprieties of words are to be observed.)

Proprio vigore [Lat.] (*by its own force*).

Propter jus sanguinis duplicatum, tam ex parte patris quam ex parte matris, dicitur hæres propinquior soror, quam frater de. aliâ uxore.—3 Co. 41.—(On account of the double right of blood, as well on the part of the father as the mother, the sister is called the next heir, rather than the brother by another wife.) But see CANONS OF INHERITANCE.

Pro querente [abbrev. *pro quer.*] (*for the plaintiff*).

Pro ratâ (*in proportion*).

Pro re natâ (*for the existing occasion*).

Prorogated jurisdiction, a power conferred by consent of the parties upon a judge who would not otherwise be competent.—*Scotch Law.*

Prorogation, prolonging or putting off to another day.

A prorogation is the continuance of the Parliament from one session to another, as an adjournment is a continuation of the session from day to day.

Prorogation never extends beyond eighty days, but fresh prorogations may take place from time to time by proclamation.

Prosecution, a proceeding either by way of indictment or information, in the criminal courts, in order to put an offender upon his trial.

Prosternation [fr. *prosterno*, Lat.], act of casting down.

Pro tanto (*for so much*).

Protectio trahit subjectionem, et subjectio protectionem.—Co. Litt. 65.—(Protection begets subjection, subjection protection.)

Protection, defence, shelter from evil, especially from being arrested; also, an immunity granted by the Crown to a certain person to be free from suits at law for a certain time, and for some reasonable cause; it is a branch of the royal prerogative. It is now very rarely, if ever, resorted to.

Protection Acts, 5 & 6 Vict. c. 116, and 7 & 8 Vict. c. 96.

Protectionibus, *de,* the statute 33 Edw. I. stat. 1, allowing a challenge to be entered against a protection, &c.

Protector of the Settlement, the person appointed by the Fines and Recoveries' Act, in substitution of the old tenant to the *præcipe,* whose concurrence in barring estates-tail in remainder is required in order to preserve, under certain modifications, the control of the tenant for life over the remainder man.

The protector is thus defined:—'If, at the time when there shall be a tenant-in-tail of lands under a settlement, there shall be subsisting in the same lands, or any of them under the *same* settlement, any estate for years determinable on the dropping of a life or lives, or any greater estate (*not being an estate for years*), prior to the estate-tail, then the owner of the prior estate, or the first of such prior estates (if more than one) then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being, for all the purposes of this Act, deemed the prior estate), shall be the *protector of the settlement,* so far as regards the lands in which such prior estate shall be subsisting, and shall for all the purposes of this Act be deemed the owner of such prior estate, *although* the same may have been charged or incumbered either by the owner thereof or by the settlor, or otherwise howsoever; and *although* the whole of the rents and profits be exhausted or required for the payment of the charges and incumbrances of such prior estate, and *although* such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner.' It is to be observed, that his prior estate must continue to subsist, for if it be merged, surrendered, or determined by forfeiture, it is presumed that he would cease to be the protector. The section then goes on to enact, 'that *an estate by the courtesy,* in respect to the estate-tail, or of any prior estate created by the *same* settlement, shall be deemed a prior estate under the same settlement within the meaning of this clause; and that *an estate by way of resulting use or trust* to or for the settlor, shall be deemed an estate under the same settlement within the meaning of this clause' (s. 22).

'Where two or more persons shall be owners of a prior estate under a settlement, the sole owner of which would, in respect thereof, have been the protector, each of such persons in respect of such undivided share as he could dispose of, shall, for all the purposes of this Act, be deemed the owner of a prior estate, and shall be the sole protector to the extent of such undivided share' (s. 23). Where the estate conferring the protectorship is limited to a married woman, the husband and wife are protectors as one owner, unless the estate be settled to her separate use, when she is sole protector (s. 24).

'Where an estate shall be limited by a settlement by way of confirmation, or where the settlement shall merely have the effect of restoring an estate, in either of those cases, such estate, for the purposes of this Act, so far as regards the protector, shall be deemed a subsisting estate under such settlement' (s. 25); excepting a lease at a rent, in which case the lessee is not to be a protector (s. 26).

No woman, in respect of her dower, and no

bare trustee, heir, executor, administrator, or assign, in respect to any estate taken by him *as such*, shall be the protector, *except* he be a bare trustee under a settlement made before the passing of this Act, August 28th, 1833 (ss. 27 & 31). A trustee, therefore, having the first immediate estate of *freehold*, will be the protector of a settlement made before August 28th, 1833. Where the owner of the prior estate is excluded by the 26th and 27th sections, then the person, if any, who, if such estate did not exist, would have been the protector, shall be such protector (s. 28).

Where, on or before December 31st, 1833, an estate *under a settlement* shall have been disposed of either absolutely or otherwise, and either for valuable consideration or not, the person who, in respect of such estate, would have been the person to make a tenant to the *præcipe* for suffering a common recovery of the lands entailed by *such* settlement, is, during the continuance of the estate, to be the protector (s. 29). Also, if any person having, on or before December 31st, 1833, disposed of a remainder or reversion in fee, would not under the general provisions of the Act, be the protector, then the person who would have been the person to make the tenant to the *præcipe* is, during the continuance of the estate which would have conferred the right to make the tenant, declared to be the protector (s. 30).

It will be necessary then, where it is intended to bar an entail created on or before December 31st, 1833, to ascertain in whom the immediate freehold of the lands is vested, in the same way as it was required in order to determine who was the proper person for making a tenant to the *præcipe* in a recovery. The estate, under the 29th section, must be created by the same instrument which creates the estate-tail; for instance, if land be conveyed to A. for life, and afterwards a settlement of the reversion be made to B. in tail, and A. alienates his life estate to C. on or before December 31st, 1833, C. would not be the protector under this Act, though he would have been the person to make the tenant to the *præcipe* under the old law; and this is one case in which the old tenant to the *præcipe* is not analogous to the protector of a settlement. If, however, the estate for life to A., and the estate-tail to B. were created by the *same* settlement, then C. would have been the protector. An instance of the operation of the 30th section may be where A., a tenant for ninety-nine years determinable on his death, with remainder to B. for life, with remainder to C. in-tail, with remainder or reversion to the said A. in fee, should have aliened his remainder or reversion on or before December 31st, 1833; in such case B. and his assigns would, during his (B.'s) life estate, be the protector; otherwise A. might have consented, as the protector in respect of his chattel interest, to the barring of his own remainder or reversion. Under the old law B. would have been the person to make the tenant to the *præcipe*, he having the first estate of freehold.

The 32nd section enables a settlor not only to appoint any persons *in esse*, not exceeding three (exclusive of aliens), whether taking an interest under the settlement or not, to the office of protector, but also by means of a power of nominating to vacancies inserted in the settlement, duly enrolled, as afterwards shown, to continue the protectorship in any persons *in esse*, not exceeding three, for the whole or any part of the period for which the office would have endured by force of the limitation. The person who, in respect of the prior estate, would ordinarily be the sole protector, may be appointed one of the special protectors, and if so appointed, will, unless there be a direction to the contrary, continue protector, after the death or resignation (by deed inrolled) of the rest until further appointment. It must be observed that this power is one of substitution only, not authorizing the creation of a protectorship, where none would otherwise exist.

The Act substitutes the Lord Chancellor (or now the Lords Justices of Appeal) in the place of a protector who shall be a lunatic; and the Court of Chancery in the place of a protector who shall be convicted of treason or felony; or of a protector, not being the owner of a prior estate, who shall be an infant, or where it shall be uncertain whether he be living or dead. The Court of Chancery is also substituted during the continuance of the prior estate where the settlor declares that the person who, as owner of a prior estate under such settlement, would be entitled to be protector, shall not be such protector, and does not appoint any protector in his stead. And also, in every other case where there shall be under a settlement, a prior estate sufficient to qualify a protector, and there shall happen to be no protector, the Court of Chancery, during the continuance of the prior estate, is to be the protector (s. 33).

The powers of the protector are thus defined:—If, when any person, actual tenant-in-tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate-tail, desires to dispose of the lands entailed, there be a protector, then his consent shall be requisite to enable such tenant to dispose of the entailed lands to the full extent, but the tenant may, without such consent, dispose of the entailed land, which shall be good against all persons who claim from the tenant (s. 34). This, then, is equivalent to a

fine with proclamations, while to render the assurance of equal efficacy with a recovery, the consent of the protector, if any, must be obtained. Another difference between the old tenant to the *præcipe* and the new protector of the settlement is, that the former was a *conveying*, the latter a mere *consenting* party, unless his estate is intended to be passed, when, of course, he must be also a *conveying* party.

Where an estate-tail shall have been converted into a base fee, in such case, so long as there shall be a protector of the settlement by which the estate-tail was created, his consent shall be requisite to enable the person who would have been tenant of the estate-tail if the same had not been barred, to exercise as to the lands in respect of which there shall be such protection, the power of disposition hereinbefore contained (s. 35).

The discretion of the protector in giving his consent is declared absolute in every case; his office is not fiduciary, nor is his conduct impeachable, or examinable in equity; the rule in relation to transactions between the donee of a power, and any object of the power in whose favor the same may be exercised, not being applicable to protectors; he may, therefore, make what bargain he pleases with the tenant-in-tail, but an agreement with the remainder-man or reversioner, or any other person to withhold his consent, would be void (ss. 36, 37).

If a voidable estate be created by a tenant-in-tail in favor of a purchaser for valuable consideration, and the tenant-in-tail afterwards make a disposition of the lands, under this Act, by any assurance *other than a lease not requiring enrolment*, such disposition, whatever its object or extent, shall (if made with the consent of the protector, if any) confirm such voidable estate against all persons *except* a purchaser, without notice of such voidable estate, and the persons claiming under him. But should the protector, if any, not consent, and the voidable estate cannot be confirmed to the full extent without such consent, then the same shall be confirmed, so far as the tenant-in-tail could confirm such estate, under this Act, without such consent (s. 38). Whenever a person entitled to a base-fee shall become entitled to the *immediate* reversion or remainder, the base-fee shall *not merge*, but shall be *ipso facto enlarged* into as great an estate as the tenant-in-tail, with protector's consent, if any, might have created if the remainder or reversion had been vested in another person (s. 39).

This last section gets rid of a prejudice to title, for when the base-fee *merged* in the remainder or reversion, the charges and estates made and created by the persons through whom the remainder or reversion was derived, were let in, and this rendered it necessary to make out the tenant-in-tail's title to the reversion or remainder, which was frequently attended with great difficulty and expense, all which is now obviated by preserving base-fees from merger and enlarging them.

Let us mark the main differences between the old and the new systems, as to their effect upon the tenant-in-tail. The power of a tenant-in-tail is precisely the same under the new law, with the protector's consent, as it was under the old law, with the concurrence of the tenant to the *præcipe*: viz. the acquirement of a new fee-simple, discharged from the estate-tail, and all posterior limitations.

The fine with proclamations of a tenant-in-tail *in possession*, remainder, or reversion, to another in fee, barred the issue-in-tail absolutely, and acquired a *fee-simple*, defeasible only by the remainder-man or the reversioner, who had a mere *right of action* (that was only descendible), which, being released to the tenant-in-tail, he acquired the absolute fee-simple, the right being extinguished; if, however, the tenant-in-tail was *in remainder*, the fine then acquired a *base fee*, determinable on the failure of the issue-in-tail, but the remainder or reversion subsisted as an *estate* expectant on the determination of the base-fee; but if the remainder or reversion became vested in the tenant-in-tail, the base-fee *merged* in it, and produced an absolute fee-simple; and this was the result when the tenant-in-tail, whether in possession or not, had the remainder or reversion in fee vested in himself. But, under the new law, where a tenant-in-tail, whether in possession or not, with remainder or reversion in fee over, makes an assurance, without the protector's consent, if any, it bars the issue-in-tail, and acquires a base fee determinable on failure of such issue, but, instead of divesting the remainder or reversion, and turning it to a right of action, it subsists as an *estate* expectant on the determination of the base-fee, and both alienable and devisable. And if the remainder or reversion become vested in the tenant-in-tail, the base-fee *does not merge* in it, as under the old law, but it is *enlarged* into an absolute fee-simple, and this will be the result where the remainder or reversion in fee is vested in the tenant-in-tail, whether in possession or not. See TAIL.

Protest, a solemn declaration of opinion, generally of dissent. Also, a notification written by a notary upon a foreign bill of exchange of non-acceptance or non-payment, notice of which must be sent the same day to the drawer and indorsers, with a copy of the bill, if they are abroad, but merely a notice is sufficient, if they are in England. All protests made in England must be on a stamp, other-

wise they cannot be given in evidence.—55 *Geo. III.* c. 184; 2 & 3 *Wm. IV.* c. 98.

In the case of foreign bills of exchange, when the drawee cannot be found, or refuses to accept, it is usual for some friend of the drawer or endorser, after the bill has been protested for non-acceptance, to accept the bill for the honor of his friends, parties to the bill; but he should be cautious and make every inquiry, since, in case of forgery or other vital defect in the bill, he cannot come upon any of the parties to it.—10 *B. and C.* 4. No such rule is applicable to promissory notes.

The following is the form of protest for non-payment: —

'On this day, the first of January, in the year of our Lord one thousand eight hundred and forty-eight, at the request of A. B., bearer of the original bill of exchange, whereof a true copy is on the other side written, I., Y. Z., of London, notary public, by royal authority duly admitted and sworn, did exhibit the said bill.'

[*Here the presentment is stated, and to whom made, and the reason, if assigned, for non-payment.*]

'Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest as well against the drawer, acceptor, and indorsers of the said bill of exchange, as against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interest suffered and to be suffered, for want of payment of the said original bill. Thus done and protested in London aforesaid, in the presence of E. F.'

[*The expenses of noting and protest are then subscribed.*]

Each peer has a right, when he disapproves of the vote of the majority of the House of Lords, to enter his dissent on the journals of the house, with his reasons for such dissent, which is usually styled his protest.

Also, a writing attested by a justice of the peace or consul, drawn up by a master of a ship, stating the circumstances under which any injury has happened to the ship, and showing that such injury was not occasioned by his misconduct or neglect.

Protestando, a word made use of to avoid double pleading in actions; it prevents the party that makes it from being concluded by the plea he is about to make, that issue cannot be joined upon it; and it is also a form of pleading, where one will not directly affirm or deny anything alleged by another or himself. But by rule of court, Hil. 4 Wm. IV. 'no protestation shall hereafter be made in any pleadings, but either party shall be entitled to the same advantage in that or other actions, as if a protestation had been made.'—1 *Chit. Pl.* 646.

As to protestation in equity pleadings, see *Story's Eq. Plead.* 669.

Protestants, those who adhered to the doctrine of Luther; so called, because, in 1529, they protested against a decree of the Emperor Charles V. and of the diet of Spires, and declared that they appealed to a general council. The name is now applied indiscriminately to all the sects, of whatever denomination, who have seceded from the Church of Rome.—*Encyc. Lond.*

Protestation. See PROTESTANDO.

Prothonotaries, officers in the Courts of Common Pleas and Exchequer, who were superseded by the masters.—7 *Wm. IV.* and 1 *Vict.* c. 30.

Protocol [fr. πρῶτος, Gk., and κόλλη], the original copy of any writing.

An original is styled the *protocol* or *scriptura matrix.*—*Encyc. Lond.*

The term is usually applied to writings of a diplomatic character.

Protutor, a *quasi* tutor.—*Civil Law.*

Prout patet per recordum (*even as it appears by the record*). The omission of the words '*per recordum*' is but form, and so it was twice adjudged, viz. in *Hancocke* v. *Prowd*, and *Clegat* v. *Banbury*, 2 *Sid.* 16; 1 *Saund.* 337 *b*, *c* (4). Rendered unnecessary by 14 & 15 Vict. c. 100, s. 24.

Prover, an approver.

Provident and Industrial Societies. The law relating to these is consolidated and amended by 25 & 26 Vict. c. 87, which repealed the previous Acts, 15 & 16 Vict. c. 31; 17 & 18 Vict. c. 25; 18 & 19 Vict. c. 63; and 19 & 20 Vict. c. 40.

Province, the district over which the jurisdiction of an archbishop extends; a county; an out-lying country governed by a deputy or lieutenant.

Provincial constitutions, the decrees of provincial synods held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V., and adopted also by the province of York in the reign of Henry VI.—*Lynd. Provinciale.*

Provincial courts, the several archiepiscopal courts in the two ecclesiastical provinces of England.

Provinciale, a work on ecclesiastical law, by William Lyndwode, official principal to Archbishop Chicheley in the reign of Edward IV. The learned canonist has here digested, under heads, the substance of almost every constitution made in synods of the province of Canterbury, from the time of Stephen Langton down to Archbishop Chicheley. The method he has taken is that of the decretals of Pope Gregory IX., so justly esteemed the most systematic and valuable part of the canon law. To this digest

he has added a very copious and minute comment, replete with every illustration that could be furnished from an intimate acquaintance with the writings of foreign canonists, and a long experience in our own ecclesiastical courts. The comprehensiveness of this, as well as the merit of its execution, has contributed to place Lyndwode much above his predecessor, *John de Athona*, who had led the way in this walk of study, by his gloss on the legatine constitutions of Otto and Ottoboni; with this distinction in favour of Lyndwode, these two writers have obtained great authority with posterity; they are regarded, both in the spiritual and temporal courts, as containing undeniable evidence of the practice and law of their respective periods; and as they were instrumental in fixing both in after-times, their works are considered as the depositories of the common law of the church and of the ecclesiastical courts.—4 *Reeves*, c. xxv., p. 117.

Proving a will in Chancery. Where lands are devised by will away from the heir, the devisee, in order to perpetuate the testimony of the witnesses to such will, exhibits a bill in Chancery against the heir, and sets forth the will *verbatim* therein, suggesting that the heir is induced to dispute its validity; and then, the defendant having answered, they proceed to issue as in other cases, and examine the witnesses to the will; after which the cause is at an end, without proceeding to any decree, no relief being prayed by the bill; but the heir is entitled to his costs, even though he contests the will.—3 *Bl. Com.* 450.

Provisional assignees, those who were formerly appointed under fiats in bankruptcy in the country to take charge of bankrupts' estates, &c., until the creditors' assignees were appointed. They are now superseded by the official assignees.

Provisional committee, a committee appointed for a temporary occasion.

Provisiones, those Acts of Parliament which were passed to curb the arbitrary power of the Crown.

Proviso, stipulation, caution, a condition inserted in any deed, on the performance whereof the validity of the deed depends.

The terms *proviso* and *condition* are synonymous, and signify some quality annexed to a real estate by virtue of which it may be defeated, enlarged, or created upon an uncertain event. Such qualities annexed to personal contracts and agreements are generally called conditions. A proviso or condition differs from a covenant in this, that the former is in the words of, and binding upon, both parties, whereas the latter is in the words of the grantor only. It is a rule in provisoes, that where a proviso is that the lessee shall perform or not perform a thing, and no penalty is annexed to it, that is a condition, otherwise it would be void; but if a penalty be annexed, it is a covenant.—*Wood's Land. and Ten.* 103, 268.

Proviso est providere præsentia et futura non præterita.—2 *Co.* 72.—(A proviso is to provide for the present or future, not the past.)

Proviso, *Trial by.* In all cases where the plaintiff, after issue joined, does not proceed to trial, where, by the course and practice of the court, he ought to have done so, the defendant may, if he wish, have the action tried by proviso; that is, he may give the plaintiff notice of trial, make up the *Nisi Prius* record, carry it down and enter it and proceed to the trial as in ordinary cases as if he were proceeding as plaintiff. This, however, can be done only in cases where the plaintiff has been guilty of some *laches* or default after issue joined, except in replevin, prohibition, *quare impedit*, and error in fact: in which cases both parties being plaintiffs, the defendant may make up the *Nisi Prius* record, and thereupon proceed to trial, although no laches or default be imputable to the plaintiff. The court have also allowed a defendant to carry down the record of an issue directed by the Court of Chancery to trial by proviso, upon its being suggested to them that the plaintiff wished to delay the cause. By rule 42 H. T. 1853, 'no trial by proviso shall be allowed in the same term in which the default of the plaintiff has been made, and no rule for a trial by proviso shall be necessary.' By C. L. P. A. 1852, s. 116, nothing herein contained shall affect the right of a defendant to take down a cause for trial after default by the plaintiff to proceed to trial, according to the course and practice of the court; and if records are entered for trial both by the plaintiff and the defendant, the defendant's record shall be treated as standing next in order after the plaintiff's record in the list of causes, and the trial of the cause shall take place accordingly. A defendant seldom tries by proviso, as the better course is to take proceedings under C. L. P. A. 1852, s. 101.—2 *Chit. Arch. Prac. by Pren.* 1479.

Provisor, a purveyor; one who sued to the court of Rome for a provision.

Provisors, *Statutes against*, 25 Edw. III. st. 6; 27 Edw. III. st. 1, c. 3; 38 Edw. III. st. 1, c. 4, and st. 2, cc. 1, 2, 3, 4.—2 *Reeves*, p. 386.

Provost, the principal magistrate of a royal borough in Scotland; a governing officer of an university or college.

Provost-Marshal, an officer of the royal navy, who had the charge of prisoners taken at sea, and sometimes also on land.—13 *Car. II.* c. 9.

Proxies, annual payments made by the parochial clergy to the bishop, &c., on visitation.

Proxineta, a kind of broker or agent.

All contracts and agreements respecting marriage (commonly called marriage-brokage-contracts), by which a party engages to give another a compensation, if he will negotiate an advantageous marriage for him, are void, as being injurious to or subversive of the public interest. 'But the civil law does not seem to have held contracts of this sort in such severe rebuke; for it allowed *proxinetæ*, or match-makers, to receive a reward for their services to a limited extent. And the period is comparatively modern in which a different doctrine was engrafted into the common law, and received the high sanction of the House of Lords. All marriage-brokage-contracts are utterly void as against public policy, so much so, that they are deemed incapable of confirmation, and even money paid under them may be recovered back in a court of equity.—1 *Story's Eq. Jurisp.* 214.

Proxy, a person appointed in the stead of another to represent him. A peer can vote by proxy, but not a member of the House of Commons, who, however, can 'pair-off' with another member. See PAIRING OFF.

The stamp-duty on a proxy to vote at a meeting of a joint-stock company is reduced to 6*d.* by 19 & 20 Vict. c. 81.

Prudenter agit qui præcepto legis obtemperat. 5 *Co.* 49.—(He acts prudently, who obeys the command of the law.)

Pryk, a kind of service of tenure. Blount says it signifies an old-fashioned spur with one point only, which the tenant, holding land by this tenure, was to find for the king.

Pseudograph, false writing.

Pubertas. See AGE.

Puberty [fr. *pubertas*, Lat.], the age of 14 in men, and 12 in women; when they are held fit for and capable of contracting marriage. See AGE.

Publicans, persons authorized by license to retail beer, spirits, or wines. Under the term publicans, are comprised innkeepers, hotel-keepers, alehouse-keepers, keepers of wine vaults, &c. An inn differs from an alehouse in this—that the former is a place intended for the lodging, as well as the entertainment of guests, whereas the latter is intended for their entertainment only. If, however, ale or beer be commonly sold in an inn, as is almost invariably the case, it also is an alehouse, and if travellers be furnished with beds, lodged, and entertained in an alehouse, it also is an inn. It is not material to the character of an innkeeper that he should have any sign over his door; it is sufficient that he makes it his business to entertain passengers and travellers, providing them with lodgings and other accommodations.

No house or place of public resort is allowed to be opened for the sale of fermented or distilled liquors, unless it be to supply refreshment to a lodger in such house, or a *bonâ fide* traveller, before half-past twelve in the afternoon, or the termination of morning Divine service, or between the hours of three and five in the afternoon, or after eleven in the afternoon, on Sunday, Christmas Day, Good Friday, or any Fast or Thanksgiving day, or before four in the morning of the day following. See 11 & 12 *Vict.* 49; 18 & 19 *Vict.* c. 118.

As to the duties and the responsibility of innkeepers, see INNKEEPERS.

Licensing of Publicans.—The provisions with respect to the licensing of public houses are embodied in the 9 Geo. IV. c. 61. See also 11 *Geo. IV.* & 1 *Wm. IV.* c. 64; 4 & 5 *Wm. IV.* c. 85; 3 & 4 *Vict.* c. 61. As to licenses for refreshment houses, see 23 *Vict.* c. 27.

Publication, divulgation; proclamation. Publication of evidence in Chancery is no longer practised, as all parties attend the examination of witnesses.

Publication of a will is no longer necessary by 1 Vict. c. 26, s. 13.

Public Accounts, the accounts of the expenditure of the nation. They are audited by commissioners, appointed under 2 Wm. IV. c. 26. See 2 & 3 *Wm. IV.* c. 99; 2 & 3 *Wm. IV.* c 104; 4 & 5 *Wm. IV.* c. 15; and 18 & 19 *Vict.* c. 96.

Public Act of Parliament. See ACT OF PARLIAMENT.

Public Appointments, *Sale of,* the sale or transfer of these is generally contrary to the policy of the law, and prohibited in most cases by the express enactment of the legislature (5 & 6 Edw. VI. c. 16; 49 Geo. III. c. 126; 6 Geo. IV. cc. 82 & 83). See 3 & 4 *Vict.* c. 113, s. 42, and 9 & 10 *Vict.* c. 88, making void (except when under the augmentation and church building Acts), any sale or assignment by any spiritual person of any parsonage belonging to him in virtue of his office.

Publicatio, confiscation.—*Civ. Law.*

Public Baths, see 9 & 10 *Vict.* c. 74; 10 & 11 *Vict.* c. 61; and 23 & 24 *Vict.* c. 30.

Public Carriages and Conveyances. See STAGE CARRIAGES, RAILWAYS, and CONVEYANCES BY WATER.

Public Chapels are chapels founded at some period later than the church itself; they were designed for the accommodation of such of the parishioners as in course of time had begun to fix their residence at a distance from its site; and chapels so circumstanced were described as *chapels of ease*, because built in aid of the original church.—3 *Step. Com.* 111.

Public Companies, large associations for every conceivable kind of speculation, which are controlled by innumerable Acts of Parliament. Consult Wordsworth, Hodge, or Grant, on the subject.

Public Funds. See FUNDS.

Public Health Act, 11 & 12 Vict. c. 63, which is amended and continued by 17 & 18 Vict. cc. 69, 95; 18 & 19 Vict. c 115; 19 & 20 Vict. c. 85; 20 & 21 Vict. c. 38; 21 & 22 Vict. cc. 97 & 98; and 23 & 24 Vict. c. 64. The 22 & 23 Vict. c. 3, amends and makes perpetual the 21 & 22 Vict. c. 97.

Public Houses, places of public resort, mostly for purposes of drinking.

The statutes relating to them are of two kinds; the first having in view the subject of *revenue*, for which see 6 *Geo. IV.* c. 81; the other of *police*, that is, the proper regulation of these places, and the prevention of abuses to which they are naturally liable; the principal one now in force is the 9 Geo. IV. c. 61. And see the Beer Acts, 11 *Geo. IV.* and 1 *Wm. IV.* c. 64; 4 & 5 *Wm. IV.* c. 85; and 3 & 4 *Vict.* c. 61. And see 17 & 18 *Vict.* c. 79; 25 & 26 *Vict.* c. 25 (Scotland). See INNKEEPERS and PUBLICANS.

Public Nuisance. See NUISANCE.

Public Officer, a person appointed by joint-stock bank companies, &c., to sue and be sued on behalf of the company. As to their frauds, see 24 & 25 *Vict.* c. 96, ss. 81 to 84.

Public Offices Extension, 25 & 26 Vict. c. 74.

Public Prosecutor, the Queen, in whose name criminals are prosecuted, because all offences are said to be against the Queen's peace, her Crown and dignity.

Public Statues. See 17 & 18 *Vict.* c. 33, which placed public statues in the metropolitan police district under the control of the Commissioners of Works and Public Buildings.

Public Stores. See STORES.

Public Verdict. See PRIVY VERDICT.

Public Ways, the highways.

Publicist, a writer on the laws of nations.

Puddling, a process of considerable importance in canal engineering. A mixture is made of well-tempered clay and sand, reduced to a semi-fluid state, and rendered impervious to water by manual labor, as by working and chopping it about with spades. It is usually applied in three or more strata, to a depth or thickness of about three feet; and care is taken at each operation so to work the new layer of puddling stuff as to unite it with the stratum immediately beneath. Over the top course a layer of common soil is usually laid. It is only by the careful employment of puddling that the filtration of the water of canals into the neighboring lower lands through which they pass, can be effectually prevented.—1 *Smiles' Lives of the Engineers* 353, n. 2.

Pudzeld, to be free from the payment of money for taking wood in a forest.—*Co. Litt.* 233 *a.* See WOODGILD.

Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum.—3 *Co.* 40.—(Children are of the blood of their parents, but the father and mother are not of the blood of the children.)

Pueritia, the age from seven to fourteen.

Puffer, one who attends a sale by auction for the purpose of raising the price and exciting the eagerness of the bidders.

A bidder may be privately appointed by the owner, in order to prevent the estate or property from being sold at an undervalue; but where a person is employed, not for a defensive precaution with a view to prevent a sale at an undervalue, but to screw up the price, this will be deemed a fraud. A vendor can only appoint one bidder. If the particulars or advertisements state that the property is to be sold *without reserve*, the sale would be void against a purchaser, if any person were employed as a puffer, and actually bid at the sale.—*St. Leon. V. and P.* 8.

Puis darrein continuance (*since the last continuance*) **Plea.** If any matter of defence arise after the defendant has pleaded, and before the jury have actually delivered their verdict, the defendant may, within eight days after such matter of defence arose, unless a further time be allowed by the court or a judge, avail himself of it by a plea, styled a plea *puis darrein continuance* before the abolition of the entry of continuances, but now more properly denominated a plea to the further maintenance of the action. It cannot be pleaded after a demurrer or verdict. The plea must be accompanied with an affidavit of its truth, and also of the matters thereof having arisen within eight days next before the pleading of such plea, unless the court or a judge shall otherwise order. It may be pleaded during the long vacation. If this plea be put in at the assizes, or at *Nisi Prius*, the judge has no discretion to refuse it, and no further proceedings can be had on it there; but it must be certified on the back of the record at *Nisi Prius*, and returned to the court above; after the record is thus returned, the plaintiff may reply or demur to the plea, and then proceed as in ordinary cases. If the plaintiff demur, the court may order it to be set down for argument for the first paper-day in term, so that the plaintiff can have judgment as soon as he would have had it if the plea had not been pleaded. The defendant can only plead one of these pleas.

A plea of this kind is always pleaded by way of substitution for the former plea, which is waived. The plaintiff may always, after this plea, discontinue, without payment of costs.—2 *Chit. Arch. Prac. by Pren.* 907.

A plea containing a defence arising after the commencement of the action may be pleaded together with pleas of defences arising before

the commencement of the action, provided that the plaintiff may confess such plea, and thereupon shall be entitled to the costs of the cause up to the time of the pleading of such first mentioned plea.—*R.* 22, *H. T.* 1853.

When a plea is pleaded with an allegation that the matter of defence arose after the last pleading, the plaintiff shall be at liberty to confess such plea, and shall be entitled to the costs of the cause up to the time of pleading such plea; provided that this and the preceding rule shall not apply to the case of such plea pleaded by one or more only of several defendants.—*R.* 23, *Ib.*

Puisine [fr. *puisné*, Fr.], junior, inferior, lower in rank.

The several judges and barons of the common law courts at Westminster are called *puisné*.

Pulchre placitare, a fair hearing. See BEAU-PLEADER.

Pulsator [fr. *pulso*, Lat., to accuse], the plaintiff or actor.

Punchayet, an arbitration.—*Indian.*

Pund-brech, pound-breach.

Pundit, an interpreter of the Hindoo law, a learned Brahmin.—*Indian.*

Punishment, the penalty for transgressing the law.

Pupil, a ward; one under the care of a guardian.

Pupilarity, non-age.

Pur autre vie, *Tenant,* the least estate of freehold which the law acknowledges, for an estate for the life of another is not so great as an estate for one's own life. See 1 *Vict.* c. 26, s. 6; and SPECIAL OCCUPANCY.

Purchase [fr. *perquisitio*, or *conquæstus*, Lat., according to the feudists], in its popular sense, an acquisition of land, obtained by way of bargain and sale, for money or some other valuable consideration; in its legal acceptation, an acquisition of land in any lawful manner, other than by descent, or the mere act of law, and including escheat, occupancy, prescription, forfeiture, and alienation.

Purchase, *Words of,* those by which, taken absolutely, without reference to or connection with any other words, an estate first attaches, or is considered as commencing in point of title, in the person described by them; such as the words 'son,' 'daughter.'

Purchaser, a buyer, a vendee; also the root of descent, from whom, as the *terminus à quo*, it is in every case to be traced.

To the intent, then, that the pedigree may never be carried farther back than the circumstances of the case and the nature of the title shall require, the 3 & 4 Wm. IV. c. 106, enacts that *the person last entitled to the land* (which expression shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof (s. 1)) shall, for the purposes of this Act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same; and, in like manner, the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same (s. 2).

Where on the *bonâ fide* purchase, after the passing of the Act 22 & 23 Vict. c. 35 [13th Aug. 1859], of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of the rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability, by way of forfeiture, or damages or otherwise, in respect of any breach of the covenant committed at any time before the completion of the purchase, of which the purchaser had not notice before the completion of the purchase; but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant (s. 8).

The *bonâ fide* payment to and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security (s. 23).

Purchaser of a note or bill, the person who buys a promissory note or bill of exchange from the holder without his endorsement. In such case, if the note or bill should turn out to be bad, the purchaser has no claim against the vendor, unless the latter knew at the time of the sale that it was of no value. See *Bayley on Bills*, 370.

Pure villenage, a base tenure, where a man holds, upon terms of doing whatsoever is commanded of him, nor knows in the evening what is to be done in the morning, and is always bound to an uncertain service.

Purgation, the clearing a person's self of a crime of which he was publicly suspected and accused before a judge. It was either *canonical*, which was prescribed by the canon law, the form whereof, used in the spiritual court, was

that the person suspected took his oath that he was clear of the facts objected against him, and brought his honest neighbors with him to make oath that they believed he swore truly; or *vulgar*, which was by fire or water-ordeal, or by combat. It is entirely abolished.

Purificatio Beatæ Mariæ Virginis, the Purification of the Blessed Virgin Mary, which falls on the second day of February in every year.

Puritans. See DISSENTERS.

Purlieu [fr. *pourallée*, Fr.], land formerly added to an ancient forest by unlawful encroachment, and disafforested by the Charta de Forestâ. 4 *Inst.* 303.

Purlieu-men, those who have ground within the purlieu, and being able to dispend 40s. a-year freehold, are licensed to hunt in their own purlieus.—*Manw. For. Laws*, 151.

Purloining, theft.

Purparty, share, part in a division.

Purprestura, vel porprestura, dicitur, quando aliquid super dominum regem injustè occupatur, ut in dominicis regiis, vel in viis publicis obstructis, vel in aquis publicis transversis à recto cursu, vel quando aliquis in civitate super regiam plateam aliquid ædificando occupaverit. Et generaliter, quotiens aliquid sit ad nocumentum regii tenementi, vel regiæ viæ, vel civitatis, placitum inde ad coronam domini regis pertinet.—*Glanv.* l. 9, c. xi.—(A purpresture is so called, when anything is occupied against the sovereign unjustly: as in the royal domains, or when anything is placed as an obstruction on the high roads, or in the public rivers, against the right course, or when any person in a town has erected a building on the royal highway. And generally, as often as there is anything to the injury of the royal domain, or royal road or state, the plea thence belongs to the Crown.)

Purpresture. See POURPRESTURE.

Purprise [fr. *purprisum*, law Lat.], a close or enclosure; as also the whole compass of a manor.

Purpure, or **Porprin,** the color commonly called purple, expressed in engravings by lines in bend sinister. In the arms of princes it was formerly called *Mercury*, and in those of peers *Amethyst.*—*Heraldic term.*

Pursuance, prosecution; process.

Pursue, to prosecute.

Pursuivant. See POURSUIVANT.

Purus idiota (*a congenital idiot*).

Purveyance. See POURVEYANCE.

Purview, proviso, providing clause; also, that part of a statute which begins with, 'Be it enacted,' &c. The word is frequently used to express the general scope and object of a statute.

Putage, Putagium, prostitution of a woman.

Putagium hæreditatem non adimit.—1 *Reeves' Hist.* c. iii., p. 117.—(Incontinence does not take away an inheritance.)

Putative, supposed, reputed.

Putts and refusals, time-bargains, or contracts for the sale of supposed stock on a future day. They were forbidden by the 7 Geo. II. c. 3, s. 1 (the Stock Jobbing Act), repealed by 23 Vict. c. 28.

Puture, a custom claimed by keepers in forests, and sometimes by bailiffs of hundreds, to take man's meat, horse's meat, and dog's meat, of the tenants and inhabitants within the perambulation of the forest, hundred, &c. The land subject to this custom is called *terra putura.*

Others who call it *pulture*, explain it as a demand in general; and derive it from the monks, who, before they were admitted, *pulsabant*, that is, knocked at the gates for several days together.

Pyke, Paik, a foot-passenger; a person employed as a night-watch in a village, and as a runner or messenger on the business of the revenue.—*Indian.*

Q.

Quadragesima, the time of Lent, because consisting of forty days.

Quadragesimals, offerings formerly made, on mid-lent Sunday, to the mother-church.

Quadragesms, the third part of the year-books of Edward VII.—3 *Reeves*, c. xvi., p. 148.

Quadrans, the fourth of a whole.—*Civ. Law.*

Quadrant, an angular measure of 90 degrees.

Quadrantata terræ, a quarter of an acre, now called a rood.

Quadriennium utile, the term of four years allowed to a minor after his majority, in which he might by suit or action endeavour to annul any deed to his prejudice granted during his minority.—*Scotch phrase.*

Quadripartite, having four parties; divided into four parts.

Quadruplatores, informers among the Romans, who, if their information were followed by conviction, had the fourth part of the confiscated goods for their trouble.

Quadruplicatio [Lat.], a surrebutter.—*Civ. Law.*

Quæ ad unum finem loquuta sunt, non debent ad alium detorqueri.—4 *Co.* 14.—(Those words which are spoken to one end, ought not to be perverted to another.)

Quæ cohærent personæ à personâ separari nequeunt.—*Jenk. Cent.* 28.—(Things which belong to the person ought not to be separated from the person.)

Quæ communi legi derogant strictè interpretantur.—*Jenk Cent.* 221.—(Things derogating from the common law are to be strictly interpreted.)

Quæ contra rationem juris introducta sunt, non debent trahi in consequentiam.—12 *Co.* 75. (Things introduced contrary to the reason of law, ought not to be drawn into a precedent.)

Quæcunque intra rationem legis inveniuntur, intra legem ipsam esse judicantur.—2 *Inst.* 689. (What things soever appear within the reason of a law, are to be considered within the law itself.)

Quæ dubitationis causâ tollendæ inseruntur communem legem non lædunt.—*Co. Litt.* 205.—(Things which are inserted for the purpose of removing doubt, hurt not the common law.)

Quæ est eadem (*which is the same*). In trespass and other actions, when the plea necessarily stated the trespass to have been committed at some other time or place than that laid in the declaration, it was usual, before the conclusion of the plea, to allege that the supposed trespasses mentioned in the plea were the same as those whereof the plaintiff had complained. This allegation was usually termed *quæ est eadem.* It was equivalent to a traverse of the time and place named in the declaration.—1 *Chit. Pleading*, 581.

Quæ incontinenti vel certò fiunt in esse videntur.—*Co. Litt.* 236.—(Things which are done directly and certainly, appear already in existence.)

Quæ in curiâ regis acta sunt ritè agi præsumuntur.—3 *Buls.* 43.—(Things done in the king's court are presumed to be rightly done.)

Quæ in partes dividi nequeunt solida, à singulis præstantur.—6 *Co.* 1.—(Solids, which cannot be divided into parts, are exhibited by singulars.)

Quæ inter alios acta sunt nemini nocere debent, sed prodesse possunt.—*Ibid.*—(Transactions between strangers ought to hurt no man, but may benefit.)

Quæ legi communi derogant strictè interpretantur.—*Jenk. Cent.* 29.—(Those things which are derogatory to the common law, are to be strictly interpreted.)

Quæ legi communi derogant non sunt trahenda in exemplum.—(Things derogatory to the common law are not to be drawn into a precedent.)

Quæ mala sunt inchoata in principio vix bono peragantur exitu.—4 *Co.* 2.—(Things bad in the commencement seldom achieve a good end.)

Quæ movent ad mortem sunt deodanda.—3 *Inst.* 57.—(Things which move to death are deodands.) Deodands are abolished by 9 & 10 Vict. c. 93.

Quæ non valeant singula, juncta juvant.—3 *Buls.* 132.—(Things which do not avail separate, when joined avail.)

Quæ pertinet ad coronam et dignitatem regis et ad regnum in causis et placitis rerum temporalium, in foro seculari.—*Co. Litt.* 96.—(Which relates to the Crown and dignity of the king and to the realm, in causes and pleas of a temporal nature in the secular forum.)

Quæ plura, a writ which lay where an inquisition had been taken by an escheator of lands, &c., of which a man died seised, and all the land was supposed not to be found by the office or inquisition; it was to inquire of *what more* lands or tenements the party died seised.—*Reg. Orig.* 293. Rendered useless by 12 Car. II. c. xxiv.

Quæ præter consuetudinem et morem majorum fiunt, neque placent, neque recta videntur.—4 *Co.* 78.—(Things which are done contrary to the custom and usage of our ancestors neither please nor appear right.)

Quæ rerum naturâ prohibentur, nullâ lege confirmata sunt.—*Finch.* 74.—(Things which are prohibited by the nature of things are confirmed by no law.)

Quæ sunt minoris culpæ sunt majoris infamiæ. Co. Litt. 6.—(Things which are of the smaller guilt are of the greater infamy.)

Quælibet concessio domini regis capi debet strictè contra dominum regem, quando potest intelligi duabus viis.—3 *Leon.* 243.—(Every grant of the lord king ought to be taken strictly against the lord king, when it can be understood in two ways.)

Quælibet concessio fortissimè contra donatorem interpretanda est.—*Co. Litt.* 183.—(Every grant is to be most strongly taken against the grantor.)

Quælibet hæreditas naturaliter quidem ad hæredes hæreditabiliter descendit, nunquam quidem naturaliter ascendit: descendit itaque jus quasi ponderosum, quod cadens deorsum rectâ lineâ vel transversali, et nunquam reascendit eâ viâ quâ descendit post mortem antecessorum; à latere tamen ascendit alicui propter defectum hæredum inferius provenientium.—*Co. Litt.* 11. (Every inheritance naturally descends to the heirs in the manner of an inheritance; it never naturally ascends. The right therefore descends, as being heavy, and falling downward in a right or transverse line, and it never ascends in the way it descends, after the death of ancestors, yet laterally, it may ascend to a certain one in defect of heirs coming beneath.) But see CANONS OF INHERITANCE.

Quælibet jurisdictio cancellos suos habet.—*Jenk. Cent.* 137.—(Every jurisdiction has its own bounds.)

Quælibet narratio super brevi locari debet in comitatu in quo breve emanavit.—(Every count upon the writ ought to be laid in the county in which the writ arose.)

Quælibet pardonatio debet capi secundum intentionem regis, et non ad deceptionem regis.—3 *Buls.* 14.—(Every pardon ought to be taken according to the intention of the king, and not to the deception of the king.)

Quælibet pœna corporalis, quamvis minima,

major est quâlibet pœnâ pecuniariâ.—3 *Inst.* 220.—(Every corporal punishment, although the very least, is greater than any pecuniary punishment.)

Quæras de dubiis, legem bene discêre si vis.—(Inquire into doubtful points, if you wish to understand the law well.)

Quære de dubiis, quia per rationes pervenitur ad legitimam rationem.—*Litt.* s. 377.—(Inquire into doubtful points, because by reasoning we arrive at right reason.)

Quærens non invenit plegium (*the plaintiff has not found pledge*), a return made by a sheriff upon certain writs directed to him with this clause: *Si A. fecerit B. securum de clamore suo prosequendo, &c.*—*F. N. B.* 38.

Quærere dat sapere quæ sunt legitima verè.—*Litt.* s. 443.—(To inquire into is the way to know what things are truly lawful.)

Quæritur ut crescunt tot magna volumina legis. In promptu causa est, crescit in orbe dolus.—3 *Co.* 82.—(It is questioned how so many books of law increase. The reason is plain; crime increases in the world.)

Quæsta, an indulgence or remission of penance, sold by the pope.

Quæstio, a commission to inquire into a criminal matter.—*Civ. Law.*

Quæstionarii, those who carried *quæsta* about from door to door.

Quæstor, or **Questor,** a Roman magistrate.

Quæstus, that estate which a man has by acquisition or purchase, in contradistinction to *hæreditas*, which is what he has by descent.

Quaker, the name of a member of a religious society, more correctly denominated Friend. The nature of their creed was for a long time misrepresented and unknown; but since they have laid it fully before the public, they have enjoyed from the various parties of the Christian church a high degree of consideration and respect. They were once called *seekers*, and the term *quakers* arose out of the frequent exhortations to 'tremble at the name of the Lord,' given by this sect to their followers. Indeed, a story is related, that Fox having given this command to a justice of peace, was by him derided and called a quaker. It seems likely, however, since the term was in very general use, that it took its origin from the earnest and trembling voice and action of all the preachers of the sect. But there is another conjecture on the subject, which has obtained the support of Malone. This would refer quaker to *quacker*, and rests on the following lines written by Sir G. Wharton, in 1660:—

'Let's tear our ribbons, burn our richer laces,
Wear russet, and contrive bewitched faces;
With *thee* and *thou* let us go *quack* awhile.'

As to their solemn affirmations, see 3 & 4 Wm. IV. c. 49; 1 & 2 Vict. cc. 5, 15, 77; 6 & 7 Vict. c. 85; and 22 Vict. c. 10. As to their marriages, see 6 & 7 Wm. IV. c. 85; 3 & 4 Vict. c. 72; 10 & 11 Vict. c. 58; 19 & 20 Vict. c. 119; and 23 Vict. c. 18.

Quale jus, a judicial writ, which lay where a man of religion had judgment to recover land, before execution was made of the judgment; it went forth to the escheator between judgment and execution, to inquire what *right* the religious person had to recover, or whether the judgment were obtained by the collusion of the parties, to the intent that the lord might not be defrauded.—*Reg. Jud.* 8.

Qualification, that which makes any person fit to do a certain act; also, abatement, diminution.

An annual Act is passed indemnifying persons who have omitted to qualify themselves for certain offices and employments, and to extend the time limited for those purposes. See 26 & 27 *Vict.* c. 107.

Qualification Act *to kill game*, 22 & 23 Car. II. c. 25, abolished by 1 & 2 Wm. IV. c. 32. See GAME.

Qualified, a term applied to a person enabled to hold two benefices.

Qualified fee. See BASE FEE.

Qualified indorsement, an indorsement *sans recours*, i. e. without recourse to the indorser for payment.

Qualified oath, a circumstantial oath.

Qualified property, an ownership of a special and limited kind. It may arise either from the peculiar circumstances of the subject matter, which render it incapable of being under the absolute dominion of any proprietor, as in the case of animals *feræ naturæ*, or from the peculiar circumstances of the owner, the thing itself being capable of absolute ownership, as in the case of a bailment.

Qualitas quæ inesse debet, facilè præsumitur. Jur. Civ.—(A quality which ought to form a part is easily presumed.)

Quality of estate, the period when, and the manner in which, the right of enjoying an estate is exercised. It is of two kinds: (1) The period when the right of enjoying an estate is conferred upon the owner, whether at present or in future; and (2) the manner in which the owner's right of enjoyment of his estate is to be exercised, whether solely, jointly, in common, or in coparcenary.

Quamdiu se bene gesserit (*as long as he shall behave himself well*), a clause frequent in letters-patent or grants of certain offices, to secure them so long as the persons to whom they are granted shall not be guilty of abusing them.

Quam longum debet esse rationabile tempus, non definitur in lege, sed pendet ex discretione justiciariorum.—*Co. Litt.* 56.—(How long *reasonable time* ought to be, is not defined by law, but depends upon the discretion of the judges.)

Quam rationabilis debet esse finis, non definitur, sed omnibus circumstantiis inspectis pendet ex justiciariorum discretione.—11 *Co.* 44.—(What a reasonable termination ought to be is not defined, but it is left to the discretion of the judges, all the circumstances being considered.)

Quamvis aliquid per se non sit malum, tamen si sit mali exempli, non est faciendum.—2 *Inst.* 564.—(Although a thing in itself may not be bad, yet, if it hold out a bad example, it is not to be done.)

Quamvis lex generaliter loquitur, restringenda tamen est, ut cessante ratione et ipsa cessat; cum enim ratio sit anima vigorque ipsius legis, non videtur legislator id sensisse quod ratione careat, etiamsi verborum generalitas primâ facie aliter suadeat.—4 *Inst.* 330.—(Although the law speaks generally, it is to be restrained so that it may not apply when the reason on which it is grounded fails; for as the reason of a law is its very soul and gist, it cannot be meant by the legislature to be contrary to that reason, although at first sight the generality of its wording would induce us to think so.)

Quando accederint (*when they may happen*). See PLENE ADMINISTRAVIT.

Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud.—5 *Rep.* 116.—(When anything is commanded, everything by which it can be accomplished is also commanded.)

Quando aliquid prohibetur ex directo, prohibetur et per obliquum.—*Co. Litt.* 223.—(When anything is prohibited directly it is prohibited also indirectly.)

Quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud.—2 *Inst.* 48.—(When anything is prohibited, everything which tends towards it is prohibited.)

Quando charta continet generalem clausulam, posteaque descendit ad verba specialia quæ clausulæ generali sunt consentanea, interpretanda est charta secundum verba specialia.—8 *Co.* 154.—(When a charter contains a general clause, and afterwards descends to special words, which are consentaneous to the general clause, the charter is to be interpreted according to the special words.)

Quando de unâ et eâdem re, duo onerabiles existunt, unus, pro insufficientiâ alterius, de integro onerabitur.—2 *Inst.* 277.—(When there are two persons liable for one and the same thing, one for the other's default will be charged for the whole.)

Quando dispositio referri potest ad duas res, ita quod secundum relationem unam vitiatur et secundum alteram utilis sit, tum facienda est relatio ad illam ut valeat dispositio.—6 *Co.* 76. (When a disposition may refer to two things, so that by the former it would be vitiated, and by the latter it would be preserved, then the relation is to be made to the latter so that the disposition may be valid.)

Quando diversi desiderantur actus ad aliquem statum perficiendum, plus respicit lex actum originalem.—10 *Co.* 49.—(When to the perfection of an estate divers acts are requisite, the law has more regard to the original act.)

Quando duo jura concurrunt in unâ personâ, æquum est ac si essent in diversis.—4 *Co.* 118.—(When two rights concur in one person, it is the same as if they were in separate persons.)

Quando jus domini regis et subditi concurrunt, jus regis præferri debet.—9 *Co.* 129.—(When the right of king and of subject concur, the king's right is to be preferred.)

Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest.—5 *Co.* 47.—(When the law gives a man anything, it gives him that without which it cannot exist.)

Quando lex aliquid alicui concedit, omnia incidentia tacitè conceduntur.— 2 *Inst.* 326.—(When the law gives anything to anyone, all incidents are tacitly given.)

Quando lex est specialis, ratio autem generalis, generaliter lex est intelligenda.—2 *Inst.* 83.—(When the law is special, but its reason general, the law is to be understood generally.)

Quando mulier nobilis nupserit ignobili, desinit esse nobilem nisi nobilitas nativa fuit.—4 *Co.* 118.—(When a noble woman marries a man not noble, she ceases to be noble, unless her nobility was born with her.)

Quando plus fit quam fieri debet, videtur etiam illud fieri quod faciendum est.—8 *Co.* 85. (When a man performs more than ought to be performed, he is considered to have also performed that which ought to have been performed.)

Quando verba statuti sunt specialia, ratio autem generalis, generaliter statutum est intelligendum.—10 *Co.* 101.—(When the words of a statute are special, but the reason general, the statute is to be understood generally.)

Quantity of estate, its time of continuance, or degree of interest as in fee, during life, or for years.

Quantum damnificatus, *Issue.* This is directed by Chancery to be tried at law to fix the amount of damage for compensation. But see 21 & 22 *Vict.* c. 27.

Quantum meruit (*so much as he has deserved*) an action on the case, express or implied, grounded on a promise to pay the plaintiff for doing a thing as much as he deserved or merited. Abolished in effect by the rules H. T. 1 Wm. IV.

Quantum tenens domino ex homagio, tantum dominus tenenti ex dominio debet præter solam reverentiam; mutua debet esse dominii et homagii fidelitatis connexio.—*Co. Litt.* 64.—(As much as the tenant by his homage owes to his lord,

so much is the lord, by his lordship, indebted to the tenant, except reverence alone; the tie of dominion and of homage ought to be mutual.)

Quantum valebat (*so much as it was worth*), where goods, &c. were delivered at no certain price, or for as much as they were worth in general, then *quantum valebat* lay, and the plaintiff was to aver them to be worth so much, as where the law obliged one to furnish another with goods or provisions, as an innkeeper to his guests, &c. Abolished by the rules H. T. 1 Wm. IV.

Quarantine, or **Quarentaine**, *the widow's*. It is provided by Magna Charta, that the widow shall not be distrained to marry afresh, if she choose to live without a husband, but shall not however marry against the consent of the lord; and further, that nothing shall be taken for assignment of the widow's dower, but that she shall remain in her husband's capital mansion-house for forty days after his death, during which time her dower shall be assigned. These forty days are called the widow's *quarantine*. Marriage during these forty days forfeits the quarantine. This right was enforced by writ of *Quarantinâ habendâ*.

It likewise signifies a quantity of land containing forty perches.—*Leg. Hen. I.* c. 16.

Also a regulation by which all communication with persons, ships, or goods, arriving from places infected with the plague, or other contagious disease, or supposed to be peculiarly liable to such infection, is interdicted for a certain definite period. The term is derived from the Italian *quaranta*, forty; it being generally supposed, that if no infectious disease break out within forty days or six weeks no danger need be apprehended from the free admission of the persons or things under quarantine. During this period, too, all the things which are supposed capable of retaining the infection are subjected to a process of purification.

The notion that the plague was imported from the East into Europe seems to have prevailed in all ages. But it would appear that the Venetians were the first who endeavoured to guard against its introduction from abroad, by obliging ships and persons coming from suspected places to perform quarantine. The regulations upon this subject were, it is most probable, issued for the first time in 1484.—*Beckman, Hist. of Invent.* vol. ii. art 'Quarantine.' They have since been gradually adopted in every other country. Their introduction into England was comparatively late. Various preventive regulations had been previously enacted, but quarantine was not systematically enforced till after the alarm occasioned by the dreadful plague at Marseilles in 1720. The regulations then adopted were made conformably to the suggestions of the celebrated Dr. Mead, in his famous 'Discourse concerning Pestilential Contagion.'

The existing quarantine regulations are embodied in the 6 Geo. IV. c. 78, and the different orders in council issued under its authority. These orders specify what vessels are liable to perform quarantine; the places at which it is to be performed; and the various formalities and regulations to be complied with. The publication in the *Gazette* of any order in council with respect to quarantine is deemed sufficient notice to all concerned, and no excuse of ignorance is admitted for any infringement of the regulations. To obviate, as far as possible, any foundation for such plea, it is ordered that vessels clearing out for any port or place with respect to which there shall be at the time any order in council subjecting vessels from it to quarantine, are to be furnished with an abstract of the quarantine regulations.—*McCull. Com. Dict.*

Quare clausum fregit (*wherefore he broke the close*), a plea in trespass which operates as a denial that defendant committed the alleged trespass in the place mentioned; but if it be intended to deny the plaintiff's possession, or right of possession, it must be traversed specially, as well as all matters in discharge, justification, or excuse.

Quare ejecit infra terminum (*wherefore he ejected within the term*), a writ which lay by the ancient law where the wrong-doer or ejector was not himself in possession of the lands, but another who claimed under him.

Quare impedit, a real possessory action, which can be brought only in the Court of Common Pleas, and lies to recover a presentation, when the patron's right is disturbed, or to try a disputed title to an advowson. If the right of nomination be in one person, and that of presentation in another, this action lies by the nominator for disturbing his right, either against the presentor before presentation, or against the incumbent after. If two patrons present to one and the same church by several titles, the church is become litigious, because the bishop knows not which has the true and rightful title; in that case, if the bishop admits the clerk of the one, he puts the other out of possession, and consequently to his action; and the bishop becomes a disturber if he, who is put out of possession, prove to have a better title. If opposition be intended, it is usual for each party to enter a *caveat* with the bishop, to prevent the institution of the other's clerk; but to this *caveat* the temporal courts pay no regard, viewing a *caveat* as a mere nullity. *Mirehouse on Advows.* 265.

A plaintiff must show an actual seisin to maintain this writ, and prove, when the title is disputed, a presentment by himself, his an-

cestor or some person under whom he claims, and the institution and induction of the presentee.

When the title is not involved, as under the general issue, *ne disturba pas*, the plaintiff either takes judgment, or proceeds for damages consequent upon the disturbance, the proofs being, the presentation, the bishop's refusal, and the presentation or institution of the other clerk.

If the delay of presentation arise from the bishop alone, as upon a pretence of incapacity, or the like, then he only is named in the writ; but if there be another presentation set up, then the pretended patron and his clerk are also joined in the action; or it may be brought against the patron and clerk leaving out the bishop; or against the patron only.

But it is most advisable to bring it against all three; for (1) if the bishop be left out, and the suit be not determined till the six months are past, the bishop is entitled to present by lapse, as he is not a party to the suit; but if he be named, and there has been a disturbance before the action, no lapse can possibly accrue till the right is determined. Should, however, the church be full, and there is not any danger of lapse, the bishop need not be joined. (2) If the patron be left out, and the writ be brought only against the bishop and the clerk, the suit is of no effect, and the writ shall abate, for the right of the patron is the principal question in the cause. (3) If the clerk be left out, and have received institution before the action brought (as is sometimes the case), the patron, by this suit, may recover his right of patronage, but not the present turn; for he cannot have judgment to remove the clerk, unless he be made a defendant and party to the suit, to hear what he can allege against it.

Previous to the passing of the Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), the action was commenced by an original writ issuing out of Chancery.

If there were two plaintiffs, as in the case of joint-tenancy, &c. the death of one of them would not abate the action, for a lapse might occur before the survivor could bring another action.—2 *Saund.* 72 *k*, and see 117 *a*. The summons upon this writ was served on the defendants, either personally or by posting it on the church-door of the benefice to which the action relates. A proclamation was unnecessary. If the defendant did not appear, or cast an essoin, i. e. show an excuse for not appearing at the return of the original writ, or if, after casting an essoin, he did not appear at the adjournment day, a writ of attachment issued commanding the sheriff to put such defendant, by gages and safe pledges, to answer for his default; if no appearance was entered in due time to this, then a writ of grand distress was sued out, commanding the sheriff to distrain the defendant by all his lands and chattels in the bailiwick, in order to compel the appearance; if then the defendant would not appear at the return of this writ, the plaintiff had judgment by default.—52 *Hen. III.* c. 12, *Stat. of Marlbridge.* Upon making out his title, execution was had.

When the defendant appeared, the plaintiff declared.

By section 26 of 23 & 24 Vict. c. 126, it is enacted that no *quare impedit* shall be brought after the commencement of the Act in any court whatsoever, but that an action may be commenced by writ of summons issuing out of the Court of Common Pleas in the same manner and form as the writ of summons in an ordinary action, and upon such writ shall be endorsed a notice that the plaintiff intends to declare in *quare impedit*. By s. 27, the service of the writ, the appearance of the defendant proceedings in default of appearance, pleadings, judgment, execution, and all other proceedings and costs upon such writ, shall be subject to the same rules of practice, as nearly as may be, as the proceedings in an ordinary action commenced by writ of summons, and the provisions of the Common Law Procedure Acts 1852 and 1854 shall apply to the writ and pleadings, and the proceedings thereupon.

The bishop and the clerk usually disclaim all title, except that of the bishop, as ordinary, to admit and institute, and that of the clerk, as presentee of the patron, who is thus left to defend his own right. The ordinary, however, if he have collated by lapse, may defend his right so to collate, and also his clerk may defend his right to be instituted (25 Edw. III. st. 3, c. 7). They may likewise plead dilatory pleas, or they may plead the general issue in bar—*ne disturba pas*—but should a disturbance be proved on their parts, the plaintiff will be entitled to damages. If the plaintiff's presentee be unfit, for want of learning, or otherwise, the bishop may plead the incapacity in bar.

The patron-defendant may plead dilatory pleas; or plenarty, i. e. that the church has been full for six calendar months before the issuing of the original writ, by virtue of his own presentation; or the general issue *ne disturba pas*; or he may traverse the plaintiff's title.

The defendant should set forth his own title, since in this action both parties are in effect complainants, and either may establish his right to present upon proving his title thereto.

The defendant, being thus deemed an *actor*, may himself carry down the record to trial without a proviso, although it is usual in practice to insert the proviso.—2 *Saund.* 336 *a*.

The trial is generally by jury. If the plaintiff

fail in proving his title, the defendant may prove his, if he have pleaded it. If the plaintiff succeed, then the jury are to inquire whether the benefice be full or not; if full, upon whose presentation; its yearly value; and whether six calendar months have passed since the avoidance, in order that they may assess the damages. By West. 2, 13 Edw. I. c. 5, if more than six calendar months have elapsed by reason of disturbance, so that the bishop has collated by lapse, and the true patron has thereby lost his presentation, damages are to be adjudged against the disturber to the amount of the value of the benefice for two years; if this time have not elapsed, then damages are to be assessed to the value of a moiety of the benefice for one year. Should the defendant succeed he is not entitled to damages.

The judgment is that the successful party recover his presentation, and a writ issues to the bishop commanding him to admit his presentee.

As to costs, see 4 & 5 *Wm. IV.* c. 39, and 23 & 24 *Vict.* c. 126, s. 27; and see *Chit. Arch. Prac. by Pren.* 305, 1486.

Quare incumbravit, a writ which lay against a bishop, who, within six months after the vacation of a benefice, conferred it on his clerk, whilst two others were contending at law for the right of presentation, calling upon him to show cause why he had incumbered the church.—*Reg. Orig.* 32. Abolished by 3 & 4 Wm. IV. c. 27.

Quare intrusit, a writ that formerly lay where the lord proffered a suitable marriage to his ward, who rejected it, and entered into the land, and married another, the value of his marriage not being satisfied to the lord. Abolished by 12 Car. II. c. 24.

Quare non admisit, a writ to recover damages against a bishop who does not admit a plaintiff's clerk. It is however rarely or never necessary; for it is said that a bishop refusing to execute the writ *ad admittendum clericum*, or making an insufficient return to it, may be fined.—*Wats. Cler. Law.* 302.

Quare non permittit, an ancient writ, which lay for one who had a right to present to a church for a turn against the proprietary.—*Fleta*, l. 5, c. vi.

Quare obstruxit, a writ which lay for him who, having a liberty to pass through his neighbor's ground, could not enjoy his right, because the owner had obstructed it.—*Fleta*, l. 4, c. xxvi.

Quarentena terræ, a furlong.—*Co. Litt.* 5 *b.*

Quarrel, a dispute, contest; also, an action real or personal.

Quart, the fourth part of a gallon.

Quarter, a length of four inches.

Quarter-days, the days which begin the four quarters of the year, viz. the 25th of March, or Lady-day; the 24th of June, or Midsummer-day; the 29th of September, or Michaelmas-day; and the 25th of December, or Christmas-day.

Quarterization, dividing a criminal into four quarters.

Quarter-seal, the seal kept by the director of the Chancery in Scotland. It is in the shape and impression of the fourth part of the great seal; and is in the Scotch statutes called the Testimonial of the Great Seal. Gifts of lands from the Crown pass this seal in certain cases. *Bell.*

Quarter-sessions. See GENERAL QUARTER-SESSIONS, and BOROUGH-SESSIONS.

Quarter of a year, ninety-one days.—*Co. Litt.* 135 *b.*

Quarto die post, the fourth day inclusive after a return of a writ, and if a defendant appeared then it was sufficient; but this practice is now altered.

Quash [*cassum facere*, Lat.], to overthrow or annul.—*Bracton.* As to quash an indictment, an order of justices, or a poor-rate.

Quasi-contract, an act which has not the strict form of a contract, but yet has the force of it; an implied contract.

Quasi-crime, or **Quasi-delict,** the action of one doing damage or evil involuntarily.

Quasi-entail. An estate *pur autre vie* may be granted, not only to a man and his heirs, but to a man and the heirs of his body, which is termed a *quasi* entail; the interest so granted not being properly an estate-tail (for the Statute *De Donis* applies only to where the subject of the entail is an estate of inheritance), but yet so far in the nature of an estate-tail, that it will go to the heir of the body as special occupant during the life of *cestui que vie*, in the same manner as an estate of inheritance would descend, if limited to the grantee and the heirs of his body. And such estate may be also granted with a remainder thereon during the life of *cestui que vie*; and the alienation of the *quasi*-tenant-in-tail will bar not only his issue, but those in remainder. The alienation, however, for that purpose (unlike that of an estate-tail, properly so called), may be effected by any method of conveyance, except a will.—1 *Step. Com.* 448.

Quasi-fee, an estate gained by wrong; for wrong is unlimited and uncontained within rules.

Quasi-personalty, things which are movable in point of law, though fixed to things-real, either actually, as emblements (*fructus industriales*), fixtures, &c.; or fictitiously, as chattels-real, leases for years, &c.

Quasi-realty, things which are fixed in contemplation of law to realty, but movable in themselves, as heir-looms (or limbs of the inheritance), title-deeds, court-rolls, &c.

Quasi-tenant at sufferance, an under-tenant who is in possession at the determination of an original lease, and is permitted by the reversioner to hold over.

Quasi-traditio, the placing a person in possession of a right.

Quasi-trustee, a person who reaps a benefit from a breach of trust, and so becomes answerable as a trustee.—*Lewin's Trusts*, 846.

Quatuorviri, magistrates who had the care and inspection of roads among the Romans.—*Civ. Law.*

Quays. As to erection of quays in or near to a public harbour, or river communicating therewith, see 46 *Geo. III.* c. 153, amended by 25 & 26 Vict. c. 69, s. 15.

Quebec. See 15 & 15 *Vict.* c. 53.

Queen [fr. *cwen*, Sax., a wife], a woman who is sovereign of a kingdom. The queen regent, regnant, or sovereign, is she who holds the Crown in her own right, as Queen Victoria, who has the same powers, prerogatives, rights, dignities, and duties as if she had been a king.

(1) With regard to the Queen's title, the Crown of England, by the positive constitution of the kingdom, has ever been descendible, and so continues, and it is descendible in a course peculiar to itself, yet subject to limitation by Parliament; but notwithstanding those limitations, the Crown retains its descendible quality, and becomes hereditary in the prince to whom it is limited.

(2) Her duties are to govern the people according to law, to execute judgment in mercy, and to maintain the established religion.

(3) Her prerogatives are—

(*a*) As to her dignity or royal character, which consists in the legal attributes of—

(*α*) Personal sovereignty.
(*β*) Absolute perfection.
(*γ*) Political perpetuity.

(*b*) As to her regal power, in which consists the executive part of government; in foreign concerns, the Queen, as the representative of the nation, has the right or prerogative of—

(*α*) Sending and receiving ambassadors.
(*β*) Making treaties.
(*γ*) Proclaiming war or peace.
(*δ*) Issuing reprisals.
(*ε*) Granting safe conducts.

In domestic affairs, the Queen is a constituent part of the supreme legislative power; she may negative all new laws; and is bound by no statute unless specially named therein. She is also considered as the general of the kingdom, and may raise fleets and armies, build forts, appoint havens, erect beacons, prohibit the exportation of arms and ammunition, and confine her subjects within the realm, or recall them from foreign parts. She is also the fountain of justice and general conservator of the peace, and therefore may erect courts (wherein she has a legal ubiquity), prosecute offenders, pardon crimes, and issue proclamations. She is likewise the fountain of honor, office, and privilege. She is also the arbiter of domestic commerce; but not of foreign, which is regulated by the law of merchants. She is, therefore, entitled to the erection of public marts, the regulation of weights and measures, and the coinage or legitimation of money. The Queen is also the supreme head of the church, and as such, convenes, regulates, and dissolves synods, nominates bishops, and receives appeals in all ecclesiastical causes.

(4) The Queen's revenue is either ordinary or extraordinary.

(A.) The ordinary is either—

(1) Ecclesiastical, consisting in

(*α*) The custody of the temporalities of vacant bishoprics.
(*β*) Corodies and pensions.
(*γ*) Extra-parochial tithes.
(*δ*) The first-fruits and tenths of benefices.

(2) Temporal, consisting in

(*α*) The demesne lands of the Crown.
(*β*) The hereditary excise; being part of the consideration for the purchase of the feodal profits, and the prerogatives of purveyance and pre-emption.
(*γ*) Forests.
(*δ*) Courts of justice.
(*ε*) Royal fish.
(*ζ*) Wrecks and things jetsam, flotsam, and ligan.
(*η*) Royal mines.
(*θ*) Treasure trove.
(*ι*) Waifs.
(*κ*) Estrays.
(*λ*) Forfeitures for offences.
(*μ*) Escheats.
(*ν*) The custody of idiots and lunatics.

(B.) Extraordinary, which consists in aids, subsidies, and supplies granted to her by the Commons in Parliament, and raised by taxation. 1 *Bl. Com.* 190.

Queen, *Shooting at,* a high misdemeanor. See SHOOTING AT THE QUEEN.

Queen Anne's Bounty. See BOUNTY OF QUEEN ANNE.

Queen Consort, the wife of the reigning king. She is a public person, exempt and distinct from the king, for she is of ability to purchase lands, and to convey them, to make leases, to grant copyholds, and to do other acts of ownership, without the concurrence of her husband. She is also capable of taking a grant at common-law from her husband, which no other wife can do. She has separate courts and offices distinct from the king's, not only in matters of ceremony, but even of law; and her attorney and solicitor-general are

entitled to a place within the bar of his Majesty's courts, together with the king's counsel. She may likewise be sued, and sue alone, without joining her husband; she is indeed considered as a *feme sole*, and not as a *feme covert*. She pays no toll, nor is she liable to any fine in any court. As to the security of her life and person, she is placed on the same footing with the king.

Queen Dowager, the widow of a deceased king. She enjoys most of the privileges belonging to her as queen consort. But it is not treason to conspire her death or violate her chastity, because the succession to the Crown is not thereby endangered. No man can marry her without special license from the Crown, on pain of forfeiting his lands and goods. If she marry a subject, she does not lose her regal dignity, as dowager peeresses (if commoners by birth) do their peerages, when they marry commoners.

Queen Gold, a royal revenue which belonged to every queen consort during her marriage with the king, and was due from every person who had made a voluntary offer or fine to the king amounting to ten marks or upwards, or in consideration of any privileges, grants, licenses, pardons, or other matters of royal favor conferred upon him by the king; it was due in the proportion of one-tenth part more, over and above the entire offering or fine made to the king, and became an actual debt of record to the queen's majesty, by the mere recording of the fine. But no such payment was due for any aids or subsidies granted to the king in Parliament or convocation; nor for fines imposed by courts on offenders against their will, nor for voluntary presents to the king, without any consideration-money from him to the subject, nor for any sale or contract whereby the revenues and possessions of the Crown were granted away or diminished. It is now quite obsolete.

Queen Regnant, or **Regent,** she who holds the Crown in her own right. See QUEEN.

As to the status, &c. of the husband of the Queen Regnant, see PRINCE CONSORT.

Queen's Advocate. See ADVOCATE, QUEEN'S. Also an officer in Scotland, similar, but in some respects superior to the Queen's attorney-general in England. It is his province to prosecute all criminal actions, and bring the criminals to punishment, without the intervention of any grand jury, and at the public expense.

Queen's Bench. The Court of King's, or Queen's Bench (so called because the king used formerly to sit there in person, the style of the court still being *coram ipso rege*, or *coram ipsâ reginâ*) is a court of record, and the supreme court of common law in the kingdom, consisting of a chief justice and four *puisné* justices who are by their office the sovereign conservators of the peace and supreme coroners of the land. Yet though the king himself used to sit in this court, and still is supposed so to do, he did not, neither by law is he empowered to, determine any cause or motion but by the mouth of his judges to whom he hath committed his whole judicial authority.

This court, which is the remnant of the *aula regia*, is not, nor can be from the very nature and constitution of it, fixed to any certain place, but may follow the king's person wherever he goes, for which reason all process issuing out of this court in the king's name is returnable '*ubicunque fuerimus in Angliâ.*' It hath indeed for some centuries past usually sat at Westminster, being an ancient palace of the Crown, but might remove with the king to York or Exeter if he thought proper to command it. And we find that after Edward I. had conquered Scotland it actually sat at Roxburgh; and this movable quality, as well as its dignity and power, are fully expressed by Bracton where he says that the justices of this court are *capitales generales perpetui et majores; a latere regis residentes; qui omnium aliorum corrigere tenentur injurias et errores.* And it is moreover especially provided in the *articuli super cartas* that the king's chancellor and the justices of his bench shall follow him, so that he may have at all times near unto him some that be learned in the laws.

The jurisdiction of this court is very high and transcendent. It keeps all inferior jurisdictions within the bounds of their authority, and may, either by writ of *certiorari*, remove their proceedings to be determined here, or, by writ of *prohibition*, prohibit their progress below. It superintends all civil corporations in the kingdom (See QUO WARRANTO). By writ of *mandamus* it commands magistrates to do what their duty requires in every case where there is no other specific remedy. By writ of *habeas corpus* it protects the liberty of the subject by speedy and summary interposition. It takes cognizance both of criminal and civil causes; the former in what is called the crown side or crown office; the latter in the plea side of the court. On the crown side it takes cognizance of all criminal causes from high treason down to the most trivial misdemeanor or breach of the peace. Into it also indictments from all inferior courts may be removed by writ of *certiorari*, and may be tried either at bar, or at *nisi prius*, or in some extreme cases at the Central Criminal Court under 19 & 20 Vict. c. 16. See CERTIORARI, HABEAS CORPUS, MANDAMUS, QUO WARRANTO.

On the plea side it exercises a general jurisdiction over all actions between subject and subject with the exception of real actions and suits

concerning the revenue. Its jurisdiction in civil actions was formerly limited to trespass or injuries said to have been committed *vi et armis*, but by means of fictitious proceedings called *Bill of Middlesex* and *Latitat* (which see) it usurped jurisdiction over all personal actions. It now exercises a direct jurisdiction in all such actions by virtue of 2 Wm. IV. c. 39, which abolished these fictitious proceedings. Error lies from this court to the Exchequer chamber.

The matters comprised within the civil jurisdiction of this court have been thus classed—

(I.) Formal or plenary.

(1) Personal actions.

(2) Mixed action of ejectment.

(II.) Summary.

(1) Annuities and mortgages (15 & 16 Vict. c. 76, ss. 219 & 220).

(2) Arbitrations and awards.

(3) *Habeas Corpus* Act (31 Car. II. c. 2, extended by 56 Geo. III. c. 100).

(4) Interpleader Act (1 & 2 Wm. IV. c. 58).

(5) Over officers of the court.

(6) Warrants of attorney, cognovits, and judges' orders for judgment.

(III.) Auxiliary.

(1) Answering a special case.

(2) Enforcing judgments of inferior courts of record.

(3) Prerogative *Mandamus* to compel inferior courts or officers to act. See 17 & 18 *Vict.* c. 125, ss. 75–77.

(4) Prohibition.

(5) *Quo warranto.*

(6) Trying an issue in fact from a court of equity, or a feigned issue.

(IV.) Appellate.

(1) Appeal from the decisions of justices of the peace, in giving possession of deserted premises to landlords, under 11 Geo. II. c. 19, ss. 16, 17.

(2) Writs of error from certain inferior courts of record (17 & 18 Vict. c. 125, s. 102).

(3) Writs of false judgment from inferior courts, not of record, but proceeding according to the course of the common law.

(4) Appeals by way of a case from the summary jurisdiction of justices of the peace, on questions of law (20 & 21 Vict. c. 43, Order of Court, 25th November, 1857).

Connected with the Court of Queen's Bench, and auxiliary thereto, is the practice Court, presided over by one of the *puisné* judges in rotation. The Practice Court (formerly called the Bail Court) hears and determines common matters of business, and ordinary motions for writs of *mandamus*, prohibition, &c.

Queen's Coroner and Attorney, an officer on the Crown side of the Queen's Bench.—6 & 7 *Vict.* c. 20. By 23 & 24 Vict. c. 54, the office of assistant master of the Crown office is abolished; and the officers on the Crown side of the court are to be the Queen's coroner and attorney and one master.

Queen's Counsel, barristers who have been called within the bar, and selected to be the Queen's counsel. They answer in some measure to the advocates of the revenue, *advocati fisci*, among the Romans. They must not be employed against the Crown without special license, which, however, is never refused. It costs about nine pounds.

Queen's Evidence, an accomplice to whom a hope is held out, that if he will fairly disclose the whole truth as a witness on the trial, and bring the other offenders to justice, he shall himself escape punishment.—1 *Phil. Evid.* 31. A jury may, if they think fit, convict on the unsupported testimony of an accomplice.

Queensland, a separate colony, in the district of Moreton Bay, New South Wales. See *Gaz.* June 3rd, 1849, and 24 & 25 *Vict.* c. 44.

Queen's Printer has the liberty of printing the Bible, Prayer-book, statutes and acts of state, to the exclusion of all other presses, except the two Universities.

Queen's Prison, a jail appropriated to the debtors and criminals confined under process or by authority of the superior courts at Westminster, the High Court of Admiralty, and also to persons imprisoned under the bankrupt-law. The 5 & 6 Vict. c. 22, amended by 11 & 12 Vict. c. 7, and 23 & 24 Vict. c. 60, consolidated the Queen's Bench, Fleet and Marshalsea Prisons. See *The Queen's Prison Discontinuance Act*, 1862, 25 & 26 *Vict.* c. 104.

Que estate [*quorum statum*, Lat.], as much as to say, whose estate he has. It is a plea where one entitling another to land, says, that he and they whose estate he has, have enjoyed the same. A person cannot prescribe in anything by a *que estate* that lies in grant, and cannot pass without deed or fine; but in him and his ancestors he may, because he comes in by descent without any conveyance.—1 *Inst.* 121; 2 *Bl. Com.* 266. See PRESCRIPTION.

Que est le mesme [*quæ est eadem*, Lat.], a term used in actions of trespass, &c. for a direct justification of the very act complained of by the plaintiff as a wrong. See QUÆ EST EADEM.

Quemadmodum ad quæstionem facti non respondent judices, ita, ad quæstionem juris non respondent juratores.—*Co. Litt.* 295.—(In the same manner that judges do not answer to questions of fact, so jurors do not answer to questions of law.)

Quem redditum reddit, an old writ which

lay where a rent-charge, or other rent which was not rent-service, was granted by fine, holding of the grantor. If the tenant would not attorn, then the grantee might have had this writ.—*O. N. B.* 126.

Querela, an action or declaration preferred in any court of justice.

Querela coram rege a concilio discutienda et terminanda, a writ by which one is called to justify a complaint of a trespass made to the king himself, before the king and his council.

Querele, a complaint to a court.

Querent [fr. *querens*, Lat.], a plaintiff, complainant, inquirer.

Quest, inquest, inquisition, or inquiry.

Question, interrogatory; anything inquired. See TORTURE.

Questman, or **Questmonger,** starter of lawsuits or prosecutions; also a person chosen to inquire into abuses, especially such as relate to weights and measures; also a churchwarden. See *Prid. Churchwarden's Guide.*

Questus, land which does not descend by hereditary right, but is acquired by one's own labor and industry.

Questus est nobis, a writ of nuisance, which by 15 Edw. I. lay against him to whom a house or other thing that caused a nuisance, descended or was alienated; whereas, before that statute the action lay only against him who first levied or caused the nuisance, to the damage of his neighbour.

Qui abjurat regnum amittit regnum sed non regem; patriam sed non patrem patriæ.—7 *Co.* 9.—(He who abjures the realm, leaves the realm, but not the king; the country, but not the father of the country.)

Qui accusat integræ famæ sit et non criminosus.—3 *Inst.* 26.—(Let him who accuses be of clear fame, and not criminal.)

Qui adimit medium, dirimit finem.—*Co. Litt.* 161.—(He who takes away the middle destroys the end.)

Qui aliquid statuerit parte inaudita altera, æquum licet dixerit, haud æquum fecerit.—6 *Co.* 52.—(He who decides anything, one party being unheard, though he should decide right, does wrong.)

Quia Emptores, *Statute of,* 18 Edw. I. st. 1, c. 1, A. D. 1290, West. the third. It is entitled in the parliament-roll, from the subject of it, *statutum regis de terris vendendis et emendis.* Prior to this statute, any person might, by a grant of land, have created a tenure as of his person; but if no such tenure were reserved, the feoffee held of the feoffor, by the same services by which the feoffor held of his superior lord. The consequence was, that all the fruits of tenure fell into the hands of the feoffors or mesne lords, to the prejudice of the superior lords of the fee; for remedy whereof it was by this statute enacted, 'That thenceforth it shall be lawful to every freeman to sell at his own pleasure his lands and tenements, or part of them, so that the feoffee shall hold the same lands or tenements of the chief lord of the same fee, by such service and customs as his feoffor held before.'—2 *Inst.* 500; 2 *Reeves*, c. xi., p. 223.

Quia Timet Bill. It is filed for the purpose of quieting a present apprehension of a probable or possible future injury to property. The court adapts its relief so as to accomplish the ends of the precautionary justice required, and will either appoint a receiver to receive the rents or other income, or order the fund to be paid into court, or direct security to be given for its due preservation and appropriation, or issue its preventive writ of injunction.—*Sto. Eq. Jur.* c. xxi. and 1 *Madd. Chan.* 294.

Qui bene distinguit, bene docet.—2 *Inst.* 470. (He who distinguishes well, teaches well.)

Qui bene interrogat, bene docet.—3 *Buls.* 227. (He who questions well, learns well.)

Quick with child. See ABORTION.

Qui concedit aliquid, concedere videtur et id sine quo concessio est irrita, sine quo res ipsa esse non potuit.—11 *Co.* 52.—(He who concedes anything is considered as conceding that without which his concession would be idle, without which the thing itself could not exist.)

Qui contemnit præceptum, contemnit præcipientem.—12 *Co.* 96.—(He who contemns the precept, contemns the person giving it.)

Quicquid est contra normam recti est injuria. 9 *Buls.* 313.—(Whatever is against the rule of right, is an injury.)

Quicquid in excessu actum est lege prohibetur. 2 *Inst.* 107.—(Whatever is done in excess is prohibited in law.)

Quicquid judicis auctoritati subjicitur novitati non subjicitur.—4 *Inst.* 66.—(Whatever is subject to the authority of the judge, is not subject to novelty.)

Quicquid plantatur solo, solo cedit.—*Off. of Exec.* 57.—(Whatever is affixed to the soil, belongs to the soil.)

Quicquid solvitur, solvitur secundum modum solventis.—2 *Vern.* 606.—(Whatever is paid, is paid according to the direction of the payer.)

Qui cum alio contrahit, vel est, vel esse debet, non ignarus conditionis ejus.—(He who contracts with another, either is, or ought to be, acquainted with the condition of the person with whom he contracts.)

This rule, however reasonable in its application to the condition of a person as fixed by the law of the country where he is domiciled, is not so clear in point of convenience or equity, when applied to the condition of a person as fixed by the law of a foreign country. How are the inhabitants of any country to ascertain

the condition of a stranger dwelling among them, as fixed by the law of a foreign country, where he was born, or has acquired a domicile? Even courts of justice do not assume to know what the laws of a foreign country are; but require them to be proved; how then shall private persons be presumed to have better means of knowledge? On the other hand, it may be said with great force, that contracts ought to be governed by the law of the country where they are made, as to the competence of the parties to make them, and as to their validity; because the parties may well be presumed to contract with reference to the laws of the place where the contract is made, and is to be executed. Such a rule has certainty and simplicity in its application. It ought not, therefore, to be matter of surprise that the country of the party's birth should hold such a contract valid or void, according to its own law; and that, nevertheless, the country where it is to be made and to be executed, should hold it valid or void, according to its own law. It has well been observed by an eminent judge (Lord Stowell), that 'with respect to any ignorance arising from foreign birth and education, it is an indispensable rule of law, as exercised in all civilised countries, that a man who contracts in a country engages for a competent knowledge of the law of contracts of that country. If he rashly presume to contract without such knowledge, he must take the inconveniences resulting from such ignorance upon himself, and not attempt to throw them upon the other party who has engaged under a proper knowledge and sense of the obligation which the law would impose upon him by virtue of that engagement.' *Dalrymple* v. *Dalrymple*, 2 *Hagg. Cons. R.* 61; *Story's Confl. of Laws*, 93.

Quicunque habet jurisdictionem ordinariam est illius loci ordinarius.—Co. Litt 344.—(Whoever has an ordinary jurisdiction, is ordinary of that place.)

Quicunque jussu judicis aliquid fecerit non videtur dolo malo fecisse, quia parere necesse est. 10 *Co.* 71.—(Whoever does anything by the command of a judge, is not reckoned to have done it with an evil intent, because it is necessary to obey.)

Qui destruit medium destruit finem.—10 *Co.* 51.—(He who destroys the middle, destroys the end.)

Qui doit inheriter al père doit inheriter al fitz. (He who would have been heir to the father, shall be heir to the son.)

Quid juris clamat, a judicial writ issued out of the record of a fine, which remained with the *custos brevium* of the Common Pleas before it was engrossed; it lay for the grantee of a reversion or remainder, when the particular tenant would not attorn.—*Reg. Jud.* 571.

Quid pro quo (*what for what*), the mutual consideration and performance of both parties to a contract.

Quid sit jus, et in quo consistit injuria, legis est definire.—Co. Litt. 158 *b.*—(What right is, and what injury is, it is the business of the law to declare.)

Qui eorum vestigia insistant eorum exitus perhorrescant.—4 Inst. 487.—(Let those dread their fate who tread in their steps.)

Quietare, to quit, acquit, discharge, or save harmless.

Quiete clamare, to quit claim, or renounce all pretensions of right and title.—*Bract.* l. 5.

Quiet enjoyment. See COVENANT and DEMISE.

Quietus, freed or acquitted. A word made use of in the Exchequer in the discharge given to accountants to the Crown, e. g. a sheriff. As to the registration of a *quietus*, see 2 *Vict.* c. 11, s. 9.

Quietus reditus, a quit-rent.

Qui evertit causam evertit causatum futurum. 10 *Co.* 51.—(He who overthrows the cause, overthrows the future consequence.)

Qui ex damnato coitu nascuntur inter liberos non computentur.—Co. Litt. 8.—(Those who are born of unlawful intercourse, are not counted among children.)

Qui facit per alium, facit per se.—Co. Litt. 258.—(He who acts through another, acts through himself.)

Qui habet jurisdictionem absolvendi, habet jurisdictionem ligandi.—12 *Co.* 59.—(He who has the jurisdiction of loosening, has the jurisdiction of binding.)

Qui hæret in literâ, hæret in cortice.—Co. Litt. 289.—(He who sticks to the letter, sticks to the bark.)

Qui improvide, a supersedeas granted where a writ is erroneously sued out or misawarded.

Qui in utero est, pro jam nato habetur, quoties de ejus commodo quæritur.—(He who is in the womb is held as already born, whenever a question arises for his benefit.)

Qui jure suo utitur, nemini facit injuriam.—Reg. Jur. Civ.—(He who exercises a right, does an injury to nobody.)

Quilibet potest renunciare juri pro se introducto.—2 Inst. 183.—(Every man can renounce a right introduced for himself.)

Qui molitur insidias in patriam id facit quod insanus nauta perforans navem in quâ vehitur. 3 *Inst.* 36.—(He who plots against his country acts like an insane sailor who scuttles the ship in which he is carried.)

Qui non cadunt in constantem virum vani timores sunt æstimandi.—7 *Co.* 27.—(Those fears are to be esteemed vain which do not affect a firm man.)

Qui non habet in ære, luat in corpore; ne quis peccetur impunè.—2 *Inst.* 173.—(He who

cannot pay with his purse must suffer in person, lest any one should sin with impunity.)

Qui non habet potestatem alienandi habet necessitatem retinendi.—*Hob.* 336.—(He who has not the power of alienating, is obliged to retain.)

Qui non improbat, approbat.—3 *Inst.* 27.—(He who does not blame, approves.)

Qui non libere veritatem pronunciat proditor est veritatis.—4 *Inst. Epil.*—(He who does not willingly speak truth is a betrayer of the truth.)

Qui non obstat quod obstare potest, facere videtur.—2 *Inst.* 146.—(He who does not prevent what he can prevent, seems to commit the thing.)

Qui non prohibet quod prohibere potest, assentire videtur.—2 *Inst.* 308.—(He who does not forbid what he can forbid, appears to assent.)

Qui non propulsat injuriam quando potest, infert.—*Jenk. Cent.* 271.—(He who does not repeal an injury when he can, induces it.)

Quinquagesima Sunday, Shrove Sunday.

Quinquepartite, consisting of five parts.

Quinque Portus, see CINQUE PORTS.

Quinsteme, or **Quinzime**, fifteenths.—13 *Edw. I.*

Quintal, or **Kintal**, a weight of 100 lbs.

Quinto exactus, the fifth or last call or requisition of a defendant sued to outlawry.

Qui obstruit aditum, destruit commodum.—*Co. Litt.* 161.—(He who obstructs an entry (on land) takes away the enjoyment.)

Qui omne dicit, nihil excludit.—4 *Inst.* 81.—(He who says all, excludes nothing.)

Qui parcit nocentibus, innocentibus punit.—*Jenk. Cent.* 126.—(He who spares the guilty punishes the innocent.)

Qui peccat ebrius, luat sobrius.—*Cary's Rep.* 133.—(Let him who sins when drunk, be punished when sober.)

Qui per alium facit, per seipsum facere videtur. Co. Litt. 258.—(He who does a thing by an agent, is considered as doing it himself.)

Qui per fraudem agit, frustrà agit.—2 *Rol. Rep.* 17.—(What a man does fraudulently, he does in vain.)

Qui periculum amat in eo peribit.—(He who loves danger will perish by it.)

Qui potest et debet vetare, jubet.—*Gilb.* 35. (He who is able and ought to forbid, commands.)

Qui primum peccat ille facit rixam.—*Godb.* (He who sins first, makes the strife.)

Qui prior est tempore potior est jure.—*Co. Litt.* 14.—(He who is first in time, is more powerful in law.)

Qui pro me aliquid facit, mihi fecisse videtur. 2 *Inst.* 501.—(He who does anything for me, appears to do it to me.)

Qui providet sibi providet hæredibus.—(He who provides for himself, provides for his heirs.)

Qui rationem in omnibus quærunt, rationem subvertunt.—2 *Co.* 75.—(They who seek a reason for everything, subvert reason.)

Qui semel actionem renunciaverit, amplius repetere non potest.—8 *Co.* 59.—(He who renounces an action once, cannot any more repeat it.)

Qui semel malus, semper præsumitur esse malus in eodem genere.—*Cro. Car.* 317.—(He who is once bad, is presumed to be bad always in the same degree.)

Qui sentit commodum, sentire debet et onus: et è contra.—1 *Co.* 99.—(He who receives the advantage, ought also to suffer the burthen, and on the contrary.)

The converse of this maxim also holds.

Qui tacet, consentire videtur.—*Jenk. Cent.* 32.—(He who is silent, appears to consent.)

Qui tacet consentire videtur, ubi tractatur de ejus commodo.—9 *Mod.* 38.—(He who is silent is considered as assenting, when his advantage is debated.)

Qui tam (*who as well*), a popular action on a penal statute which is partly at the suit of the Queen and partly at that of an informer; so called from the words '*Qui tam pro dominâ reginâ, quam pro se ipso, sequitur.*' As to the Crown's power of remitting these penalties see 22 *Vict.* c. 32.

Qui tardius solvit, minus solvit.—*Jenk. Cent.* 58.—(He who pays slowly, pays too little.)

Qui timent, cavent et vitant.—*Office of Exec.* 62.—(They who fear, are wary and avoid.)

Quisquis præsumitur bonus; et semper in dubiis pro reo respondendum.—*Jur. Civ.*—(Every one is presumed good; and in doubtful cases, the presumption is always in favor of the defendant.)

Quisquis est qui velit juris consultus haberi continuet studium, velit a quocunque doceri.—*Jenk. Cent.*—(Whoever wishes to be a jurisconsult, let him continually study, and desire to be taught by everyone.)

Quit claim, a quitting of one's action, claim or title.

Quit-rent, a rent, the payment of which frees from services, &c.

Quoad hoc (*as to this*).

Quo animo (*with what mind*).

Quod ab initio non valet, in tractu temporis non convalescet.—4 *Co.* 2.—(That which is bad in its commencement, improves not by lapse of time.)

Quod alias bonum et justum est, si per vim vel fraudem petatur, malum et injustum efficitur. 3 *Co.* 78.—(What otherwise is good and just, if it be sought by force and fraud, becomes bad and unjust.)

Quod clerici beneficiati de cancellaria, a writ to exempt a clerk of the Chancery from the contribution towards the proctors of the clergy in Parliament, &c.—*Reg. Orig.* 261.

Quod clerici non eligantur in officio

ballior, &c. a writ which lay for a clerk, who, by reason of some land he had, was made, or was about to be made, bailiff, beadle, reeve, or some such officer, to obtain exemption from serving the office.—*Reg. Orig.* 187.

Quod constat clare, non debet verificari.—(That which is clearly apparent, needs not to be verified.)

Quod constat curiæ, opere testium non indiget. 2 *Inst.* 662.—(What appears to the court, needs not the help of witnesses.)

Quod contra legem fit, pro infecto habetur.—4 *Co.* 31.—(What is done contrary to law is considered as not done.)

Quod computet, an interlocutory judgment or decree in a matter of account.

Quod cum (*that whereas*).

Quodcunque aliquis ob tutelam corporis sui fecerit, jure id fecisse videtur.—2 *Inst.* 590.—(Whatever any one does in defence of his person, that he is considered to have done legally.)

Quod datum est ecclesiæ, datum est Deo.—2 *Inst.* 2.—(What is given to the church is given to God.)

Quod demonstrandi causâ additur rei satis demonstratæ, frustra fit.—10 *Co.* 113.—(What is added to a thing sufficiently palpable for the purpose of demonstration, is vain.)

Quod dubitas, ne feceris.—*P. C.* 300.—(Where you doubt, do nothing.)

Quod ei deforceat, a writ for a tenant-in-tail, tenant-in-dower, by the courtesy, or for term of life, having lost any land by default, against him who recovers, or his heir.—*Reg. Orig.* 171.

Quod est ex necessitate nunquam introducitur, nisi quando necessarium.—2 *Rol. Rep.* 512.—(What is of necessity, is never introduced, except when necessary.)

Quod est inconveniens, aut contra rationem, non permissum est in lege.—*Co. Litt.* 178.—(What is inconvenient, or contrary to reason, is not permitted in law.)

Quod est necessarium est licitum.—*Jenk. Cent.* 76.—(What is necessary is lawful.)

Quod fieri non debet factum valet.—5 *Co.* 38.—(What ought not to be done avails when done.)

Quod inconsulto fecimus, consultius revocemus. Jenk. Cent. 116.—(What we have done without counsel, let us undo when better advised.)

Quod in jure scripto 'jus' appellatur, id in lege Angliæ 'rectum' esse dicitur.—*Co. Litt.* 260.—(What in written law is called '*jus*,' in the law of England is said to be '*rectum*.')

Quod in minori valet, valebit in majori; et quod in majori non valet, nec valebit in minori. Co. Litt. 260.—(What avails in the minor, will avail in the major; and what does not avail in the major, will not avail in the minor.)

Quod in uno similium valet, valebit in altero. Co. Litt. 191.—(What avails in one of two similar things, will avail in the other.)

Quod meum est, sine me auferri non potest. Jenk. Cent. 251.—(What is mine cannot be taken away without my act.)

Quod necessariè intelligitur, id non deest.—1 *Buls.* 71.—(What is necessarily understood is not wanting.)

Quod necessitas cogit, defendit.—*H. H. P. C.* 54.—(What necessity forces, it justifies.)

Quod non apparet non est; et non apparet judicialiter ante judicium.—2 *Inst.* 479.—(That which appears not is not; and nothing appears judicially before judgment.)

Quod non capit Christus, capit fiscus.—3 *Inst.* 132.—(What the church does not take, the exchequer does.)

Quod non habet principium non habet finem. Co. Litt. 345.—(That which has no beginning has no end.)

Quod non legitur non creditur.—4 *Inst.* 304.—(What is not read is not believed.)

Quod non valet in principalia, in accessoria seu consequentia non valebit; et quod non valet in magis propinquo, non valebit in magis remoto. 8 *Co.* 78.—(That which is not good against the principal, will not be good as to accessories or consequences; and that which is not of force in regard to things near it, will not be of force in things more remote from it.)

Quod nostrum est, sine facto sive defectu nostro amitti seu in alium transferri non potest.—8 *Co.* 92.—(That which is ours cannot be lost or transferred to another without our own act, or our own fault.)

Quod nullius est, est domini regis.—*Fleta*, 1, iii. (That which is he property of nobody belongs to our lord the king.)

Quod nullius est, id ratione naturali occupanti conceditur.—*Pand* 1, xli.—(What belongs to nobody is given to the occupant by natural right.)

Quod per me non possum, nec per alium.—4 *Co.* 24.—(What I cannot do of myself, I cannot do by another.

Quod permittat, a writ which lay against any person who erected a building, though on his own ground, so near to the house of another, that it hung over or became a nuisance to it.—*Termes de la Ley*, 479. Abolished.

Quod permittat prosternere, a writ, in the nature of a writ of right, to abate a nuisance.—*F. N. B.* 104. Abolished.

Quod per recordum probatum, non debet esse negatum.—(What is proved by record, ought not to be denied.)

Quod persona nec prebendarii, &c. a writ which lay for spiritual persons, distrained in their spiritual possessions, for payment of a fifteenth with the rest of the parish.—*F. N. B.* 176. Obsolete.

Quod primum est intentione, ultimum est in

operatione.—Bacon.—(That which is first in intention is last in operation.)

Quod prius est verius est; et quod prius est tempore potius est jure.—Co. Litt. 347.—(What is first is true, and what is first in time is better in law.)

Quod pro minore licitum est, et pro majore licitum est.—8 *Co.* 43.—(That which is lawful as to the minor is lawful as to the major.)

Quodque dissolvitur eodem modo quo ligatur. 2 *Rol. Rep.* 39.—(In the same manner that a thing is bound, in the same manner it is unbound.)

Quod quisquis norat in hoc se exerceat.—11 *Co.* 10.—(Let everyone employ himself in what he knows.)

Quod recuperet [Lat.] (*that he do recover the debt or damages*), a final judgment for a plaintiff in a personal action.

Quod remedio destituitur ipsa re valet si culpa absit.—Bacon.—(That which is without remedy avails of itself if without fault.)

Quod restringendi causâ additur in casu domini regis, si falsum sit, vitiat cartam.—10 *Co.* 110.—(That which is added for the purpose of restraint in the case of the king, if false, vitiates the grant.)

Quod semel meum est, amplius meum esse non potest.—Co. Litt. 49.—(What is once mine, cannot be mine more completely.)

Quod semel placuit in electione, amplius displicere non potest.—Co. Litt. 146.—(Where choice is once made, it cannot be disapproved any longer.)

Quod sub certâ formâ concessum vel reservatum est, non trahitur ad valorem seu compensationem.—Bacon.—(What is given or reserved under a certain form, is not to be drawn into a valuation or compensation.)

Quod tacite intelligitur deesse non videtur.—4 *Co.* 22.—(What is silently understood does not appear to be wanting.)

Quod vanum et inutile est, lex non requirit.—*Co. Litt.* 319.—(The law requires not what is vain and useless.)

Quo jure, a writ which lay for him who had land wherein another challenged common of pasture, time out of mind; and it was to compel him to show by what title he challenged it. *F. N. B.* 158.

Quo ligatur, eo dissolvitur.—2 *Rol. Rep.* 21.—(By the same power by which a thing is bound, by that is it released.)

Quo minus, a writ which lay for him who had a grant of house-bote and hay-bote in another's woods against the grantor, making such waste as that the grantee could not enjoy his grant.—*O. N. B.* 148.

It also lay for the Queen's accountant in the Exchequer against any person against whom he had a right of action, and was called a *quo minus* because in it the plaintiff suggested that he was the king's farmer or debtor, and that the defendant had done him the injury or damage complained of, *quo minus sufficiens existit* (by which he is less able) to pay the king his debt or rent. Afterwards this suggestion of being debtor to the king was allowed to be inserted by any plaintiff who wished to proceed in that court against any defendant, as a mere matter of form, and in this way the Court of Exchequer obtained a jurisdiction coextensive with that of the Common Pleas in actions personal. The writ of *quo minus* was abolished by 2 Wm. IV. c. 39.—3 *Bl. Com.* 46.

Quomodo quid constituitur eodem modo dissolvitur.—Jenk. Cent. 74.—(In the same manner by which anything is constituted, by that it is dissolved.)

Quoniam attachiamenta, one of the oldest books of the Scotch law, so called from the first words of the volume.

Quorum (*of whom*). See JUSTICES.

Quorum prætextu, nec auget nec minuit sententiam, sed tantum confirmat præmissa.—Plow. 52.—('*Quorum prætextu*' neither increases nor diminishes a sentence, but only confirms that which went before.)

Quot, one twentieth part of the movable estate of a person dying in Scotland, anciently due to the bishop of the diocese wherein he had resided.

Quota, a tax to be levied in an equal manner.

Quoties duplici jure defertur alicui successio, repudiato novo jure, quod ante defertur supererit vetus.—Reg. Jur. Civ.—(As often as a succession comes to a man by a double right, the new right being laid aside, the old one which brought it first will survive.)

Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est.—Co. Litt. 147.—(When in the words there is no ambiguity, then no exposition contrary to the words is to be made.)

Quousque [Lat.] (*until*).

Quo warranto, a writ issuable out of the Queen's Bench in the nature of a writ of right for the Crown, against him who claims or usurps any office, franchise, or liberty, to enquire *by what authority* he supports his claim, in order to determine the right. It lies also in case of non-user or long neglect of a franchise, or mis-user or abuse of it, commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse.

This writ having fallen into disuse on account of the delay with which it was attended, a more expeditious mode of proceeding has been adopted, by filing an information by the attorney-general in the nature of a *quo warranto*, in which the person usurping is

considered as an offender, and consequently punishable by fine.

This proceeding is generally adopted for the purpose of trying the right to corporate offices, and was resorted to in so many cases after the passing of 5 & 6 Wm. IV. c. 76, for 'the regulation of municipal corporations in England and Wales,' that the 7 Wm. IV. and 1 Vict. c. 78, 'to amend the Act for the regulation of municipal corporations,' provides, 'that every proceeding pending in the Queen's Bench upon any ground on which it is herein declared that the validity of the election into any corporate office shall not be questioned, or for the purpose of bringing into question the validity of any election which is herein declared to be good, shall be discontinued immediately upon the passing of this Act, upon payment of the costs incurred up to that time, to be taxed as between attorney and client.' This section (s. 20) only operates as a conditional discontinuance, and a defendant who wishes to avail himself of it must first offer to pay the costs incurred by the prosecutor. By 7 Wm. IV. and 1 Vict. c. 78, and 6 & 7 Vict. c. 89, it is further enacted, that every application to the Queen's Bench for the purpose of calling upon any person to show by what warrant he claims to exercise the office of mayor, alderman, or burgess, in any borough within the Municipal Corporation Act, shall be made before the end of twelve months after the election of the defendant, or the time when he shall become disqualified; and that no election of any mayor shall be liable to be questioned by reason of a defect in the title of such person to the office of alderman or councillor, to which he may have been previously elected, unless application shall have been made to the Court of Queen's Bench, calling upon such person to show cause by what warrant he claims to exercise such office of alderman or councillor, within twelve months after his election thereto; and that every election to the office of mayor, alderman, councillor, or any other corporate officer within the said boroughs, which shall not have been called in question within twelve months after such election, shall be deemed good and valid.

Informations in the nature of *quo warranto* are of two kinds, and are filed either by the attorney-general, or by the coroner and attorney of the Queen, usually called the master of the Crown-office. Informations, *quo warranto*, filed by the attorney-general, are only filed for the purpose of trying the right to some private franchise claimed by the Crown, and usurped by a subject. When this proceeding is adopted with reference to the exercise of offices of a public nature, it can only be by leave of the court, at the relation of particular person, regulated by the preceding statutes (9 Anne, c. 20). The court exercises a discretion in granting this information, and where there is adequate relief by another mode of proceeding, the court will not generally interfere.

The application may be made in term *ex parte* at the relation of any body interested, but in the rule *nisi* all the objections to the title must be stated. The affidavit of the relator in support of the application must make out a *primâ facie* case. The rule *nisi* is drawn up and served as in other cases; if the rule be enlarged upon the defendant's application, the court will compel him to undertake, should the rule be made absolute, to appear and plead immediately to the information. The clerk of the rules in the Crown-office draws up the rule absolute, the information is filed, and recognizances in a penalty of 20*l.* to prosecute entered into, and process issued to compel an appearance, and an attachment will issue in default thereof. Upon an appearance being entered for the defendant, the prosecutor must give two four-day rules to plead, and after the expiration of the last, he should also move in term for a peremptory rule to plead, otherwise the defendant has until the next term to plead. If the defendant obtain no further time to plead, the prosecutor may sign judgment at the expiration of eighteen days from the service of the peremptory rule to plead. As soon, however, as the defendant has pleaded, a side-bar rule to reply should be entered. A plea of not guilty or *non usurpavit* cannot be pleaded, but only pleas to justify or disclaim. See 32 *Geo. III.* c. 58, s. 1. After issue joined, the record is taken down to trial. If on verdict or judgment on demurrer for the prosecutor, it appears that a vacancy exists in the corporation, the court will, on motion, grant a peremptory writ of *mandamus* to proceed to the election of another person in the room of the defendant; but under some circumstances a new trial or a repleader will be awarded. If the defendant appear and plead, and the prosecutor shall not, at his own costs, within a year after issue joined, proceed to try the same, or in case the defendant obtain a verdict, or a *nolle prosequi* is entered by the informer, the court may award taxed costs to the defendant (unless the judge shall at the trial certify that there was a reasonable cause for exhibiting the information) and unless the informer pay them within three months after demand, the defendant shall have the benefit of the recognizance to compel him.—4 & 5 *W. & M.* c. 18.

If, however, the defendant be adjudged guilty of an intrusion or usurpation, the court may give judgment of *ouster* against him, fine him, and order him to pay costs to the relator.

9 *Anne*, c. 20, s. 5; *Com. Dig.* tit. 'Quo Warranto,' 4 *Step. Com.* 14; and 2 *Selw. N. P.* 1169–1198.

Quum quod ago non valet ut ago, valeat quantum valere potest.—1 *Vent.* 216.—(When what I do is of no force as to the purpose for which I do it, let it be of force to as great a degree as it can.)

R.

Rabbit, a beast of warren.

Racehorse Duty Act, 19 & 20 Vict. c. 82, partially repealed and amended by 20 Vict. c. 16.

Rachetum [fr. *redimo*, Lat.], a compensation or redemption of a thief.

Rack [fr. *racke*, Dut., fr. *racken*, to stretch], an engine of torture.

It was occasionally used for the purposes of state; but not in judicial proceedings more than once in the reign of Queen Elizabeth; and its last infliction is said to have been in 1640. When, upon the assassination of Villiers, Duke of Buckingham, by Felton, it was proposed in the privy council to put the assassin to the rack, in order to discover his accomplices, the judges being consulted, declared unanimously, to their own honor and the honor of the English law, that no such proceeding was allowable by the laws of England. The uncertainty of this punishment as a test and criterion of truth, was long ago very elegantly pointed out by Cicero, though he lived in a state where it was usual to torture slaves, in order to furnish evidence. '*Tamen*,' says he, '*illa tormenta gubernat dolor, moderatur natura cujusque tum animi tum corporis, regit quæsitor, flectit libido, corrumpit spes, infirmat metus; ut in tot rerum angustiis nihil veritati loci relinquatur.*'—*Pro Sulla*, 28.

The Marquis Beccaria (on Crimes, c. xvi.), with a force of raillery truly exquisite, if the subject were not so improper for merriment, proposes this problem: 'The force of the muscles and the sensibility of the nerves of an innocent person being given, it is required to find the degree of pain necessary to make him confess himself guilty of a given crime.'—*Encyc. Lond.*; 4 *Reeves*, 411; and 5 *Ib.* 240; 1 *Hall. Cons. Hist.* c. iii., pp. 148, 150; 2 *Ib.* c. viii., p. 8; and 3 *Ib.* c. xvii., p 329.

Rack-rent, rent raised to the uttermost; the full annual value of the property.

Rack-renter, one who pays the uttermost rent.

Rack-vintage, wines drawn from the lees.

Radicals, a political party. The term arose in 1818, when the popular leaders, Hunt, Cartwright, and others, sought to obtain a radical reform in the representative system of Parliament. Bolingbroke (*Disc. on Parties*, Let. 18) employs the term in its present accepted sense: 'Such a remedy might have wrought a *radical* cure of the evil that threatens our constitution,' &c.

Radoub [Fr.], the repairs made to a ship, and a fresh supply of furniture and victuals, munitions and other provisions required for a voyage.—*Mer. Law.*

Rageman [fr. *regimen*, Lat.], a rule, form, or precedent.

Raglorius, a steward.—*Seld. Tit. of Hon.* 597.

Ragman's-roll, or **Ragimund's-roll**, a roll, called from one Ragimund, a legate in Scotland, who summoning all the beneficed clergymen in that kingdom, caused them on oath to give in the true value of their benefices, according to which they were afterwards taxed by the court of Rome.

Railway, a well-known mode of travelling, by which mechanical is substituted for animal power.

There are several statutes for the general regulation of railroads, viz. 1 & 2 Vict. c. 98; 3 & 4 Vict. c. 97; 5 & 6 Vict. c. 55; 7 & 8 Vict. c. 85; 8 & 9 Vict. c. 96; 9 & 10 Vict. c. 57; 14 & 15 Vict. cc. 19, 64; 17 & 18 Vict. c. 31; 21 & 22 Vict. c. 95; 22 & 23 Vict. c. 59; 23 & 24 Vict. c. 41; 24 & 25 Vict. c. 97, ss. 35–38, c. 100, ss. 32, 34; 26 & 27 Vict. c. 92. As to malicious injuries to railway property, see 24 & 25 *Vict.* c. 97, ss. 4, 8, 35, 36. Consult *Shelford*, *Wordsworth*, or *Hodges on Railways*.

Railway Clauses Consolidation Act, 1845, 8 Vict. c. 20, and Railway Clauses Act, 1863, 26 & 27 Vict. c. 92.

Railway and Canal Traffic Act, 1854, 17 & 18 Vict. c. 31.

Railway Clearing System. See 13 & 14 *Vict.* c. 33.

Railway Companies Arbitration Act. 22 & 23 Vict. c. 59.

Railway Companies Mortgage Transfer (Scotland) Act, 1861, 24 & 25 Vict. c. 50.

Railway Passengers Assurance Company, 12 & 13 Vict. c. xl.; and 15 & 16 Vict. c. c.

Railway Passengers, *attempts to endanger*. The 24 & 25 Vict. c. 100, enacts that whosoever shall unlawfully and maliciously put or throw upon or across any railway any wood, stone, or other matter or thing, or shall *unlawfully* and maliciously take up, remove, or displace any rail, sleeper, or other matter or thing belonging to any railway, or shall unlawfully and maliciously turn, move, or divert any points or other machinery belonging to any railway, or shall unlawfully and maliciously make or show[illegible]de or remove any signal or light upon or [illegible]r to any railway, or shall

unlawfully and maliciously do, or cause to be done, any other matter or thing with intent in any of the cases aforesaid to endanger the safety of any person travelling or being upon such railway, shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labour, and if a male under the age of sixteen years with or without whipping (sec. 32).

Whosoever shall unlawfully and maliciously throw or cause to fall or strike at, against, into or upon any engine, tender, carriage, or truck used upon any railway, any wood, stone, or other matter or thing, with intent to injure or endanger the safety of any person being in or upon such engine, tender, carriage, or truck, or in or upon any other engine, tender, carriage, or truck of any train of which such first-mentioned engine, tender, carriage, or truck shall form part, shall be guilty of felony, and being convicted thereof shall be liable to the same punishment, with the exception of whipping (sec. 33).

Whosoever by any unlawful act, or by any wilful omission or neglect, shall endanger, *or cause to be endangered*, the safety of any person conveyed, or being in or upon a railway, or shall aid or assist therein, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years with or without hard labor (sec. 34). See also 16 & 17 *Vict.* c. 99, and 20 & 21 *Vict.* c. 3.

Ran, open or public theft.

Ranger, a sworn officer of the forests and parks. His office consists chiefly in three points: to walk daily through his charge, and see, hear, and inquire of trespasses in his bailwick; to drive the beasts of the forest, both of venery and chase, out of the disafforested into the forested lands; and to present all trespasses of the forest at the next court holden for the forest.—*Manw.*

Rank Modus, one that is too large. Rankness is a mere rule of evidence, drawn from the improbability of the fact, rather than a rule of law.

Ranking of Creditors, the arrangement of the property of a debtor, according to the claims of the creditors, and the nature of their respective securities.—*Scotch phrase.*

Ransom [fr. *rançon*, Fr.], price of redemption of a captive or prisoner of war, or for the pardon of some great offence. It differs from amerciament, because it excuses from corporal punishment.

Rape, a division of a county, especially Sussex, similar to that of a hundred, but oftentimes containing in it more hundreds than one. It was originally a military government.

Rape of the Forest, trespass committed in the forest by violence.

Rape-reeve, an obsolete officer who used to act in subordination to the shire-reeve.

Rape, the carnal knowledge of a woman forcibly and against her consent.

'It is an accusation,' says Sir Matthew Hale, 'easy to be made, and harder to be proved, but harder to be defended by the party accused, though innocent.'

According to our system of laws, the testimony of the injured person is sufficient to condemn the criminal; yet, it not unfrequently occurs that the opinion of the physician is required in order to elucidate various difficulties connected with the accusation.

(1) The physical signs of virginity have been the subject of keen discussion among anatomists and physiologists; and none of them has led to greater inquiry than the existence of the hymen.

This is understood to be a membrane of a semilunar or occasionally of a circular form, which closes the orifice of the vagina, leaving, however, an aperture sufficiently large to permit the menses to pass.

Some distinguished physiologists have denied its existence altogether, or, in the cases where it is found, consider it a non-natural or morbid occurrence. Among these may be enumerated, Ambrose Parè, Palfyn, Pinæus, Columbus, Dionis, and Buffon.

Those on the contrary, who from dissection have believed in its presence, previous to sexual intercourse, or some other cause destroying it, are Fabricius, Albinus, Ruysch, Morgagni, Halber, Dremerbrock, Hiester, Riolan, Sabatier, Cuvier, Blumenbach, and Denman.

It may be wanting from original malformation, or may be destroyed by disease, or some other cause, and yet the female may be pure.

This membrane may, on the other hand, be present, and yet the female be unchaste; nay, she may become pregnant without having it destroyed.

The opinion of physiologists generally is, that it is an extremely equivocal sign.

(2) Narrowness of the vagina. In children, this part is extremely small, but it increases in size as they approach to the age of puberty. But we cannot place much reliance on this as a sign.

Parent Duchatelet informs us, as the result of actual inspection, that the genital organs of many prostitutes, some indeed of advanced years, cannot be distinguished from those of the virgin state; and the inference drawn is, that degrees of amplitude and straightness of

the vagina are to many women a natural and congenital state.

(3) In the place of the hymen, certain fleshy tubercles, termed *caruncuIæ myrtiformes*, have been observed by anatomists, and a variety in their appearance has been considered indicative of chastity or unchastity. Zacchias remarks, that in the former they are red, tumid, and connected by fleshy cords, but, in married women, being situated at the entrance of the vagina, they are found pale, flaccid, and the cords torn asunder. They are generally considered as the remains of the hymen, '*et corruptæ adeò pudicitiæ indicia.*' They are then found thick, red, and obtuse at their extremities, somewhat resembling a myrtle berry, and from this resemblance their name is derived. They generally disappear after frequent connexions or deliveries.

Systematic writers have added to these, other signs, but they are generally equivocal.

The bright red color of the nipples, the hardness of the breast, and in fine, the general appearance of the female, all deserve attention, but can seldom be of any practical utility in determining the point under examination.

In cases of young children supposed to have been violated, it will be well to remember an observation made by Devergie, and verified in repeated examinations of healthy subjects. This is, that at a tender age the labia are at a much greater distance from each other at the upper part than in more advanced years. The opening was, in repeated instances, found to be triangular, and to expose the clitoris.

Marks of external injury are to be considered as corroborating, but not as certain, proofs of the commission of a rape. The weight which they deserve depends on several circumstances, which it is proper to notice:—

(*a*) The age, strength, and state of mind of the respective parties.

(*β*) A comparison of the sexual organs may be necessary, since cases have occurred in which the male has proved impotency, or defective organization, or has exhibited proofs of the destruction of parts by the venereal disease.

(*γ*) A speedy examination of the parts is all important in disputed cases. The body of the male should also be inspected, whether there be scratches or bruises on it.

Doubts exist whether a rape can be consummated on a grown female, in good health and strength.

The great points to be looked to, says Mr. Alison, are: (1) whether they make resistance and cry out before they were discovered; (2) whether they had received blows and actual injury, it being quite certain that at least that violence was inflicted against the will.

Metzger only allows of three cases in which the crime can be consummated; where narcotics have been administered; where many are engaged against the female; and, where a strong man attacks one who is not arrived at the age of puberty.

Notwithstanding all the authorities, it may with justice be supposed, that fear or terror may operate on a helpless female; she may resist for a long time, and then faint from fatigue; or the dread of instant murder may lead to the abandonment of active resistance.

The following maxims, says Foderé (which he quotes from Bœrius), have been adopted for thirty years in Neapolitan jurisprudence, viz. that in accusations for rape, there be full proof of the following facts: (1) that there has been a constant and equal resistance on the part of the person violated; (2) that there is an evident inequality of strength between the parties; (3) that she has raised cries; and (4) that there be some marks of violence present.

In Scotland, according to Baron Hume, the following facts are necessary to be proved on a charge of rape: (1) penetration, but there is no distinct reference made to emission; (2) actual force in the consummation, but it is held to be forcible knowledge, if the female discontinue her resistance out of fear of death, or be rendered incapable of it by the giving of narcotic drugs, or be under the age of puberty.

Three questions relating to this subject have at various times been discussed, and they all deserve a brief notice: (1) Whether the presence of the venereal disease in the female violated, is a proof in favor of or against her accusation? If, on examination, the marks of this disease be found recent, it will be proper to consider them as corroborating circumstances; it is necessary, however, to remark that the symptoms of venereal infection do not commonly make their appearance until three days after receiving it, while the examination should be made within that time; should the appearances indicate anything like a disease of long standing, they must, of course, tend to weaken the complaint of the female.

(2) Can a female be violated during sleep without her knowledge? If the sleep have been caused by powerful narcotics, by intoxication, or if syncope, or excessive fatigue, be present, it is possible that this may occur, and it ought then to be considered, to all intents, a rape. In such cases the quantity of stupifying drugs administered may be so great as to render her unable, even if awakened by the violence, to withdraw from it.

(3) Does pregnancy ever follow rape? On this question a great diversity of opinion has existed. It was formerly supposed that a certain degree of enjoyment was necessary in order to cause conception, and accordingly the presence of pregnancy was deemed to exclude the idea of a rape. Late writers, however, urge

that the functions of the uterine system are, in a great degree, independent of the will, and that there may be physical constraint on those organs sufficient to induce the required state, although the will itself is not consenting. We do not know, nor shall probably ever know, what is necessary to cause conception, but if we reason from analogy, we shall certainly find cases where females have conceived while under the influence of narcotics, of intoxication, and even of asphyxia, and consequently without knowing or partaking of the enjoyment that is insisted on. Pregnancy, then, is not incompatible with the idea of rape under the limitations laid down. Several writers on this subject are, however, of a different opinion, and particularly Dr. Bartley, who goes so far as to recommend that pregnancy shall be considered a proof of acquiescence, and that, in order to ascertain this, the punishment of the criminal be delayed till the requisite time.

'It was formerly supposed,' says East, 'that if a woman conceived, it was no rape, because that showed her consent; but it is now admitted on all hands, that such an opinion has no sort of foundation either in reason or law.'—*Vol. I.* 445; *Beck's Med. Juris.* 88; and *Tayl. Med. Jurisp.* c. 51.

By 24 & 25 Vict. c. 100, s. 48, 'Whosoever shall be convicted of the crime of rape shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labor.' See 4 *Step. Com.* 169; *Arch. Crim. Evid.* 805, *et seq.*

Rapine [fr. *rapina*, Lat.], the taking a thing against the owner's will, openly or by violence; robbery. See LARCENY.

Raptu hæredis, a writ for taking away an heir holding in socage; of which there were two sorts, one when the heir was married, the other when he was not.—*Reg. Orig.* 163.

Rastell. Among the ancient law-writers of the reign of Henry VIII. are to be reckoned John Rastell, the printer and lawyer, and his son William Rastell, the lawyer and printer. The former was bred a printer, and though he did not take to the practice of the law, yet it evidently appears from his works that he had been a diligent student. The latter, though educated for the bar and a practiser, succeeded to his father's occupation, which he seems to have united with his profession, till the honors of the latter called upon him to decline it altogether. John Rastell translated from the French the 'Abridgment of the Statutes prior to the time of Henry VII.' He also abridged those of Henry VII., and down to the 23rd and 24th of Henry VIII., which were printed together by the son William in 1533. This was the first abridgment in the English language, and it is introduced by the author with a long preface, recommending the printing of law-books in English, and ascribing great praise to Henry VII. for first directing the statutes to be made in the mother-tongue. To this writer are ascribed two other books, 'Les Termes de la Ley,' and 'The Tables to Fitzherbert's Abridgment.' The title of authorship has, however, been disputed with respect to these two works, which have by some been given to the son, William. As to 'Les Termes de la Ley,' it was ascribed to John by Bale; but it is omitted by Pitts in his account of him, and peremptorily denied to be his by Wood, who as positively attributes it to William. That was Lord Coke's opinion; but Bishop Tanner again restores it to John. Perhaps it may be giving to each his distinct merit, if we suppose that John composed the original work in French, and that William made the translation, which was printed by him, and was never doubted to be his.

To William Rastell is ascribed a tract called 'The Chartulary,' printed in 1534; but there seems no pretence for this supposition, and the work is no more than the tract which had before been printed under the title of 'Carta Feodi Simplicis.' He made a table to Fitzherbert's 'New Natura Brevium,' and another of the 'Pleas of the Crown.' The tables to 'Fitzherbert's Abridgment,' which are ascribed by some to him, are the same probably that were before made by his father, and were reprinted by William. The performances, therefore, which must distinguish William Rastell, belong to a later period than the reign of Henry VIII. These are his collection of English statutes printed in 1559, and his 'Entries,' printed long after his death in 1596.—4 *Reeves*, 418.

Rasure, the act of scraping or shaving.

Rasure of a deed, so as to alter it in a material part, without consent of the party bound by it, &c., will make the same void; and if it be rased in the date after delivery, it is said it goes through the whole. Where a deed by rasure, addition, or alteration becomes no deed, the defendant may plead *non est factum.*—5 *Rep.* 23.

A rasure or interlineation in a *deed* is presumed, in the absence of rebutting evidence, to have been made at or before its execution; but in a *will* it is presumed to have been made after its execution. See INTERLINEATION.

Rate, a valuation of an estate, or the appointing or setting down how much every one shall contribute to any tax.

Rate of Exchange, the price at which a bill drawn in one country upon another may be sold in the former.

Rate-tithe, when any sheep, or other cattle, are kept in a parish for less time than a year, the owner must pay tithe for them *pro ratâ*,

according to the custom of the place.—*F. N. B.* 51.

Ratification, confirmation.

Ratihabitio, confirmation, agreement, consent, approbation of a contract.

Ratihabitio mandato æquiparatur.—(Ratification is tantamount to a direction.)

Ratio, an account, a rule of proportion; also, a cause, or giving judgment therein.

Ratio est formalis causa consuetudinis.—(Reason is the formal cause of custom.)

Ratio est legis anima, mutatâ legis ratione mutatur et lex.—7 *Co.* 7.—(Reason is the soul of law; the reason of law being changed, the law is also changed.)

Ratio est radius divini luminis.—*Co. Litt.* 232.—(Reason is a ray of the divine light.)

Ratio et auctoritas duo clarissima mundi lumina.—4 *Inst.* 320.—(Reason and authority, the two brightest lights of the world.)

Ratio legis est anima legis.—*Jenk. Cent.* 45. (The reason of law is the soul of law.)

Ratio potest allegari deficiente lege. Sed ratio vera et legalis, et non apparens.—*Co. Litt.* 191.—(Reason may be alleged when law is defective. But it must be true and legal reason, and not apparent.)

Rationabile estoverium, alimony.

Rationabilibus divisis, an abolished writ which lay where two lords, in divers towns, had seignories adjoining, for him who found his waste by little and little to have been encroached upon, against the other, who had encroached, thereby to rectify their bounds.

Rationabili parte, an old writ of right for lands, &c.

Rationabili parte bonorum, a writ which lay for a wife after her husband's death, against the executors of the husband, for her third or reasonable part of his goods, after debts and funeral charges paid.—*F. N. B.* 122, *L.*; 1 *Wms. Ex.* 2.

Rationabilis dos, a widow's thirds, or reasonable dower.

Rationes [M. Lat.], the pleadings in a suit. *Rationes exercere*, or *ad rationes stare*, to plead.

Ravishment, forcible violation. See Abduction and Rape.

Ravishment de Gard (*ravishment of ward*), an abolished writ which lay for a guardian by knight's service or in socage, against a person who took from him the body of his ward.—*F. N. B.* 140; 12 *Car. II.* c. 24.

Re-afforested, where a de-afforested forest is again made a forest.

Reader, a lecturer or prælector.

Reading-in. The title of a person admitted, to a rectory or other benefice, will be divested unless within two months after actual possession he publicly read in the church of the benefice, upon some Lord's day, and at the appointed times, the morning and evening service, according to the Book of Common Prayer; and afterwards, publicly before the congregation, declare his assent to such book; and also publicly read the thirty-nine articles in the same church, in the time of common prayer, with declaration of his assent thereto; and, moreover, within three months after his admission, read upon some Lord's day in the same church, in the presence of the congregation, in the time of divine service, a declaration, by him subscribed before the ordinary, of conformity to the liturgy, together with the certificate of the ordinary of its having been so subscribed.—3 *Step. Com.* 30.

Reading of Deed. See Deed.

Readmission *of Solicitors and Attornies.* See *Smi. Ch. Pr.* 54; and 1 *Chit. Arch. Prac. by Pren.* 57, 152.

Real Action, one brought for the specific recovery of lands, tenements, and hereditaments.

Among the civilians, real actions, otherwise called *vindications*, are those in which a man demanded something that was his own. They were founded on dominion, or *jus in re.*

The real actions of the Roman law were not like the real actions of the common law, confined to real estate, but they included personal as well as real property. But the same distinction as to classes of remedies and actions pervades the common and civil law. Thus we have in the common law, the distinct classes of real actions, personal actions, and mixed actions. The first, embracing those which concern real estate where the proceeding is purely *in rem*; the next, embracing all suits *in personam* for contracts and torts; and the last, embracing those mixed suits where the person is liable by reason of and in connexion with property.—*Story's Confl. Laws.* 781.

Real Burden, a condition imposed on an estate, which is effectual against creditors and heirs.—*Scotch phrase.*

Real Chattels. See Chattels.

Real Estate, landed property, including all estates and interests in lands which are held for life or for some greater estate, and whether such lands be of freehold or copyhold tenure.

Reality. See Personality of Laws.

Real Laws. Laws purely real directly and indirectly regulate property, and the rights of property, without intermeddling with or changing the state of the person.

In regard to laws purely real, Boullenois lays down the rule in the broadest terms, that they govern all real property within the territory, but have no extension beyond it. *Les lois réelles n'ont point d'extension directe ni indirecte hors la jurisdiction et la domination du législateur.*—*Story's Confl. Laws.* 426.

Real Right, the right of property, *jus in re.* The person having such right may sue for the subject itself. A personal right, *jus ad rem,*

entitles the party only to an action for performance of the obligation.

Real things, things substantial and immovable, and the rights and profits annexed to or issuing out of them.

Real Warrandice, an infeoffment of one tenement given in security of another.—*Scotch phrase.*

Realm, a kingdom or country.

Realty, thing real; landed property, &c.

Reason, the very life of law, for when the reason of a law once ceases, the law itself generally ceases, because reason is the foundation of all our laws.—*Co. Litt.* 97.

Reasonable aid, a duty claimed by the lord of the fee of his tenants, holding by knight service, to marry his daughter, &c.

Reasonable cause, a proper consideration.

Reasonable part. See RATIONABILI PARTE.

Re-assurance, a contract that a first insurer enters into in order to release himself from a risk which he may have incautiously undertaken by throwing it upon some other insurer. Such contracts are prohibited by 19 Geo. II. c. 37, s. 4, except in the event of the original insurer's insolvency, bankruptcy, or death, when a reassurance may lawfully be made by himself, or his representatives or assigns, provided the transactions be declared by the policy to be of that description. Re-assurance is not to be confounded with double insurance, which see.—2 *Selw. N. P.* 1023. As to the duty on re-assurance in the case of fire-policies, see 19 & 20 *Vict.* c. 22, s. 6.

Re-attachment, a second attachment of him who was formerly attached and dismissed the court without day, by the not coming of the justices, or some such casualty.—*Reg. Orig.* 35.

Rebate, discount; reducing the interest of money in consideration of prompt payment.

Rebellion, the taking up of arms traitorously against the Crown, whether by natural subjects or others, when once subdued; also, disobedience to the process of the courts.

Rebellion, *Commission of,* one of the abolished processes of contempt in the High Court of Chancery.—*Consol. Ord.* 1860, xxx., r. 5.

Rebellious assembly, a gathering of twelve persons or more, intending, going about, or practising unlawfully and of their own authority, to change any laws of the realm, or to destroy the enclosure of any park or ground enclosed; banks of fish-ponds, pools, conduits, &c., to the intent the same shall remain void, or that they shall have way in any of the said grounds; or to destroy the deer in any park, fish in ponds, coneys in any warren, dove-houses, &c.; or to burn stacks of corn; or to abate rents, or prices of victuals, &c.

Rebouter, to repel or bar.

Rebut, to bar, repel, or contradict.

Rebutter [fr. *repello,* Lat., to put back or bar], the answer of a defendant to a plaintiff's surrejoinder.

Rebutting evidence, that which is given by one party in a cause, to explain, repel, counteract or disprove evidence produced by the other party.

Recall, to supersede a minister, or deprive him of his office; also to revoke a judgment on a matter of fact.

Recaption, the taking a second distress of one formerly distrained, during the plea, grounded on the former distress. It is a writ to recover damages for him, whose goods being distrained for rent in service, &c., are distrained again for the same cause, pending the plea in the county court or before the justices.—*F. N. B.* 71.

It is also a species of remedy by the mere act of the party injured. This happens when any one has deprived another of his property, in goods or chattels personal, or wrongfully detains one's wife, child, or servant, in which case the owner of the goods, and the husband, parent, or master, may lawfully claim and retake them, wherever he happens to find them, so it be not in a riotous manner, or attended with a breach of the peace and so that he favor not the thief.

Recapture, the recovery by force of a prize captured by an enemy.

Receditur à placitis juris potius quam injuriæ et delicta maneant impunita.—*Bacon.*—(We surrender the forms of law rather than allow injuries to remain unpunished.)

Receipt, or **Receit,** an acknowledgment in writing of having received a sum of money, or other valuable consideration; it is a voucher either of an obligation or debt discharged, or of one incurred.

By 16 & 17 Vict. c. 59, a penny stamp-duty is imposed on a receipt or discharge given for or upon the payment of money amounting to two pounds or upwards. Exemption:—Receipts given for money deposited in any bank, or in the hands of any banker, to be accounted for, whether with interest or not, provided the same be not expressed to be received of or by the hands of any other than the person to whom the same is to be accounted for. Provided always, that this exemption shall not extend to receipts or acknowledgments for sums paid or deposited for or upon letters of allotment of shares, or in respect of calls upon any scrip, or shares of or in any joint-stock or other company, or proposed or intended company; which said last-mentioned receipts or acknowledgments, by whomsoever given, shall be liable to the duty by this Act charged on receipts.

Receiptor. A person to whom property is bailed by an officer, who has attached it upon mesne process, to answer to the exigency of the writ, and satisfy the judgment, the understanding

being to have it forthcoming on demand. See *Story on Bailments*, p. 145.

Receiver, one to whom anything is communicated by another. Also, an officer of the Court of Chancery appointed to collect rents, &c. pending a suit. Receivers are usually appointed in suits concerning the estates of infants, against executors, and between partners for the purpose of winding-up the business. A practising barrister may be a receiver, but a solicitor in the cause cannot, unless by consent, and he will act without salary; nor can the receiver-general of a county; for the Crown might by its prerogative, sweep away the whole of his property; nor can peers, next friends of infant-plaintiffs, nor trustees, be receivers. The allowance to the receiver depends on the degree of difficulty experienced in the collection; the usual allowance is 5*l.* per cent. on the gross rental. The security required by the court is that a receiver shall enter into a recognizance jointly with two sureties in double the amount of the yearly value of the estate to be collected. He passes his accounts in the chief clerk's office, and pays the balance into the office of the accountant-general. At the termination of his office, he should apply to have his recognizance vacated, and for his own discharge from the receivership. See *Sm. Ch. Pr.* 607, *et seq.*

Receiver of the Fines, an officer who receives the money of all such as compound with the Crown on original writs sued out of Chancery.

Receiver-General of the Duchy of Lancaster, an officer of the Duchy Court, who collects all the revenues, fines, forfeitures, and assessments within the duchy.

Receiver-General of the Public Revenue, an officer appointed in every county to receive the taxes granted by Parliament, and remit the money to the treasury.

Receiver of Stolen Property. By 24 and 25 Vict., c. 96, it is enacted:—

'Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, *extorting*, *obtaining*, *embezzling*, *or otherwise disposing whereof*, shall amount to a felony at common law, or by virtue of this Act, knowing the same to have been feloniously stolen, taken, *extorted*, *obtained*, *embezzled*, *or disposed of*, shall be guilty of felony, and may be indicted and convicted either as an accessary after the fact or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and every such receiver, howsoever convicted, shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labor and with or without solitary confinement, and if a male under the age of sixteen years with or without whipping. Provided that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence' (s. 91).

'In any indictment containing a charge of feloniously stealing any property it shall be lawful to add a count or several counts for feloniously receiving the same, or any part or parts thereof, knowing the same to have been stolen; and in any indictment for feloniously receiving any property knowing it to have been stolen it shall be lawful to add a count for feloniously stealing the same, and where any such indictment shall have been preferred and found against any person the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty either of stealing the property or of receiving the same or any part or parts thereof knowing the same to have been stolen; and if such indictment shall have been preferred and found against two or more persons it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving the same or any part or parts thereof knowing the same to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same or any part or parts thereof knowing the same to have been stolen' (s. 92).

'Whenever any property whatsoever shall have been stolen, taken, extorted, obtained, embezzled or otherwise disposed of in such a manner as to amount to a felony, either at common law or by virtue of this Act, any number of receivers at different times of such property, or of any part or parts thereof, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding that the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice' (s. 93).

'If upon the trial of any two or more persons indicted for jointly receiving any property, it shall be proved that one or more of such persons separately received any part or parts of such property, it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part or parts of such property' (s. 94).

'Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanor by this Act, knowing the same to have been unlawfully stolen, taken, obtained,

converted, or disposed of, shall be guilty of a misdemeanor, and may be indicted and convicted thereof whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice, and every such receiver being convicted thereof shall be liable at the discretion of the court to be kept in penal servitude for a term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labor, and with or without solitary confinement, and if a male under the age of sixteen years with or without whipping' (sec. 95).

'Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted, or disposed of, may, whether charged as an accessary after the fact to the felony, or with a substantive felony, or with a misdemeanor only, be dealt with, indicted, tried, and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in the county or place where he actually received such property' (sec. 96).

'Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this Act made liable' (sec. 97).

Receivers of Wreck, or **Droit**, officers appointed by the Board of Trade, pursuant to 17 & 18 Vict. c. 104, ss. 439–457, for the preservation of wreck, &c. The Act provides for their duties and powers.

Receptus, an arbitrator.—*Civ. Law.*

Recession, a re-grant.

Récidive [Fr.], a relapse; the commission of a second offence.

Reciprocity, mutuality.

Recital, the rehearsal or making mention in a deed or writing of something which has been done before.—1 *Lill. Abr.* 416. See DEED.

Reclaimed animals, those that are made tame by art, industry, or education, whereby a qualified property may be acquired in them. See FERÆ NATURÆ.

Reclaiming, the action of a lord pursuing, prosecuting, and recalling his vassal, who had gone to live in another place, without his permission. Also for the demanding of a thing or person to be delivered up or surrendered to the prince or state it properly belongs to, when by an irregular means it has come into the possession of another.

Reclaiming bill, a petition of appeal against the judgment of any lord ordinary or the Court of Sessions in Scotland.

Recognition, an acknowledgment.

Recognitione adnullandâ per vim et duritiem factâ, a writ to the justices of the Common Bench for sending a record touching a recognizance, which the recognizor suggests was acknowledged by force and duress; that if it so appear, the recognizance may be disannulled. *Reg. Orig.* 183.

Recognitors, the jury impannelled in an assize; so called because they acknowledged a disseisin by their verdict.—*Bract.* l. 5.

Recognizance. This is of two sorts: (1) at common law, which is an obligation, acknowledged and enrolled in a court of law with a condition to be void on the performance of a thing stipulated; it differs from a bond, in that the latter is a creation of a new debt, while a recognizance is an acknowledgment upon record of a former debt owing to our sovereign lady the Queen; (2) by statute, which are, the statute-merchant, created by 11 Edw. I. (*Acton Burnell*), and the statute-staple, created by 27 Edw. III. stat. 2. They are both obsolete. See *Coote on Mort.* 76.

Recognizee, he to whom one is bound in a recognizance.

Recognizor, he who enters into a recognizance.

Récolement [Fr.], re-examination.

Re-compensation. Where a party sues for a debt, and the defendant pleads compensation, the plaintiff may allege a compensation on his part, and this is called a re-compensation.—*Scotch term.*

Reconduction, a relocation, a renewal of a lease.—*Civ. Law.*

Reconvention, an action by a defendant against a plaintiff in a former action; a cross-bill or litigation.—*Ibid.*

Record, a memorial or remembrance; an authentic testimony in writing contained in rolls of parchment, and preserved in a court of record. The public records of the kingdom are placed under the superintendence of the Master of the Rolls, and a Record Office established by 1 & 2 Vict. c. 94.

There are three kinds of records, viz.: (1) *judicial*, as an attainder; (2) *ministerial*, on oath, being an office or inquisition found; (3) by way of *conveyance*, as a deed enrolled.

Record, *Conveyances by*, extraordinary

assurances, as private Acts of Parliament, and royal grants.

Record, *Courts of*, those whose judicial acts and proceedings are enrolled in parchment, for a perpetual memorial and testimony; which rolls are called the records of the court, and are of such high and supereminent authority, that their truth is not to be called in question. Every court of record has authority to fine and imprison for contempt of its authority.—3 *Step. Com.* 380.

Record, *Debts of*, those which appear to be due by the evidence of a court of record, such as a judgment, recognizance, &c.

Record of Nisi Prius, a transcript of the pleadings and issue, on parchment, for the use of the court on the trial of the action.

Record, *Trial by*. If a record be asserted on one side to exist, and the opposite party deny its existence under the form of traverse, 'that there is no such record remaining in court as alleged,' and issue be joined thereon, this is called an issue of *nul tiel* record; and the court awards in such a case a trial by inspection and examination of the record. Upon this, the party affirming its existence is bound to produce it in court on a day given for the purpose; and if he fail to do so, judgment is given for his adversary. The trial by record is not only in use when an issue of this kind happens to arise for decision, but it is the only legitimate mode of trying such issue, and the parties cannot put themselves upon the country.—*Step. Plead.* 112; 2 *Chit. Arch. Prac. by Pren.* 925.

Record and Writ Clerks, three officers of the Court of Chancery appointed by 5 & 6 Vict. c. 103. As to their duties, see *Smi. Ch. Pr.* 28; *and Consol. Ord.* 1860, I., rr. 35–53.

Recordari facias loquelam [abbrev. *re. fa. lo.*], an original writ, in the nature of a *certiorari*, issuing out of Chancery, addressed to a sheriff to remove a cause depending in an inferior court not of record to a superior court; and it is called a *recordari*, because it commands the sheriff to make a record of the plaint in the ancient county-court, and then to send up the cause. Obsolete.—*F. N. B.* 71.

Recorda sunt vestigia vetustatis et veritatis. 2 *Rol. Rep.* 296.—(Records are the footsteps of antiquity and truth.)

Recorder, a person whom the mayor and other magistrates of any city or town corporate, having jurisdiction in a court of record within their precincts by the royal grant, associate unto them for their better direction in matters of justice and proceedings according to law. He is usually a barrister of some standing.—5 & 6 *Wm. IV.* c. 76, s. 103; 6 & 7 *Wm. IV.* c. 105, s. 3; and 6 & 7 *Vict.* c. 89, s. 8.

Recorder of London, one of the justices of oyer and terminer, and a justice of the peace of the *quorum* for putting the laws in execution for the preservation of the peace and government of the city. Being the mouth of the city, he delivers the sentences and judgments of the courts therein, and also certifies and records the city customs, &c. He is chosen by the lord mayor and aldermen, and attends the business of the city when summoned by the lord mayor, &c.

Recoup [fr. *recouper*, Fr., to cut again], the keeping back or stopping something which is due; discount; recompense.

Recoupment, the act of recouping.

Recoverer, the demandant in a common recovery after judgment.

Recovery, the obtaining a thing by judgment or trial.

A *true* recovery is an actual or real recovery of anything, or the value thereof, by judgment; as if a man sue for any land or other thing movable or immovable, and gain a verdict or judgment.

A *feigned* recovery. An abolished common assurance by matter of record, in fraud of the statute *De Donis*, whereby a tenant-in-tail enlarged his estate-tail into a fee-simple, and so barred the entail, and all remainders and reversions expectant thereon, with all conditions and collateral limitations annexed to them, and subsequent charges subordinate to the entail. But incumbrances on the estate-tail equally affected such fee-simple, and any estate or interest prior to the entail remained undisturbed.

This assurance consisted of two parts: (1) the recovery itself, which was a fictitious real action in the Court of Common Pleas, carried on to judgment, and founded on the supposition of an adverse claim; and (2) the recovery-deed, which was partly a preparatory step to suffering the recovery, and partly a declaration of the uses when suffered.

Recoveries were either legal or equitable.

The parties to a recovery action were: (1) the *Demandant*, or Recoveror, who was merely a formal party for the purpose of supporting the character of plaintiff; (2) the *Tenant*, or Recoveree, who was the person in whom the immediate freehold resided, and against whom the lands were to be demanded by the plaintiff; and (3) the *Vouchee*, who was called to warrant or vouch upon a supposed warranty, and took the defence on himself.

The action was begun by a writ of entry brought by the demandant, who was a mere nominee or stranger, against him whose estate-tail was to be barred, who appeared and in defence vouched over the common vouchee—the crier of the court—if the recovery had been with a single voucher, which however, was rarely, if ever, used, as it only barred the estate of which he was actually seised, but more usually against a person, who was made by a previous conveyance the tenant to the *præcipe*

or writ, and who vouched the tenant-in-tail, who vouched over the common vouchee, which was called a recovery with double voucher, and effectually barred the entail, with every latent interest and all reversions and remainders expectant thereon. The only possible case in which a remainder with treble voucher was necessary was in the instance in which a tenant-in-tail created an entail derived out of his own, and the two entails were, in point of estate or of right, existing at one time in distinct persons, and both entails were to be barred.

To perfect the legal title, and to give a seisin to the demandant, a writ of *habere facias seisinam* must have been issued after judgment, and seisin duly delivered to him whereupon the uses arose. This writ was returned by the sheriff, and the proceedings exemplified by the clerk of the court for the purpose of proving the suffering of the recovery. In a recovery-deed the proper parties, either alone or jointly with other persons, as circumstances might have required, were: (1) the person who had the immediate freehold; (2) the intended vouchee; (3) the intended tenant; and (4) the intended demandant. See 1 *Shepp. Touch.* c. iii. and 1 *Prest. Conv.* c. 1. As to its origin and establishment, see 1 *Hall. Cons. Hist.* c. i., p. 12. The fiction was abolished by 3 & 4 Wm. IV. c. 74. See TAIL.

The best evidence of a recovery is the exemplification, and the attention should be drawn to these points—whether the recovery correspond with the recovery-deed as to date, parties, and parcels; whether there be a clear and undoubted tenant to the *præcipe*; and whether there be any outstanding estate of freehold in a dowress, jointress, tenant by the curtesy, or other tenant for life, which would render the assurance defective or exceptionable. See 3 & 4 *Wm. IV.* c. 74, s. 13; 5 *Vict.* 32; and 11 & 12 *Vict.* c. 70.

Recreant, yielding. See CRAVEN.

Recrimination, a charge made by an accused person against the accuser.

Recruit, a soldier newly enlisted.

Recta prisa regis, the king's writ to prisage, or taking of one butt or pipe of wine before, and another behind the mast, as a custom for every ship laden with wines. See PRISAGE.

Rectitudo, right or justice; legal dues, tribute or payment.

Recto, *Breve de*, a writ of right, which was of so high a nature, that as other writs in real actions were only to recover the possession of the land, &c. in question, this aimed to recover the seisin and the property, and thereby both the rights of possession and property were tried together.

There were two species: (1) writ of right-patent, so called, because it was sent *open*, and was the highest writ lying for him who had a fee-simple in the lands or tenements sued for, against tenant of the freehold at least, and in no other case; this writ was likewise called *breve magnum de recto*; (2) writ of right-close, which was brought where one held lands and tenements by charter in ancient demesne in fee-simple, fee-tail, or for term of life, or in dower, and was disseised.—*Co. Litt.* 158. Abolished by 3 & 4 Wm. IV. c. 27.

Recto de advocatione ecclesiæ, a writ which lay at common law, where a man had right of advowson of a church, and the parson dying, a stranger had presented.—*F. N. B.* 30.

Recto de custodiâ terræ et hæredis, a writ of right of ward of the land and heir. Abolished.

Recto de dote, a writ of right of dower, which lay for a widow who had received part of her dower, and demanded the residue, against the heir of the husband or his guardian. Abolished. See 23 & 24 *Vict.* c. 126, s. 26, and DOWER.

Recto de dote unde nihil habet, a writ of right of dower whereof she had nothing, which lay where her deceased husband, having divers lands or tenements, had assured no dower to his wife, and she thereby was driven to sue for her thirds against the heir or his guardian. Abolished. See *Ibid.*

Recto quando (or **quia**) **dominus remisit curiam**, a writ of right, when or because the lord had remitted his court, which lay where lands or tenements in the seignory of any lord were in demand by a writ of right.—*F. N. B.* 16.

Recto de rationabile parte, a writ of right, of the reasonable part, which lay between privies in blood, as brothers in gavelkind, sisters, and other coparceners, for land in fee-simple.—*F. N. B.* 9.

Recto sur disclaimer, an abolished writ on disclaimer.

Rector, a governor; he that has that part of the revenues of a church, which heretofore was appropriated to some of the monasteries; or one who has the whole revenues.

Rector sinecure, one without cure of souls.

Rectorial tithes, great or predial tithes.

Rectory, a spiritual non-appropriated living, composed of land, tithe, and other oblations of the people, separate or dedicate to God, in any congregation for the service of his church there, and for the maintenance of the governor or minister thereof, to whose charge the same is committed.—*Spel.*

Rectum, right; also, a trial or accusation.—*Bract.*

Rectum esse, to be right in court.

Rectum rogare, to ask for right; to petition the judge to do right.

Rectum, stare ad, to stand trial, or abide by the sentence of the court.

Rectus in curiâ, one who stands at the bar of a court, and no accusation is made against him; also, said of an outlaw when he has reversed his outlawry.

Recuperatio, i. e. *ad rem, per injuriam extortam sive detentam, per sententiam judicis restitutio.—Co. Litt.* 154 *a.*—(Recovery, that is, restitution by sentence of a judge to a thing wrongfully extorted or detained.)

Recuperatio est alicujus rei in causam alterius adductæ per judicem acquisitio.—Ibid.—(Recovery is the acquisition, by sentence of a judge, of anything brought into the cause of another.)

Recuperatores, judges to whom the prætor referred a question.—*Civil Law.*

Recurrendum est ad extraordinarium quando non valet ordinarium.—(We must have recourse to what is extraordinary, when what is ordinary fails.)

Recusants, persons who wilfully absent themselves from their parish-church, and on whom penalties were imposed by various statutes passed during the reigns of Elizabeth and James I.

Recusatio judicis, a refusal of, or exception to a judge upon any suspicion of partiality.—*Civil Law.*

Red [fr. *rœd*, Sax.], advice.

Red-Book of the Exchequer [*liber rubens scaccarii*, Lat.], an ancient record, wherein are registered the names of those who held lands *per baroniam* in the time of Henry II.—*Ryley*, 667.

Reddendo singula singulis.—5 *Co.* 7 *b.*—(By giving to each that which peculiarly belongs to it.)

Reddendum, a clause reserving rent in a lease, whereby a lessor retains some new thing to himself out of that which he granted before: it commonly and properly succeeds the *habendum*, and is usually made by the words 'yielding and paying,' or similar expressions.

In every good reservation these things must always concur:—(1) It must be by certain and apt words. Thus, a lease for years, reserving rent 'after the rate' of 18*l.* a year, is void for uncertainty. (2) It must be of some other thing issuing or coming out of the thing granted, and not a part of the thing itself, nor of some thing issuing out of another thing. (3) It must be of such thing whereunto the grantor may have resort to distrain. (4) It must be made to one of the grantors, and not to a stranger to the deed.—*Woodf. Land. and Ten.* 102. See DEED.

Reddere, nil aliud est quam acceptum restituere: seu, reddere est quasi retrò dare; et redditur dicitur a redeundo, quia retrò it.—Co. Litt. 142.—(To render is nothing more than to restore that which has been received; or, to render is as it were to give back, and it is called rendering from returning, because it goes back again.)

Reddidit se (*he has rendered himself*), applied to a principal, who renders himself to prison in discharge of his bail.

Redditarius, a renter.

Redditarium, a rental of an estate or manor.

Reddition, a surrendering or restoring; also, a judicial acknowledgment that the thing in demand belongs to the demandant, and not to the person surrendering.

Redditus cæcus et siccus.—6 *Co.* 58.—(Rent blind and barren.)

Redeemable rights, rights which return to the conveyor or disposer of land, &c. upon payment of the sum for which such rights are granted.

Re-delivery, a yielding and delivering back of a thing.

Re-demise, a regranting of lands demised or leased.

Redemption, a ransom or commutation.

Redemption, *Equity of.* See EQUITY OF REDEMPTION.

Redemption *of Land-tax.* The redemption of the land-tax is proved by the certificate of the commissioners, the receipt of the cashier of the Bank of England, and memorandum of registration. See LAND-TAX.

Redhibition [fr. *redhibitio*, Lat.], an action allowed to a buyer, by which to annul the sale of some movable, and oblige the seller to take it back again, upon the buyer's finding it damaged, or that there was some deceit, &c.—*Civ. law; Sand. Just.* 464.

Re-disseisin, a disseisin made by him who once before was bound and adjudged to have disseised the same person of his lands or tenements.—*F. N. B.* 188; 1 *Reeves*, 263.

Reditus albi, white rents, or rents paid in silver.

Reditus assisus, a set or standing rent.

Reditus capitales, chief rents paid by freeholders to go quit of all other services.

Reditus nigri, black mail; rents paid in grain or base money.

Reditus quieti, quit rents, which see.

Reditus siccus, a rent seck, or barren; the owner of which has neither seignory nor reversion, nor any express power of distress reserved to him.—See 4 *Geo. II.* c. 28.

Redmans, or **Radmans,** men who, by the tenure or custom of their lands, were to ride with or for the lord of the manor, about his business.—*Domesday.*

Re-draft, a second bill of exchange.

Red Sea and Indian Telegraph Act, 1859, amended by 24 Vict. c. 4; 25 & 26 Vict. c. 39.

Redubbers, persons who bought stolen cloth and turned it into some other color or fashion, that it might not be known again.—3 *Inst.* 134.

Reduction, an action for the purpose of repealing or rendering null and void some deed or claim.—*Scotch term.*

Reduction Improbation, the reduction is a rescissory action by which deeds, services, decrees, or illegal acts by any body corporate may be rendered void. The action of reduction has a certification which renders the deed called for and not produced incapable of receiving any effect until it be produced. The action of improbation is founded on actual forgery, and the certification thereon has the effect of rendering the deed called for, and not produced, for ever void and null. The junction of two actions which forms what is called the reduction-improbation, confers on the simple reduction all the efficacy of the improbation, and secures the person who uses it from all future trouble from the deed called for, if it be not produced in the action.—*Scotch Law.*

Redundancy, impertinent or foreign matter inserted in a pleading.

Re-entry, the resuming or retaking that possession which any one has lately foregone.

Re-entry, *proviso for* a clause, usually inserted in leases, that upon non-payment of rent, &c. the term shall cease.—*Wood. Land. and Ten.* 270.

Reeve [fr. *gerefa*, Sax.], a steward or bailiff.

Re-examination, a second examination of a witness after a cross-examination.

Re-exchange, the amount for which a bill of exchange can be purchased in the country where the acceptance is made, drawn upon the drawer or indorser in the country where he resides, which will give the holder of the original bill a sum exactly equal to the amount of that bill at the time when it ought to be paid, or when he is able to draw the re-exchange bill, together with his necessary expenses and interest, for that is precisely the sum which the holder is entitled to receive, and which will indemnify him for its non-payment.

It is supposed that the Ghibelins, driven out of Italy by the faction of the Guelphs, and sheltered at Amsterdam, first established the custom of re-exchange, on the pretence of the interest, damages, and expenses they underwent when the bills given them for the effects they had been obliged to abandon were not accepted, but came to be protested.—*Story on Bills*, 470.

Re-extent, a second extent on lands or tenements, on complaint that the former was partially made, &c.

Re. Fa. Lo., the abbreviation of *recordari facias loquelam*, which see.

Refare, to bereave, take away, rob.

Refection, reparation of a building.—*Civ. Law.*

Referee, one to whom anything is referred; an arbitrator.

Reference, the sending of any matter of enquiry by the Court of Chancery to a chief clerk, a taxing master, or a conveyancing counsel, in order to examine it and certify the result to the court. References to compute, &c. are frequently made to the masters of the Courts of Common Law. As to reference to arbitration, see ARBITRATION.

Referendary, one to whose decision anything is referred.

Referendum, a note addressed by an ambassador to his own government touching a proposition, as to which he is without power and instructions.

Reform Act, 2 Wm. IV. c. 45.

Reformatory Schools. See 17 & 18 *Vict.* c. 86; 18 & 19 *Vict.* c. 87; 19 & 20 *Vict.* c. 109; and 20 & 21 *Vict.* c. 55.

Refresher, a reviving fee.

Refreshment Houses, the Licensing of. See 23 *Vict.* c. 27; and 23 & 24 *Vict.* c. 107.

Refund, to pay back.

Refusal, where one has, by law, a right and power of having or doing something of advantage, and he declines it.

Refusing *to bury the dead* by those whose duty it is to do so. It is an offence punishable by the temporal courts (independently of spiritual censures), on indictment or information. As to the interment of corpses cast on the seashore, see 48 *Geo. III.* c. 75.

Refusing *to execute a deed.* See EXECUTION OF DEED.

Refusing *to institute a clerk.* When a clerk is presented, the bishop may refuse to institute him upon many grounds, as: (1) If the patron be excommunicated, and remain in contempt forty days; or, (2) if the clerk be unfit, either as to person, or as to his faith or morals, or for want of learning. If the refusal is for heresy, schism, want of learning, or other matter of ecclesiastical cognizance, there the bishop must give notice to the patron of such his cause of refusal, at least if he be a layman, for in that case he is presumably unaware of his disability. But if the objection be a temporal one, the bishop is not bound to give such notice.

If an action be brought by the patron against the bishop, for refusing his clerk, the bishop must assign the cause.—3 *Step. Com.* 28, 75. See INSTITUTION.

Refusing *to pay money decreed by Chancery.* Consol. Ord. 1860, xxix., r. 6; 1 & 2 Vict. c. 110. If payment be not made within one month from the entry of the decree or order, the person to whom it was ordered to be made may sue out one or more writs of *fieri facias* or *elegit*, of the same nature with the writs

issued, under those names, by the courts of common law.—*Smi. Eq. Pr.* 155.

Refusing *to serve a public office* without lawful excuse or exemption is a common-law misdemeanor, punishable by fine and imprisonment.

Refusing *to take the oath of allegiance.* See PRÆMUNIRE (7); and 21 & 22 *Vict.* c. 48, s. 3.

Regale episcoporum, the temporal rights and privileges of a bishop.

Regale, the prerogatives of monarchy.

Regale fish, whales and sturgeons.

Regalia, the royal rights of a sovereign, which the civilians reckon to be six; viz. power of judicature, of life and death, of war and peace, masterless goods, as waifs, estrays, &c. assessments and minting of money. See MAJORA and MINORA REGALIA.

Regalia facere, to do homage or fealty to the sovereign by a bishop when he is invested with the regalia.

Regality, a territorial jurisdiction in Scotland granted with land from the Crown.

Regard, *Court of,* a tribunal held every third year, for the lawing or expeditation of dogs, to prevent them from chasing deer.

Regard of the Forest, the oversight or inspection of it, or the office and province of the regarder, who is to go through the whole forest, and every bailiwick in it, before the holding of the sessions of the forest, or justice-seat, to see and inquire after trespasses, and for the survey of dogs.

Regardant Villein, or **Regardant to the Manor,** an ancient servant or retainer annexed to the mannor or land, who did the base services within the manor.—1 *Inst.* 120.

Regarder of a Forest [*regardator forestæ*, Lat.], an ancient officer of the forest, whose duty it was to take a view of the forest-hunts, and to inquire concerning trespasses, offences, &c.

Rege inconsulto, a writ issued from the sovereign to the judges, not to proceed in a cause which may prejudice the Crown, until advised.

Regency, a temporary monarchy.

Regent, one invested with vicarious royalty. See 3 & 4 *Vict.* c. 52.

Reges dicuntur clerici.—*Dav.* 4.—(Kings are called clerks.)

Reges, sacro oleo uncti, sunt spiritualis jurisdictionis capaces.—5 *Co. Eccle. L.*—Anointed kings are capable of spiritual jurisdiction.)

Regest [fr. *registum*, Lat.], a register.—*Milton.*

Regia dignitas est indivisibilis, et quælibet alia derivativa dignitas est similiter indivisibilis.—4 *Inst.* 243.—(The kingly power is indivisible, and every other derivative power is similarly indivisible.)

Regiam Majestatem, a collection of the ancient laws of Scotland. It is said to have been compiled by order of David I. King of Scotland, who reigned from A.D. 1124 to 1153.—*Hale's Hist.* 271.

Regicide, the murderer of a sovereign.

Regio assensu, a writ whereby the sovereign gives his assent to the election of a bishop.—*Reg. Orig.* 294.

Regis ad exemplum totus componitur orbis.—7 *Inst.* 193.—(The whole earth is ruled after the example of a king.)

Register [fr. *gîter*, Fr., to lodge] a public book serving to enter and record memoirs, acts, and minutes, to be had recourse to occasionally, for the justifying of matters of facts.

By several Acts of Parliament, all deeds and wills concerning estates within the north, east, and west ridings of York, or within the town and county of Kingston-upon-Hull, or within the county of Middlesex, or the Bedford Levels, are directed to be registered. A memorial of a will should be registered within six months after the death of the devisor if he die within Great Britain, or within the space of three years after his death, if he die upon the sea, or in parts beyond the seas. Wills registered within the allowed time will prevail over even a prior registered conveyance.

If the devisee of an estate within the east or west ridings of York or Kingston-upon-Hull, be disabled from exhibiting a memorial within the time limited, by the suppression of the will or other inevitable difficulty, then a memorial entered of such impediment within six months after the death of such devisor who shall die within Great Britain, or within three years after the decease of such person who shall die upon the sea, or beyond the seas, and a memorial of such will also, registered within six months after the removal of such impediment, will protect the devisees against any purchaser subsequently to the will.

But as to estates in the north riding of York, then in case of the concealment or suppression of any will or devise, any purchaser shall not be disturbed or defeated in his purchase unless the will be actually registered within three years after the death of the devisor.

As to estates in the county of Middlesex, it is provided that an entry of the impediment within two years after the death of any devisor who shall die in Great Britain, or within four years after the decease of such person who shall die upon the sea or beyond the seas, and a registry of a memorial of the will within six months after the removal of the impediment shall be good. But no concealed will is to affect a purchaser unless it be registered within five years after the death of the testator.

No judgment, statute, or recognizance (other than such as shall be entered into in the name and upon the proper account of the Crown)

shall bind estates in Middlesex, but from the time that a memorial thereof shall be duly registered. As to estates in the east and west ridings of York and Kingston-upon-Hull, the registry of judgments, statutes, or recognizances within thirty days after the acknowledging or signing thereof, shall bind all the lands of the defendant at the time of such acknowledgment or signing, but in the north riding the time is limited to twenty days. The appointment of an assignee to an insolvent's estate had to be registered. See 1 & 2 Vict. c. 110, s. 46. Deeds of appointment must be registered; but a legacy charged on land needs not registry. The non-registry of a lease is not cured by registering an assignment in which such lease is recited.

None of the acts extend to copyhold-estates or to leases at rack rents, or not exceeding twenty-one years, where the actual possession and occupation go along with the lease, or to any of the chambers in Serjeants' Inn, the Inns of Court, or the Inns of Chancery.

A person having the legal estate, as a mortgagee, and advancing more money, without notice of a second mortgage duly registered, shall hold against the second mortgage till he is satisfied all the money he has advanced.

A person purchasing without notice, and obtaining the legal estate, shall not be prejudiced by a prior equitable incumbrance, which was duly registered previously to his purchase.

A person buying an estate with notice of a prior incumbrance not registered, shall in equity be bound by such incumbrance, although he has at law obtained a priority by registering his deed.

A purchaser from a devisee should not complete his contract till the will is duly registered; for if any person were to purchase of the heir at law *bonâ fide*, and without notice of the will, he would be preferred to the purchaser from the devisee. But if the vendor be both heir at law and devisee, the non-registry of the will is immaterial; for if he sell to any subsequent purchaser, it must either be in the character of heir at law or devisee. If he sell in this character, the second purchaser must have notice of the will; if he contract in that, the first purchaser has already procured the legal estate.

If the vendor claim a leasehold estate, either as executor or legatee, the purchaser need not insist upon the testator's will being registered, because no subsequent purchaser can procure a title without notice of the will. Letters of administration are never registered.

Every memorial of a deed or conveyance is directed by the acts to be under the hand and seal of some, or one, of the grantors or grantees, his or their heirs, or executors, administrators, guardians, or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of the deed; which witness shall upon his oath, before the registrar, prove the signing and sealing of the memorial, and the execution of the deed mentioned in such memorial.

Every memorial must contain, first, the day of the month and year when the deed, &c. bears date, and the names and additions of all the parties to it, and of the devisor or testatrix of a will, and all the witnesses to such deed, &c. and the places of their abode; and, secondly, the houses, manors, lands, tenements, and hereditaments, contained in such deed, &c. and the names of the parishes, &c. where any such estates lie that are comprised in or affected by such deed, &c. in such manner as the same are explained or mentioned in such deeds, &c. or to the same effect. See 3 *Sug. V. and P.* 345, 10th ed. and *St. Leon. V. and P.* 598, 13th ed. See TRANSFER OF LAND ACT.

Register of Patents, a book kept at the Specification-Office for the public use. See 15 & 16 *Vict.* c. 83, s. 34.

Register of Pauper-servants, *under* 16. See 14 & 15 *Vict.* c. 11.

Register of Writs, an old book in which new forms of original writs were entered. The Register of Writs is said to be the oldest book in the law: a character which may, in a great measure, be true, but should not be allowed without some consideration. It is not more certain than extraordinary that the forms of writs were settled in their substance and language very nearly in the manner in which they were drawn ever after. However, this uniformity was not so exact as that the writs published and used in the reign of Henry VIII. were all of them identically the same with those used at the first origin of this invention, in the reign of Henry II. It is not to be wondered that there should be a difference in these forms at their infancy, and at this advanced state of our law, but it is extremely remarkable that the difference should be so small. 4 *Reeves*, 426; *Co. Litt.* 16 *b*, 37 *b*, 159 *a*.

Registrarius, a notary or registrar.

Registrar, or **Registrary,** an officer whose business is to write and keep a register; also a functionary of the Court of Probate or a County Court. As to the duties of registrars in Chancery, see *Smi. Ch. Pr.* 21.

Registrar-General, an officer appointed by the Crown under the Great Seal, to whom, subject to such regulations as shall be made by a principal secretary of state, the general superintendence of the whole system of registration of births, deaths, and marriages is entrusted.—6 & 7 *Wm. IV.* c. 86, ss. 2, 5.

Registrar-General of Seamen. To secure the great object of affording general information from time to time as to the state of our mercantile marine, it is provided that there shall be

in the port of London a 'General Register and Record Office for Seamen,' under the management of this officer. See 17 & 18 *Vict.* c. 104, ss. 271–279; and 25 & 26 *Vict.* c. 63, s. 4.

Registrar of Attornies and Solicitors. His duty is to keep an alphabetical list or roll of all attornies and solicitors, and to issue certificates as to persons who have been duly admitted and enrolled; and the duties of this office are committed to the 'Incorporated Law Society,' until some person shall be appointed in their room, by 6 & 7 Vict. c. 73, s. 21.

Registrar of Friendly Societies. Any persons wishing to establish a society of this description may make rules for the purpose; but two copies of the rules must be made out and transmitted to this officer, and when certified by him as conformable to law and to the Act, one of them is to be returned to the society, and the other he is to keep in such manner as shall be from time to time directed by one of the principal secretaries of state. Upon being so certified, the rules take immediate effect, and are binding in point of law on all the parties concerned.—18 & 19 *Vict.* c. 63.

Registrar of the Privy Council. As to his examining witnesses and taking affidavits, see 16 & 17 *Vict.* c. 85.

Registration, the act of inserting in a register.

Registration of Aliens Act, 6 & 7 Wm. IV. c. 11.

Registration of Births and Deaths Ireland Act, 26 & 27 Vict. c. 11.

Registration of Copyright. The 5 & 6 Vict. c. 45 authorizes, in every case of copyright, the registration of the title of the proprietor at Stationers' Hall; and provides that, without previous registration, no action shall be commenced, though an omission to register is not otherwise to effect the copyright itself.

Registration of Electors. It is requisite that a voter in the election of members of Parliament should be duly registered before he exercises the franchise. See 2 *Wm. IV.* c. 45, s. 26, and 6 & 7 *Vict.* c. 18. s. 2; 17 & 18 *Vict.* c. 102; and as to Scotland, see 19 & 20 *Vict.* c. 58.

Registration of Joint-Stock Companies. See *The Companies Act*, 1862, 25 & 26 *Vict.* c. 89.

Registration of Marriages Ireland Act, 1863, 26 & 27 Vict. c. 90.

Registration of Parish Apprentices. See 43 *Eliz.* c. 2, s. 5; 8 & 9 *Wm. III.* c. 30; 18 *Geo. III. c.* 47; 56 *Geo. III.* c. 139; 42 *Geo. III.* c. 46; 7 & 8 *Vict.* c. 101, ss. 12, 13.

Registration and Protection of Designs Act. See 5 & 6 *Vict.* c. 100, amended by 24 & 25 Vict. c. 73; 6 & 7 Vict. c. 65; 13 & 14 Vict. c. 104; 14 & 15 Vict. c. 8; 15 & 16 Vict. c. 6; 21 & 22 Vict. c. 70; 25 & 26 Vict. c. 12.

Registrum Brevium, a register of writs, which see.

Registry, in commercial navigation, the registration or enrolment of ships at the Custom-house, so as to entitle them to be classed among, and to enjoy the privileges of, British-built ships.

The registry of ships appears to have been introduced into this country by the Navigation Act, 12 Car. II. c. 18, A.D. 1660; several provisions were made with respect to it by the 7 & 8 Wm. III. c. 22, and the whole was reduced into a system by the 27 Geo. III. c. 19.

The great, and perhaps the only original object of the registration of ships, was to facilitate the exclusion of foreign ships from those departments in which they were prohibited from engaging by the navigation laws, by affording a ready means of distinguishing such as were really British. It has also been considered advantageous to individuals, by preventing the fraudulent assignment of property in ships; but Lord Tenterden has observed, in reference to this supposed advantage, that 'the instances in which fair and honest transactions are rendered unavailable through a negligent want of compliance with the forms directed by these and other statutes requiring a public register of conveyances, make the expediency of all such regulations, considered with reference to private benefit only, a matter of question and controversy.'—*Law of Shipping*, pt. 1, c. ii.

The existing regulations as to the registry of ships are embodied in the 17 & 18 Vict. c. 104, which provides that no ship shall be deemed a British ship unless she belong wholly to owners who are of one of the following descriptions:—Natural-born subjects, persons made denizens, or persons naturalized, either by or pursuant to any Act of Parliament, or the proper legislative authority in some British possession; or bodies corporate established under and subject to the laws of, and having their principal place of business in the United Kingdom or some British possession (sec. 18). And even as to the capacity of the first three descriptions of persons to be owners, some restrictive conditions are contained in the Act. It is also provided that every British ship (subject to the exceptions mentioned in s. 19) must be registered, and that unless registered she shall not be recognised as a British ship, so as to be entitled to any of the advantages or protection usually enjoyed by British ships, or to use the national flag, or assume the national character. This registration may be made in the United Kingdom at any port approved by the commissioners of customs for the registry of ships, and is to be made with the collector or comptroller, or other principal officer of customs, who is to be deemed registrar for the purposes

of this Act; and the port at which any ship is registered is thereafter to be considered as that to which she belongs, until the registry is transferred to another (18 & 19 Vict. c. 91, s. 12). It is further provided, with respect to the registration, that it must comprise, *inter alia*, the name of the ship, which is incapable of being afterwards changed, and the names and descriptions of the owners. But in connection with this registration of the owners, the following points require attention:—(1) The property in any ship is always to be divided for this purpose into sixty-four shares. (2) No person is to be registered as owner of any fractional part of a share. (3) The individuals registered as owners are not to exceed thirty-two in the whole, except that any number not exceeding five may be registered as joint-owners of any share. (4) The property in the ship or its shares, so far as regards the power of making a valid title as owner to a purchaser, is vested exclusively in the registered owners; though any number of other persons may be *beneficially* or *equitably* interested, and may enforce their rights in that capacity, in case of breach of trust, by application to the Court of Chancery. A registered ship, or any share therein, when disposed of to a person qualified to be the owner of a British ship, shall be transferred by a bill of sale under seal according to a form prescribed; upon which the name of the transferee shall be entered on the register book; and a registered ship, or any share therein, may be mortgaged by instrument in a form prescribed for that purpose, and the mortgage shall be entered in the register book; and where there are several mortgagees, their respective priorities are to be, in all cases, according to the time at which each security was registered, and not the time at which it was executed (ss. 30–100, and 18 & 19 Vict. c. 91).—3 *Step. Com.* 261; *McCull. Comm. Dict.*

Regius Professor, a royal professor, a reader of lectures in the universities. Henry VIII. founded in each of our universities five professorships, viz. of Divinity, Greek, Hebrew, Law, and Physic.

Regnant, reigning, having regal authority. See QUEEN.

Regni populi, a name given to the people of Surrey and Sussex, and on the sea-coasts of Hampshire.—*Blount.*

Regnum ecclesiasticum, the ecclesiastical kingdom.

Regnum non est divisibile.—Co Litt. 165.—(The kingdom is not divisible.)

Regrating, buying corn, &c., in any market, and selling it again in or near to the same place. It was illegal, but is now no longer so. 7 & 8 *Vict.* c. 24.

Regress, *Letters of*, they were granted by the superior of lands mortgaged to the wadsettor or mortgagor. Their object was this: by the wadset or mortgage, the mortgagor was completely divested, and when he redeemed, he appeared to claim an entry from the superior as a stranger, and the superior was no more bound to receive the mortgagor than he would have been forced to receive any third party; to remedy this, letters of regress were granted by the superior under which he became bound to re-admit the mortgagor at any time when he should demand entry.—*Scotch Law.* See 20 *Geo. II.* c. 50.

Regulæ generales, *General Rules* which the courts promulgate from time to time for the regulation of their practice.

Regula peccatis quæ pœnas irrogat æquas.—Gilb. 213.—(The rule which sets equal penalties on sins.)

Regular clergy, the monks, who lived *secundum regulas* of their respective houses or societies.

Regular deposit, one where the thing deposited must be returned.

Regulars, those who profess and follow a certain rule of life (*regula*), and observe the three approved vows of poverty, chastity, and obedience.

Regulariter non valet pactum de re meâ non alienanda.—Co. Litt. 223.—(Regularly a compact, not to alienate my property, is not binding.)

Rehabere facias seisinam, a judicial writ which lay when the sheriff in the *habere facias seisinam* had delivered more than he ought.—*Reg. Judic.* 13.

Rehabilitate, to restore a delinquent to former rank, privilege, or right; to qualify again; to restore a forfeited right.

Rehearing. If either party is dissatisfied with a decree or decretal order in Chancery, he may apply to have the cause reheard before the judge pronouncing the same. The petition for rehearing should be presented after the decree is passed and entered, and before it is enrolled. The petition must be signed by two counsel, who also certify that it is a proper case for rehearing. A deposit of 20*l.* for costs must be made.

By Consol. Ord. 1860, xxv., r. 14, any defendant waiving all objection to the order to take the bill *pro confesso*, and submitting to pay such costs as the court may direct, may, before enrolment of the decree, have the cause reheard upon the merits stated in the bill, the petition of rehearing being signed by counsel as other petitions of rehearing.—*Smi. Ch. Pr.* 478.

Reif [fr. *refian*, Sax.], robbery.—*Cowel.*

Re-insurance, or **Re-assurance,** a contract by which a first insurer relieves himself from the risks which he has undertaken, and devolves them upon other insurers, called reinsurers or re-assurers, but see 19 *Geo. II.* c. 37.

Reipublicæ interest voluntates defunctorum effectum sortiri.—(It concerns the state that the wills of the dead should have their effect.)

Reissuable notes, bank-notes which may again be put into circulation.

Rejoinder, a defendant's answer to a plaintiff's replication, which must be delivered within four days after notice, unless the defendant is under terms of 'rejoining gratis,' which means rejoining within four days from the delivery of the replication without a notice to rejoin, or a demand of a rejoinder. It does not apply to a joinder in demurrer, therefore, on a demurrer to a plea, the defendant is entitled to four days to join in it from the service of a notice to do so. As to rejoining several matters, and rejoining and demurring together, see 1 *Chit. Arch. Prac. by Pren.* 302.

Relation, where two different times or other things are accounted as one, and by some act done, the thing subsequent is said to take effect by relation from the time preceding. Thus letters of administration relate to the intestate's death, and not to the time when they were granted. See FORFEITURE.

Relatio est fictio juris et intenta ad unum.—3 *Co.* 28—(Relation is a fiction of law, and is intent to one point.)

Relatio semper fiat ut valeat dispositio, et quando ad duas res referri potest dispositio ita quod secundum unam vitiatur et secundum alteram utilis est, tunc facienda est relatio ut valeat dispositio.—6 *Co.* 76.—(Let reference be made always in such a manner that the disposition may avail; and when a disposition is referable to two things, so that by one it is bad, and by the other is good, then let the reference be made to that by which the disposition may avail.)

Relative powers, those relating to realty.

Relativorum cognito uno, cognoscitur et alterum.—*Cro. Jac.* 539.—(Of relatives one being known, the other is also known.)

Relator, a rehearser, teller, or informer; also, a plaintiff to an information in Chancery, where the rights of the Crown are not immediately concerned, who is responsible for costs; he must give the solicitor a written authority to file the information.—15 & 16 *Vict.* c. 86, s. 11. Also a person who brings an information in the nature of a *quo warranto.* See 2 *Selw. N. P.* 1178.

Release [fr. *relaxatio,* Lat.], a gift, discharge, or renunciation of a right of action; also a common law conveyance, the operative verb in which is 'release;' hence the name. It operates or enures in five modes:—

(*a*) By passing an estate (*mitter l'estate*), as where a joint-tenant or coparcener conveys his estate to his co-joint-tenant or co-parcener. In consequence of the privity between such parties, a fee-simple will pass without any words of limitation. Tenants in common, however, cannot thus release to one another, since they have distinct interests in the property.

(*b*) By transferring a right (*mitter le droit*), as in the case of a disseisee discharging his right to a disseisor, his heir, or grantee. Words of limitation are not necessary, since the subject of transfer is a simple right, which once discharged is for ever extinguished, and not an estate, which may be qualified or restricted.

The difference between this and the previous mode is, that the former passes an estate, where a privity exists between the parties; this passes only a right, in the absence of privity.

(*c*) By extinguishment, as the lord releasing his seignorial rights to his tenant, or a life-tenant having conveyed a greater estate than he owns, the expectant releasing his right to the tenant's grantee. A release of all demands extinguishes all actions and titles, and is the amplest discharge that can be given.

(*d*) By enlarging a particular estate into an estate commensurate with that of the person releasing; but a privity of estate must at the time exist between the releasor and the releasee, who must have an estate actually vested in him susceptible of enlargement.

(*e*) By entry and feoffment, as a disseisee releasing to one of two disseisors, who then becomes as solely seised as if the disseisee had entered upon the property, put an end to the disseisin, and then enfeoffed such disseisor.

Releasee, the person to whom a release is made.

Releaser, or **Releasor,** the maker of a release.

Relegation, exile; judicial banishment.

Abjuration is forswearing the realm for ever; relegation is banishment for a time only.—*Co. Litt.* 133.

In Rome, relegation was a less severe punishment than deportation, in that the relegated person did not thereby lose the rights of a Roman citizen, nor those of his family, as the authority of a father over his children, &c.—*Encyc. Lond.; Sand. Just.* 144.

Relevant, applying to the matter in question; affording something to the purpose.

Relict, a widow.

Relictâ verificatione, where a judgment is confessed by *cognovit actionem* after plea pleaded, and the plea is withdrawn, it is called a confession or *cognovit actionem relictâ verificatione.*—2 *Chit. Arch. Prac. by Pren.* 931, 935.

Formerly, a defendant who had pleaded a bad plea, which was demurred to, could withdraw it by entering a *relictâ verificatione,* upon which he would not have to pay costs until the plaintiff obtained judgment in the action; but by Reg. Gen. H. T. 1853, r. 8, 'a defendant shall not be at liberty to waive his plea, or enter a

relictâ verificatione after a demurrer without leave of the court or a judge, unless by consent of the plaintiff or his attorney.'—2 *Chit. Arch. Prac. by Pren.* 297.

Reliction, the sudden recession of the sea from land. See DERELICTION.

Relief, legal remedy for wrongs, &c.; charitable assistance.

In the feudal law a payment made to the lord by the tenant coming into possession of an estate held under him. Abolished with other feudal grievances.

Religion, *Offences against*; they are,

(1) Apostasy.
(2) Heresy.
(3) Reviling the ordinances of the church.
(4) Blasphemy.
(5) Profane swearing.
(6) Conjuration or witchcraft.
(7) Religious imposture.
(8) Simony.
(9) Profanation of the Lord's day.
(10) Drunkenness.
(11) Lewdness.

Religious houses, places set apart for pious uses, such as monasteries, churches, hospitals, and all other places where charity was extended to the relief of the poor and orphans, or for the use or exercise of religion.

Religious impostors, those who falsely pretend an extraordinary commission from heaven, or terrify and abuse the people with false denunciations of judgment; punishable with fine, imprisonment, and infamous corporal punishment.—4 *Step. Com.* 291.

Religious men [fr. *religiosi*], such as entered into some monastery or convent, there to live devoutly. They were held to be *civiliter mortui.*

Relinquishment, a forsaking, abandoning, or giving over.

Reliqua, the remainder or debt which a person finds himself debtor in upon the balancing or liquidation of an account. Hence *reliquary*, the debtor of a *reliqua*; as also a person who only pays piece-meal.—*Encyc. Lond.*

Reliques, remains, such as the bones, &c., of saints, preserved with great veneration as sacred memorials; they are forbidden to be used or brought into England.—3 *Jac. I.* c. 26.

Relocation, a reletting or renewal of a lease; a *tacit relocation* is permitting a tenant to hold over without any new agreement.

Remoto impedimento emergit actio.—5 *Co.* 76.—(The impediment being removed, the action revives.)

Rem, *information in,* when any goods are supposed to become the property of the Crown, and no one appears to claim them or to dispute its title, as anciently, in the case of treasure-trove, wrecks, waifs, and estrays seized by the Crown's officers. After such seizure an information was usually filed in the Exchequer, and thereupon a proclamation was made for the owner (if any) to come in and claim the effects, and at the same time there issued a commission of appraisement to value the goods, after the return of which, and a second proclamation had, if no claimant appeared, the goods were supposed derelict, and condemned to the use of the Crown; and when in later times forfeitures of the goods themselves, as well as personal penalties on the parties, were inflicted by Act of Parliament for transgressions against the laws of the customs and excise, the same process was adopted in order to secure such forfeited goods to the public use, though the offender had escaped justice. See 18 & 19 *Vict.* c. 90, as to the Crown paying costs.—4 *Step. Com.* 83.

Remainder [fr. *remanentia*, Lat.], that expectant portion, remnant, or residue of interest which, on the creation of a particular estate, is at the same time limited over to another, who is to enjoy it after the determination of such particular estate.

It may be limited in inheritable or non-inheritable freehold estates, but not strictly and technically, in chattels real or personal, although these may be limited over after a previous limitation of a partial interest in them. It may be limited by way of use (which is in practice the usual method) as well as by a conveyance deriving its effect from the common law.

In the same land there may at the same time be an estate in *possession*, and one estate or several estates in *remainder*, and an estate in reversion.

When the estate in possession is determined, the estate in remainder, if there be any, otherwise the estate in reversion, will become an estate in possession, with priority as to the estates in remainder, when there are several, according to the order in which they are limited.

An interest in possession, and an interest in remainder or reversion, are several parts of the same estate. When there are a particular estate and a remainder, the several limitations give distinct interests to the persons to whom these limitations are made.

These interests (different as they are in their nature) and also a reversion, are with reference to the person by whom the limitations are made, and the connection and relative situation of the tenants, several parts of the same estate.

Estates are said to be in remainder or reversion, according to the relative situation they bear to each other.

The interest which, as to one man, is an estate in remainder, may, as to another person, be an estate in reversion. Thus if A. leases to B. for life, with remainder to C. in fee, and C. leases to D. for life; the estate of C. is still a remainder

in reference to the estate of B., but in reference to the estate of D. it is a reversion.

So an estate which, as to one person, is an estate in possession or a particular estate, may, as to another person, be an estate in reversion; and consequently there may be two reversions in the same land. As if A. lease to B. for life, B. has the possession, and A. the reversion, as between themselves; and if B. lease to C., then, as between B. and C., C. has the possession, and B. a reversion; hence the doctrine of privity of estate.

A remainder does not, like a reversion, arise by operation of law, but is always created by act of parties. It may be granted over, charged, devised, or barred by a prior tenant in tail. Mr. Burton (*Comp.* p. 8) thus indicates the difference between a reversion and a remainder.

If the gift were simply 'to you for your life,' the reversion in fee-simple would remain in the feoffor. But this consequence would be varied, if the gift were, 'to you for your life, and after your decease to A. and his heirs;' or 'to you for twenty-one years, and, subject to that estate, to A. and his heirs;' or 'to you and the heirs of your body' (which would constitute an estate tail), 'and upon your decease, and failure of your issue, to A. and his heirs.' In any of these three cases, A. would take an estate in fee-simple, giving him a right to the possession of the land upon the death of the feoffee, or the expiration of twenty-one years, or the extinction of the feoffee and his issue. But this estate is not called a *reversion*, as the land does not revert or return to the feoffor, but a *remainder*, being the residue or remnant of the whole estate conveyed, after subtracting the feoffee's estate; which last, in relation to the remainder, as in this, or to the reversion, as in the former case, is called the *particular estate*.

The rule against perpetuities does not apply to remainders:—1st, because every remainder which is contingent must vest in interest during the continuance of the particular estate or the very instant it determines; and, 2ndly, because the owner of every vested remainder, being an estate of inheritance, and which must be an estate tail if there are remainders over, has the power, when in possession, of barring all subsequent remainders.

Remainders are of three kinds:—(1) vested or executed; (2) contingent or executory; and (3) cross.

The seven following rules affecting remainders should be observed:—

(1) There must be a present or particular estate created, which, if the remainder be vested, must be, at least, for years, but an *interesse termini* would be sufficient; or, if the remainder be contingent, it must be an estate of freehold, expressly limited, or arising by a resulting, or implied use, in order to give such a remainder existence. A chattel interest will not support a contingent remainder; since, while the contingency is in suspense, there must be an ulterior estate of freehold vested in some person, for otherwise there would be no vested freehold at all, which the law will not allow. There is not, however, any necessity for a preceding freehold to support a contingent remainder for years; for such a remainder not amounting to a freehold, no freehold estate appears requisite to pass out of the grantor in order to give effect to a chattel remainder.

(2) The particular estate, and the remainders must be created by the same deed or instrument, but a will and codicil may be fairly denominated the same instrument, for they take effect at the same time; and a deed giving a power, and the appointment exercising such power, are esteemed the same deed.

(3) The remainder must vest in the grantee during the particular estate, or the very instant it determines. But an estate limited on a contingency may fail as to one part, and take effect as to another, wherever the preceding estate is in several persons in common or in severalty; for the particular tenant of one part may die before the contingency, and the particular tenant of another part may survive it. Posthumous children are capable of taking in remainder in the same manner as if they had been born in their father's lifetime, and the remainder vests in them, while yet *in ventre matris*.—10 & 11 *Wm. III.* c. 16.

(4) A contingent remainder must be limited, upon a legal event, to some one that may by common possibility be in being, at or before the determination of the particular estate.

(5) It is not necessary for the support of a contingent remainder that the preceding estate of freehold continue in the actual seisin of the rightful tenant; it is sufficient that there subsists a right to such preceding estate at the time the remainder should vest, provided such right be a present subsisting right of entry preceding the contingency, and not a right of action. It is necessary to distinguish between a right of entry and a right of action. If A. is disseised by B., then, while the possession continues in B., it is a mere possession unsupported by any presumption of right; and A. may restore his possession by an entry on the land, without any previous action. If A. enter and B. defend his possession, and the question is tried in a possessory action, the gist of it must be, who has the better title to the possession, and A. must necessarily recover. Thus far the party disseised, even during the disseisin, is considered in law to be the rightful tenant. But, if B. continue in the possession of the estate till his decease, the law, at his decease, casts the possession upon his heir; thus, upon B.'s decease,

his heir acquires the possession by act of law, and his title, though immediately derived from a person who himself acquired it by wrong, is so far respected in law, that A. cannot restore his possession by entry, and can only recover it by action. This removes A.'s title one degree farther than while he could restore his possession by entry, and is therefore said to reduce him to a right of action, and it is called a right of action in contradistinction to a right of entry.

(6) Where a contingent remainder is limited to the use of several, who do not all become capable at the same time, notwithstanding it vests in the person first becoming capable, yet it shall devest as to the proportions of the persons afterwards becoming capable, before the determination of the particular estate.

(7) If a condition be annexed to a particular estate, making it void on a given event, and a remainder be limited to take effect, not only on the determination of the particular estate, but on the destruction of that estate, by the effect of the condition, the remainder is void; the common law rule being that a stranger shall not take advantage of a condition, but only the grantor or his heirs. But if the condition for defeating the prior estate be to operate on one event, and the remainder be to arise on another and totally different event, the remainder will not be void, but the particular estate will be discharged from the condition. If A. make a feoffment to B., a widow, for life, provided that if she marry again then her estate shall cease, and immediately after her death *or second marriage* the estate shall enure to B. in fee, *this* is a bad remainder; because it is limited to take effect, not only on the determination of the widow's estate, but also on the event which is mentioned in the condition to cut that estate short—namely, her second marriage; but if the remainder had been introduced without the words in italics, then it would have been a good contingent remainder, and the condition would be viewed as surplusage.—*Fearne's Cont. Rem.* 270. So, if the limitation had been to the widow *durante viduitate*, the remainder would have been good; as then her death or second marriage would have been the natural period for the determination of her estate. But if the remainder had been introduced by the words, 'from and immediately after the determination of that estate,' it would be liable to objection, on the ground that the remainder-man would be taking advantage of the condition, unless the word 'determination' could be construed to refer to the death only of the widow, and not to her second marriage.

But such a remainder is supported, as a conditional limitation in wills and conveyances under the Statute of Uses.

A remainder is to commence when the particular estate is, from its very nature, to determine; it is, as it were, a continuance of the same estate; it is a part of the same whole. A conditional limitation is not a continuance of the estate first limited, but is entirely a different and separate estate. It is not to commence on the determination of the first, but the first is to determine when the latter commences. It is the commencement of the latter which rescinds and destroys the former; and not the ceasing of the former which gives existence to the latter. The particular estate and remainders are, in fact, as the very terms imply, but one and the same estate. The estate first appointed, and the conditional limitations, are separate and distinct estates. See CONTINGENT REMAINDER, CROSS-REMAINDERS, VESTED REMAINDER.

Remainder-man, a person entitled to an expectant estate.

Remand, to re-commit or send back.

Remanent pro defectu emptorum (*they remain unsold for want of buyers*). A sheriff's return to a writ of *fi. fa.*

Remanet, the name given to a cause the trial of which has been postponed from one sittings to another. A new notice of trial is necessary when a cause has been made a *remanet* at the assizes, but not when it has been made a *remanet* from one sittings to another, or has been put off by order of *Nisi Prius*.

Where the cause is made a *remanet*, the costs incurred in bringing up witnesses, &c. are allowed to the party ultimately prevailing.

Remedial statutes, those which are made to supply such defects, and abridge such superfluities in the common law, as arise either from the general imperfection of all human laws, from change of time and circumstances, from the mistakes and unadvised determinations of unlearned judges, or from any other cause. This being effected either by enlarging the common law where it is too narrow and circumscribed, or by restraining it where it is too lax and luxuriant, has occasioned a division of remedial Acts of Parliament into enlarging and restraining statutes.

Remedy, the legal means to recover a right; also, a certain allowance to the master of the mint, for deviation from the standard weight and fineness of coins.—*Encyc. Lond.*

Remembrancer, an officer of the Exchequer, who reminds the lord treasurer and the justices of that court of such things as are to be called on and dealt in for the benefit of the Crown.— 57 *Geo. III.* c. 60; 3 & 4 *Wm. IV.* c. 99; 5 & 6 *Vict.* c. 86; and 22 & 23 *Vict.* c. 21. Also, an officer of corporations, &c.

Remise, to surrender or return; to release.

Remission, a pardon from the Crown, passed under the great seal; a release.

Remissius imperanti melius paretur.—3 *Inst.* 233.—(A man commanding not too strictly is better obeyed.)

Remitment, the act of sending back to custody; an annulment.

Remittance, money sent by one person to another, either in specie, bill of exchange, cheque, or otherwise.

Remittee, the person to whom a remittance is sent.

Remitter, where he who has the right of entry in lands, but is out of possession, obtains afterwards the possession of the lands by some subsequent, and, of course, defective title; in this case he is remitted or sent back, by operation of law, to his ancient and more certain title. The possession which he has gained by a bad title is *ipso facto* annexed to his own inherent good one; and his defeasable estate is utterly defeated and annulled by the instantaneous act of law, without his participation or consent. As if *A.* disseise *B.*, i. e. turn him out of possession, and afterwards demise the land to *B.* (without deed), for a term of years, by which *B.* enters, this entry is a remitter to *B.*, who is *in* of his former and surer estate. But if *A.* had demised to him for years by deed indented, or by matter of record, there *B.* would not have been remitted. For if a man, by deed indented, take a lease of his own lands, it shall bind him to the rents and covenants, because a man never can be allowed to affirm that his own deed is ineffectual, since that is the greatest security on which men rely in all manner of contracting. The same law, if it had been by matter of record, for that is of its own nature uncontrollable evidence, which a man cannot be allowed to controvert.—3 *Step. Com.* 376, 377 n. Also, a person who sends a remittance.

Remitting Cases to Courts abroad. By the 22 & 23 Vict. c. 63, courts in one part of her Majesty's dominions are empowered to remit a case for the opinion of a court in any other part thereof on any point on which the law of such other part is different, from that of the part in which the court is situate. And by the 24 Vict. c. 11, any superior court within her Majesty's dominions may remit a case to a court of any foreign state with which Her Majesty may have made a convention for that purpose, for the ascertainment of the law of such state.

Remittitur damna. Where a jury gives greater damages than a plaintiff has declared for, the mistake may be rectified by entering a *remittitur* for the excess; or, if a plaintiff have signed judgment for the greater sum, the court will give him leave to amend it, by entering a *remittitur* for the excess, even in a subsequent term and after error brought. The damages are usually remitted in ejectment and replevin where judgment is signed by confession or default.—2 *Chit. Arch. Prac. by Pren.* 1504.

Remittitur of record. Formerly when a writ of error, in the Exchequer Chamber, abated, or was discontinued, the transcript must have been remitted, and a *remittitur* entered, before a defendant could sue out execution; but now this is no longer necessary, for the record remains in the court below, and execution is, therefore, in all cases, now issued by and out of that court.—*H. T.* 4 *Wm. IV.* r. 16. See *Chit. Arch. Prac. by Pren.* 574.

Removal of goods to prevent distress. See 9 *Anne,* c. 14, and 11 *Geo. II.* c. 19.

Renant, or **Reniant** [fr. *negans,* Lat.], denying.

Rencounter, a sudden meeting; as opposed to a duel, which is deliberate.

Render, to yield, give again, or return.

Certain things lie in render, i. e. must be rendered or answered by the tenant as rents, heriots, and other services.

Renewal, a change of something old for something new; a reviving of a writ or process.

Renounce, to give up a right. An executor who declines to take probate of the will of his testator is said *to renounce* probate. Where any person after 1st January, 1858, renounces probate of the will of which he is appointed executor, or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his effects shall, and may, without any further renunciation go, devolve, and be committed in like manner as if such person had not been appointed executor.—20 & 21 *Vict.* c. 77, s. 79.

Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his effects shall, and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.—21 & 22 *Vict.* c. 94, s. 16.

Renovant, renewing.

Rent [fr. *reditus,* Lat.], a certain profit issuing yearly out of lands and tenements corporeal; it may be regarded as of a twofold nature:—first, as something issuing out of the land, as a compensation for the possession during the term; and, secondly, as an acknowledgment made by the tenant to the lord of his fealty or tenure. It must always be a profit, yet there is no necessity that it should be, as it usually is, a sum of money; for spurs, capons, horses, corn, and other matters, may be, and occasionally are, rendered by way of rent; it may also consist in services or manual operations, as to plough so many acres of ground, and the like; which services, in the eye of the law, are profits. The

profit must be certain, or that which may be reduced to a certainty by either party; it must issue yearly, though it may be reserved every second, third, or fourth year; it must issue out of the thing granted, and not be part of the land or thing itself.

There are several kinds of rents, viz.: —

(1) *Rent-service*, so called because it has some corporal service incident to it, as, at the least, fealty.

(2) *Rent-charge*, where the owner of the rent has no future interest or reversion in the land. It is usually created by deed or will, and is accompanied with powers of distress and entry. The release from a rent-charge of part of the hereditaments charged therewith, shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.—22 & 23 *Vict.* c. 35, s. 10.

(3) *Fee farm rent*, one issuing out of an estate in fee, of at least one-fourth of the value of the lands, at the time of its reservation.

(4) *Rent-seck*, a barren rent, which is in effect nothing more than a rent reserved by deed or will, but *without* any clause of distress.

(5) *Rents of assize*, the certain established rents of the freeholders and ancient copyholders of a manor, which cannot be departed from. Those of the freeholders are frequently called:

(*a*) *Chief-rents*, and both sorts are indifferently denominated:

(*b*) *Quit-rents*, because thereby the tenant goes quit and free of all services.

(6) *Rack-rent*, a rent of the full value of the tenement, or near it.

(7) *Fore-hand-rent*, otherwise called a foregift or income, but more commonly a fine; it is a premium given by the lessee at the time of taking his lease, and has been considered as an improved rent.

All kinds of rents are now recoverable by distress.—4 *Geo. II.* c. 28, s. 5.

Rent is not due till midnight of the day upon which it is reserved, although sunset is the time appointed by law to make a proper demand of it, to take advantage of a condition of re-entry or to tender it, in order to save a forfeiture; but more properly speaking, the demand should be made before sunset, so as to allow sufficient light to count the money; and the person making the demand or tender must remain on the land till the sun has set. Where rent is reserved generally, and no mention is made, as is usual, of half-yearly or quarterly payments, nothing is due until the end of the year.

Rent is considered as of a higher nature than even a debt due on an instrument under seal, as between the parties themselves; but in the case of the death of the tenant, rent in arrear, whether it be by deed or parol, is held to be of equal degree with specialty debts; and therefore in the distribution of the deceased's estate, it is to be paid with debts of that degree. As to the political theory of rent, see 1 *Mill's Pol. Eco.* b. 2, c. xvi.

Rentage, rent.

Rental, or **Rent-roll**, schedule or account of rent.

Rental-rights, a species of lease usually granted at a low rent and for life. Tenants under such leases were called *rentalers* or *kindly tenants*.

Rental'd teind bolls, when the tithes (tiends) have been liquidated and settled for so many bolls of corn yearly, by rental, or an old use of payment.—*Scotch phrase.*

Rente [Fr.], an annuity.

Rente viagère [Fr.], a life annuity.

Renunciation, the act of giving up a right.

Reparatione faciendâ, an ancient writ, which lay in many cases to compel repairs.—*F. N. B.* 127.

Repeal, a revocation or abrogation.

Repellitur à sacramento infamis.—*Co. Litt.* 158.—(An infamous person is prevented from taking an oath.) The 6 & 7 Vict. c. 85, renders a person convicted of crime a competent witness.

Repertory, a classified inventory.

Repetition, a recovery of money paid under mistake.—*Civ. Law.*

Repetitum namium, a second or reciprocal distress, in lieu of the first, which was eloigned.

Repetundæ, or **Pecuniæ repetundæ**, the term used to designate such sums of money as the *socii* of the Roman state, or individuals, claimed to recover from *Magistratus*, *Judices* or *Publici Curatores*, which they had improperly taken or received in the *provinciæ*, or in the *Urbs Roma*, either in the discharge of their *jurisdictio*, or in their capacity of *Judices*, or in respect of any other public function. Sometimes the word *repetundæ* was used to express the illegal act for which compensation was sought, as in the phrase, '*Repetundarum insimulari, damnari*;' and *pecuniæ* meant, not only money, but anything that had value. Original inquiry was made into this offence, *extra ordinem ex senatus consulto*, as appears from the case of P. Furius Philus and M. Matienus, who were accused of it by the *Hispani.*—*Smith's Dict. of Antiq.*

Repleader, to plead again.

The motion for a repleader is made, when, after issue joined and verdict thereon, the pleading is found (on examination) to have miscarried, and failed to effect its proper object, of raising an apt and material question between the parties. A repleader may become

necessary where the issue has been defectively joined.

Where a repleader is applied for, on the ground of the immateriality of the issue, the cases establish the following distinction. If the immateriality is occasioned by a traverse of a pleading insufficient in point of law, and which it was therefore futile to bring into question in point of fact, and the case be such that the pleading so traversed might be made good by a different manner of pleading, the court will award a repleader, or, in some instances, allow the party by whom it was pleaded to amend. But if the pleading traversed discloses facts which show that the case of the party is incurably bad, and could not be set right by any manner of allegation, the court will not allow a repleader, but if the party is plaintiff will arrest the judgment; or if defendant, will award judgment *non obstante veredicto*. It is a clear rule, that the court will never grant a repleader, except where complete justice cannot otherwise be obtained; and it is never granted in favor of the person who made the first fault in the pleading. The judgment is general, *quod partes replacitent*, and they begin again at the first fault which occasioned the immaterial issue.

On a judgment of repleader, neither party is entitled to costs.—*Step. Plead.* 108; 2 *Chit. Arch. Prac. by Pren.* 1540.

Replegiare, to redeem a thing detained or taken by another by giving sureties.

It is applied in the Scotch law to the power of reclaiming a criminal, and trying him under a different jurisdiction from that of the court before which he is accused.

Replegiare de averiis, a writ brought by one whose cattle were distrained or put in pound, on any cause, by any person, on surety given to the sheriff to prosecute or answer an action.—*F. N. B.* 68.

Replegiari facias, the original writ out of Chancery commencing an action of replevin. It was superseded by the Statute of Marlbridge.—52 *Hen. III.* c. 21.

Repletion, where the revenue of a benefice is sufficient to fill or occupy the whole right or title of the graduate who holds it.—*Canon Law.*

Repleviable or **Replevisable,** that which may be taken back or replevied.

Replevin, a personal action *ex delicto* brought to recover possession of goods unlawfully taken, the validity of which taking it is the regular mode of contesting. The word means a re-delivery to the owner of the pledge or thing taken in distress. It is re-delivered to him by the registrar of the county court of the district within which it was taken, upon his giving security to try the validity of the distress or taking, in an action of replevin to be forthwith commenced by him against the distrainer and prosecuted with effect and without delay either in the county court or in a superior court, and to restore it if the right be adjudged against him; after which the distrainer may keep it till tender made of sufficient amends, but must then re-deliver it to the owner (See 19 & 20 Vict. c. 108, ss. 63, 64). Statute 23 & 24 Vict. c. 126, s. 22, enacts that the provisions of the 19 & 20 Vict. c. 108, which relate to replevin, shall be taken to apply to all cases of replevin in like manner as to the cases of replevin of goods distrained for rent or damage feasant. Although this action is usually confined to goods, &c., taken in distress, it may be brought for all goods and chattels unlawfully taken. It is the proper form of action to recover a specific chattel; for in trover damages only are recovered. When an Act of Parliament orders a distress and sale of goods, it is in the nature of an execution, and this action does not lie, and a replevin of goods seized in order to condemnation would be a contempt of the Court of Exchequer, for which an attachment would be instantly granted.

This action is of two sorts: (1) In the *detinet*. (2) In the *detinuit*. Where the party has had his goods re-delivered to him, the action is in the *detinuit*; 'wherefore he detained the goods,' &c.; but where replevin has not been made, but the distrainer still keeps possession, the action is in the *detinet*, 'wherefore he detains the goods,' &c. The action in the *detinet* has long fallen into disuse, and is never brought unless the distrainer has eloigned the goods, so that they cannot be got at to make replevin.

It is a general rule, that whoever brings replevin ought to have the property of the goods either general or special in him at the time of the taking, and it lies against him who takes the goods and also against him who commands the taking, or against both. Whatever may be distrained may be replevied.

In cases of distress for rent, the replevy should be made before the expiration of five days after the distress made; which days are reckoned exclusively both of the day of distress and the day of sale, otherwise the distrainer may sell the goods; though, indeed, they may be replevied at any time before they have been actually sold. In all other cases of distress at common law, no time is limited for replevying, because the distrainer cannot sell the subject of distress.

An action of replevin may be commenced in any superior court in the form applicable to personal actions therein, and such court shall have power to hear and determine the same; and if the replevisor shall wish to

commence proceedings in any superior court, he shall, at the time of the replevying, give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage, in respect of which the distress shall have been made, and the probable costs of the cause in a superior court, conditioned to commence an action of replevin against the distrainer in such superior court as shall be named in the security, within one week from the date thereof, and to prosecute such action with effect and without delay, and unless judgment thereon be obtained by default, to prove before such superior court that he had good ground for believing, either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise, was in question, or that such rent or damage exceeded 20*l.*, and to make return of the goods, if a return thereof shall be adjudged.—19 & 20 *Vict.* c. 108, s. 65.

If the replevisor shall wish to commence proceedings in a county court, he shall at the time of replevying give security, to be approved of by the registrar, for such an amount as such registrar shall deem sufficient to cover the alleged rent or damage, in respect of which the distress shall have been made, and the probable costs of the cause in the county court, conditioned to commence an action of replevin against the distrainer in the county court for the district in which the distress shall have been taken, within one month from the date of the security, and to prosecute such action with effect and without delay, and to make return of the goods, if a return thereof shall be adjudged (s. 66).

Any action of replevin brought in a county court shall be removed into any superior court by writ of *certiorari*, if the defendant shall apply to such superior court or to a judge there for such writ, and shall give security to be approved of by the master of such superior court, for such amount, not exceeding 150*l.*, as such master shall think fit, conditioned to defend such action with effect, and unless the replevisor shall discontinue, or shall not prosecute such action, or become non-suit therein, to prove before such superior court that the defendant had good ground for believing, either that the title to some corporeal or incorporeal hereditament, or to some toll, market, fair, or franchise, was in question, or that the rent or damage in respect of which the distress shall have been taken exceeded 20*l.*, and every such superior court shall have power to determine the same action (s. 67).

There is an appeal from the county court, where the amount of the rent or damage exceeds 20*l.* A deposit of money may be made in lieu of security, ss. 68, 71.

The defendant enters his appearance with one of the masters. If he do not appear, the plaintiff, according to the old practice, served him with a four-day rule to appear, and upon his non-appearance thereto, sued out a *pone per vadios*; if no appearance entered on or before the appearance day of the return, the sheriff returned *nihil* on the *pone*, and a *distringas* was sued out, under which the sheriff levied 40*s.* After this, if no appearance were entered, an *alias* and then a *pluries distringas* issued; or if the sheriff returned *nulla bona*, a *testatum distringas* might be sued out into a different county. The issues were increased by motion to the court, both upon the *alias* and *pluries distringas*, upon the last of which they were increased to the amount of the debt and costs. If the defendant had not then appeared, a motion was made for a rule to show cause 'why the issues returned upon the several writs of *distringas* should not be sold, and the monies arising from the sale thereof should not be forthwith brought into court; and why it should not be referred to one of the masters to tax the plaintiff his costs occasioned by his issuing out the said several writs; and why such costs, when taxed, should not be paid out of the monies so brought into court; and why the surplus of the said monies after payment of the said costs should not be retained in court until the purpose of the said writs be answered.' If the rule were made absolute, the sheriff was served with a copy of it, and if he did not obey it, he was attached. This process was continued by *distringas ad infinitum*, applying from time to time to sell the issues for payment of the costs, until the defendant appeared; but if *nulla bona* were returned to the *distringas*, a *capias* to outlawry might have been had. If the plaint, however, have been removed by the defendant, or by *accedas ad curiam*, the *pone per vadios* was omitted. See 2 *Chit. Arch. Prac. by Pren.* 1077.

After appearance, the plaintiff delivers his declaration, as in ordinary cases. The venue in this action is local and particular. The defendant may take a judgment of *non pros.* as in ordinary actions; but the plaintiff is not thereby prevented from proceeding, for he may sue out a writ of second deliverance. The defendant may, after judgment of *non pros.*, proceed by writ of inquiry, in pursuance of 17 Car. II. c. 7, s. 2, which renders a writ of second deliverance void, because the goods still remain with the plaintiff; or he may take an assignment of the replevin bond, and proceed against the plaintiff and his sureties.

The pleas in replevin have been divided into four sorts:—(1) Pleas in abatement. (2) The plea of *non cepit*. (3) Pleas in justification. (4) Avowries or cognizances.

As replevin by writ is obsolete, pleas in abatement do not occur in practice.

The plea of *non cepit* used to be termed the general issue in replevin; but although it was so called, it put in issue only the taking and detention, and not the property.

There are two kinds of pleas in justification—those which disaffirm property in the plaintiff, and those which affirm property in the plaintiff—which might occur in the case of a distress being made for personal services, on the tenant dying, the replevin being sued out by the executors.

As to avowries and cognizances for *rent*. In them is set forth, as in a declaration, the nature and merits of the defendant's case, to show that the distress taken by him was lawful, and to entitle him to a judgment *de retorno habendo*. The technical difference between an avowry and cognizance is this: where the action is against the principal or landlord, he makes avowry, that is, he avows, taking the distress in his own right; where, on the other hand, it is against the bailiff or servant, he makes cognizance, that is, he acknowledges the taking in right of the principal or landlord; and where it is against both, the one avows and the other makes cognizance. Parceners must join in an avowry or cognizance for rent; for they make but one heir, and the rent is an entire inheritance. Joint-tenants should likewise join. The defendant in replevin need not set forth his title—11 Geo. II. c. 19, s. 22; but this statute does not extend to an avowry for a rent-charge. The fact of being bailiff should be correctly stated, as it is traversable.

But avowries and cognizances *damage feasant* are not within the 11 Geo. II. c. 19, s. 22, and, therefore, the title of the avowant must be traced down directly; and the defendant must show that the place where, &c., is his freehold or the freehold of the person under whom he makes cognizance; and he must set forth the precise nature of the estate.

As regards the time for avowing or making cognizance, &c., the notice must be to avow, &c., within eight days; and in default, &c., the plaintiff may sign judgment.

The plaintiff may plead in bar to an avowry or cognizance for rent, *non demisit*, *non tenuit*, nothing in arrear as to part of the rent and tender of the residue. That the avowant afterwards used or sold the cattle or goods distrained, may also be pleaded. Also, to an avowry for rent, a plea that before the defendant had any interest in the premises they were mortgaged in fee; that the mortgagor remained in possession, and demised to the defendant; that the defendant demised to the plaintiff; that afterwards the mortgage money being still due, and the rent avowed for in arrear, the mortgagee gave notice to the plaintiff to pay the rent to him, and threatened, in case of non-payment, to put the law in force, wherefore the plaintiff necessarily paid the rent to the mortgagee, is good, being a plea of payment. The statutes of set-off do not extend to replevin, therefore a set-off cannot be pleaded to an avowry for rent, neither can a mutual demand be given in evidence, where a defendant justifies under a distress; but the Statute of Limitations may be pleaded to some sorts of rents, 3 & 4 Wm. IV. c. 27, s. 2. The plaintiff may plead in bar 'tender of amends' to an avowry or cognizance *damage feasant*.

The pleadings in replevin subsequent to the plea in bar, vary with the particular circumstances of each individual case. They are, however, generally similar to those in other actions, except that they bear a name applicable to those of one stage later in the course of proceeding.

Demurrers to the declaration are not usual in practice, except where the place is omitted.

If the plaintiff plead to the avowry or cognizance, the issue may be made up in the ordinary way by either party; and after giving notice of trial, the plaintiff, or if he neglect to do so, the defendant, may make up the *nisi prius* record, enter the cause for trial, and proceed as in ordinary cases. If either plaintiff or defendant give notice of trial, and afterwards do not proceed to try the cause, or countermand his notice in time, the opposite party will be entitled to the costs of the day, as in ordinary cases.

The defendant cannot have a rule to discontinue; for though he be an actor in the action, yet still it is the plaintiff's action.

The landlord's title, under which the tenant has gained possession of the premises, cannot be disputed, although the tenant is prepared with evidence to show that the premises have been fraudulently conveyed to the landlord, and that the actual title is vested in another person.

If a verdict be found for the plaintiff, the jury assesses the damages, as in a verdict for a plaintiff in trespass. If there be judgment for the plaintiff upon a *relictâ verificatione*, *cognovit actionem*, *nil dicit*, *&c.*, or for want of a replication to his plea in bar to the avowry, or upon a demurrer, a writ of inquiry of damages shall be awarded, or, at the request of the plaintiff, by the defendant's assent, the court may assess the damages without such writ; but if there be judgment for the plaintiff, by default, after appearance, there shall be a special writ of inquiry for the value of the goods or cattle, and damages.

If the verdict be for the defendant, the jury find the issues specially for the defendant, and the judgment is, that he have a return of the goods irreplevisable. The defendant may obtain his judgment for a return of the goods by suing

out a writ *de retorno habendo*. If to this the sheriff return that the goods were eloigned, upon the writ and return being filed a *capias in withernam* is issued; and if the plaintiff have no goods or cattle, the sheriff returns *nihil*, and the defendant may thereupon sue out a *scire facias* against the pledges, or bring an action against the registrar, either if the pledges be insufficient, or if no pledges were taken. The plaintiff may have the usual writs of execution for his damages and costs.

The court will very seldom grant a new trial where the verdict is for the plaintiff; but proceedings in error will lie. See *County Courts Act*, 9 & 10 *Vict.* c. 95, ss. 119–121; *Gilbert on Replevin*; 2 *Roscoe on Actions*, 621; *Woodf. Land. and Ten.* 758–819; 2 *Chit. Arch. Prac. by Pren.* 1071–1094; 2 *Selw. N. P.* 1099–1225; and 3 *Step. Com.* 536 & 706.

Replevy, or **Replevish,** to let one to mainprise on surety; also to re-deliver goods which have been distrained to their owner, upon his giving pledges in an action of replevin.

Repliant, a litigant who replies, or files, or delivers a replication.

Replication, a plaintiff's answer to a defendant's plea, except in replevin, when it is pleaded by the defendant, who is a *quasi* plaintiff, in opposition to the plaintiff's plea in bar. As to a replication on equitable grounds, see 17 & 18 *Vict.* c. 125, ss. 85, 86. See 1 *Chit. Arch. Prac. by Pren.* 299.

In equity, the plaintiff's reply to an answer or plea, which puts the suit at issue, for the purpose of taking evidence.

Reply, the response of the opening counsel on a trial, which is only allowed when evidence has been given in answer to the case first stated, except in the case of the Crown, which is always entitled to reply. See *C. L. P. Act*, 1854 (17 & 18 Vict. c. 185, s. 18), and 1 *Chit. Arch. Prac. by Pren.* 398.

Report, a public relation or bringing again to memory of cases judicially adjudged in courts of justice, with the reasons as delivered by the judges.—*Co. Litt.* 293.

Also, the certificate from the masters of the courts, when the courts make a reference to them concerning accounts, &c.; or from committees of either House of Parliament.

Reporter, a person who reports the decisions upon questions of law in the cases adjudged in the several Courts of Law and Equity.

Report-office, a department of the Court of Chancery. The suitors' account there is discontinued by 15 & 16 Vict. c. 87, s. 36. See *Smi. Ch. Pr.* 25.

Reports, a vast number of law-books, which contain the statements of adjudged cases. Their accumulation is a grievance which demands a reform.

Reports, the, Lord Coke's reports, from 14 Eliz. to 13 Jac. I., which are quoted as 1 or 2 Rep. They are in 6 volumes.

Reposition of the forest, a reputting to; a re-afforesting, *Manw.* p. 1; also retrocession, or the returning back of a right assigned from the assignee to the person granting the right.—*Scotch phrase.*

Repositorium, a storehouse or place wherein things are kept; a warehouse.—*Cro. Car.* 555.

Repository, Public, mischief at, punishable by 24 & 25 Vict. c. 97, s. 39.

Representation, standing in the place of another for certain purposes, as heirs, executors, administrators; also, a collateral statement, in insurance, either by parol or in writing, of such facts or circumstances relating to the proposed adventure, and not inserted in the policy, as are necessary for the information of the insurer to enable him to form a just estimate of the risk. Such representations are often the principal inducement to the contract, and afford the best ground upon which the premium can be calculated.—*Encyc. Lond.*

The written pleading presented to a lord ordinary of the Court of Session in Scotland when his judgment is brought under review.

Representative, bearing the character or power of another. An heir-at-law or devisee is a real representative; an executor or administrator is a personal representative.

Reprieve [fr. *reprendre*, Fr., to take back], the withdrawal of a criminal's sentence for an interval of time.

It may take place (1) *ex mandato reginæ*, at the mere pleasure of the Crown.

Or (2) *ex arbitrio judicis*, either before or after judgment; as, where the judge is not satisfied with the verdict, or the indictment is insufficient, or any favorable circumstances appear in the criminal's character, in order to give time to apply to the Crown for either an absolute or conditional pardon.

Or, (3) *ex necessitate legis*; as, where a woman is capitally convicted, and pleads her pregnancy. See JURY WOMEN.

Or, (4) if the criminal become *non compos*.—4 *Step. Com.* 552.

Reprimand, a censure by a public functionary.

Reprisal, the taking one thing in satisfaction for another. Reprisals are used between nation and nation, in order to do themselves justice, when they cannot otherwise obtain it. If a nation has taken possession of what belongs to another—if she refuses to pay a debt, to repair an injury, or to give adequate satisfaction for it—the latter may seize something belonging to the former, and apply it to her own advantage, unless she obtains payment of what is due to her, together with interest and damages or may keep it as a pledge until she has received ample satisfaction. For the latter it is rather a

stoppage or a seizure than reprisals, but they are frequently confounded in common language. *Valet, by Chit.* 283. Reprisals are either *ordinary*, as arresting and taking the goods of merchant-strangers within the realm, or *extraordinary*, as satisfaction out of the realm, and are under the Great Seal.—*Lex. Mercat.* 120. Also recaption, which see. See LETTERS OF MARQUE and CAPIAS IN WITHERNAM.

Reprises, deductions and payments out of a manor or lands, as rent-charges, annuities, &c.

Reprobata pecunia liberat solventem.—9 *Co.* 79.—(Money refused, frees the debtor.)

Reprobation, the propounding of exceptions either to facts, persons, or things.—*Eccle. Law.*

Reprobator, *Action of*, a proceeding intended to convict a witness of perjury in Scotland, to which action the witness must be made a party.

Rep-silver, money anciently paid by servile tenants to their lord, to be quit of the duty of reaping his corn.

Republic, the state independently of its form of government; a commonwealth; also a form of government in which power is derived from the people alone.

Republication of wills, a second publication, an avowed renewal.

No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner by the Wills Act required, and showing an intention to revive the same, and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.—7 *Wm. IV.* and 1 *Vict.* c. 26, s. 22.

Every will re-executed or republished or revived, by any codicil, shall for the purposes of the Wills Act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived (s. 34).

Repudiation, the putting-away of a wife or a woman betrothed; also the renunciation of a right, or the refusal to accept a benefice.

Repugnant, that which is contrary to what is stated before, or insensible. A repugnant condition is void.

Reputation, credit, honor, character, good name.

Injuries to one's reputation, which is a personal right, are defamatory and malicious words, libels, malicious indictments or prosecutions.

Reputatio est vulgaris opinio ubi non est veritas. Et vulgaris opinio est duplex, scil.—Opinio vulgaris orta inter graves et discretos homines, et quæ vultum veritatis habet; et opinio tantum orta inter leves et vulgares homines, absque specie veritatis.—4 *Co.* 107.—(Reputation is vulgar opinion where there is not truth. And common opinion is of two kinds: to wit, common reputation arising among grave and sensible men, and which has the appearance of truth; and mere opinion arising among foolish and ignorant men, without any appearance of truth.)

Reputed owner, one who has, to all appearances, the right and actual possession of property. See 12 & 13 *Vict.* c. 106, s. 125; and 17 & 18 *Vict.* c. 104, s. 72.

Request, a demand or requirement.

Request-notes, applications to obtain a permit for removing excisable articles.

Requests, *Courts of*, tribunals of a special jurisdiction for the recovery of small demands, which are abolished by the Small Debts' Act, 9 & 10 Vict. c. 95, and Order in Council, 9th May, 1847, with a few exceptions. There was a court of requests, of the king in person, which was virtually abolished by 16 Car. I. c. 10.

Requisition, a notarial demand of a debt made by a creditor, in consequence of a clause in the securities for debt previous to the Reformation, when a personal obligation was deemed illegal.—*Scotch term.*

Requisitions of title, a series of inquiries and requests which arise upon a title on behalf of a proposed purchaser, and which the vendor is called upon to satisfy and comply with. They are frequently much curtailed by the conditions of sale.

Rere-fiefs, inferior feudatories in Scotland.

Rerum ordo confunditur, si unicuique jurisdictio non servetur.—4 *Inst. Proœm.*—(The order of things is confounded if everyone preserve not his jurisdiction.)

Rerum progressus ostendunt multa, quæ in initio præcaveri seu prævideri non possunt.—6 *Co.* 40.—(The progress of events shows many things which, at the beginning, could not be guarded against or foreseen).

Rerum suarum quilibet est moderator et arbiter.—*Co. Litt.* 223.—(Everyone is the moderator and arbiter of his own affairs.)

Re-sale, a second sale.

Res, all physical and metaphysical existences in which persons may claim a right. See *Sand. Just.* 176, and *Cum. C. L.* 59.

Res gestæ, all the surrounding facts of a transaction.

Res integra, an entire thing or agreement.

Resceit, or **Receit** [fr. *receptio*, Lat.], an admission or receiving of a third person to plead his right in a cause already commenced between two other persons.

Resceit of homage, the lord's receiving homage of his tenant at his admission to the land.—*Kitch.* 148.

Rescission, annulment or destruction.

Rescissory Action, one to rescind a contract. *Scotch Law.*

Rescous, the setting at liberty, against law, a person arrested by process or course of law. To recover a compensation for this injury, the plaintiff may bring an action of rescous, or an action on the case, against the party guilty of the rescous. The actions of rescous having fallen into disuse, the usual mode of proceeding is by an action on the case; to support which it is necessary for the plaintiff to prove, if put in issue by the pleadings:—

(1) The original cause of action.

(2) The writ and warrant, by the production of copies of them, sworn to be true copies by a witness who has compared and examined them with the originals.

(3) The manner of arrest, in order that it may appear to the court whether the arrest was legal or not; for without a legal arrest there cannot be a rescue.—2 *Selw. N. P.* 1226.

Rescript, the answer of the Roman emperor when consulted by particular persons on some difficult question; it is equivalent to an edict or decree; a counterpart.

Rescriptum principis contra jus non valet.—*Reg. Civ. Jur.*—(The prince's rescript avails not against law.)

Rescue of distress, the taking away and setting at liberty, against law, a distress effected. Rescue lies where a person distrains for rent or services, or for damage feasant, and is desirous of impounding the distress, and another person rescues the distress from him. The party distraining must be in possession of the distress, otherwise there cannot be a rescue.

The action of rescue has fallen into disuse; the usual remedy is by an action on the case, under 2 W. & M. sess. 1, c. 5, s. 4.—1 *Selw. N. P.* 686. When a distress is taken without cause, or contrary to law, the tenant may lawfully make rescue before it is impounded, for then it is deemed to be in the custody of the law. The 6 & 7 Vict. c. 30 gives a summary remedy for pound breach, and rescue in certain cases after a distress for damage feasant.—*Wood. L. and T.* 319, 420, and 739; 3 *Step. Com.* 364.

Rescue of a prisoner. If the defendant after he is arrested on mesne process, and before he is carried to prison, be rescued from the sheriff or his officer, the sheriff will be excused from having his body in court at the return of the writ, and may make his return to the writ accordingly. But a rescue after the defendant has been carried to prison, even where the sheriff is bringing him from the prison to the court by *habeas corpus*, will not excuse the sheriff, and he is answerable for it as escape. And an escape owing to the negligence of the officer, will not justify the return of a rescue.

If the sheriff return the rescue, the offenders may be punished by attachment, or by indictment, and a special action on the case lies against them by the plaintiff for damages, whether the rescue be returned or not. The court has permitted a defendant to show by affidavit, in mitigation of punishment, that in fact there had been no legal arrest.

The sheriff cannot excuse himself by returning a rescue on final process, as he may in the case of mense process, unless the rescue was by the Queen's enemies. If the defendant be rescued, therefore, the plaintiff may either have an action against the sheriff or gaoler in whose custody he was, or he may sue out a fresh *ca. sa.*, or an execution against the defendant's goods, &c. at his option.—1 *Chit. Arch. Prac. by Pren.* 693.

A rescue of one apprehended for felony is felony; for treason, treason; and for a misdemeanor, a misdemeanor; it is punishable by fine or imprisonment.—4 *Step. Com.* 305 n., 309.

Rescussor, the party making a rescue.

Res denominatur à principali parte.—9 *Co.* 47.—(The thing is named from its principal part.)

Resealing writ, the second sealing of a writ by the master so as to continue it, or to cure it of an irregularity.

Res est misera ubi jus est vagum et incertum. 2 *Salk.* 512.—(It is a miserable thing where law is vague and uncertain.)

Reservatio non debet esse de proficuis ipsis, quia ea cŏnceduntur, sed de reditu novo extra proficua.—*Co. Litt.* 142.—(A reservation ought not to be of the profits themselves, because they are granted, but from the new rent apart from the profits.)

Reservation, a keeping aside or providing.

Reserve Force. The 22 & 23 Vict. c. 40, establishes a reserve volunteer force of seamen, and c. 42 establishes a reserve force of men who have been in Her Majesty's service. See NAVAL COAST VOLUNTEERS.

Reserving, *a question of law at sessions or assizes.* See 11 & 12 *Vict.* c. 78.

Reset, the receiving or harbouring an outlawed person.

Reset of theft, the feloniously receiving and keeping of stolen property, with knowledge of the theft.—*Scotch phrase.*

Resetter, a knowing receiver of stolen property.

Res generalem habet significationem, quia, tam corporea quam incorporea, cujuscunque sunt generis, naturæ, sivè speciei, comprehendit.—3 *Inst.* 182.—(The word 'thing' has a general signification, because it comprehends corporeal and incorporeal objects, of whatever nature, sort, or species.)

Resiance, residence, abode, or continuance.

Resiant Rolls, those containing the resiants in a tithing, &c. which are to be called over by the steward on holding courts leet.

Residence, abode; also the continuance of a parson or vicar on his benefice. It is upon the supposition of residence that the law styles every parochial minister an incumbent.

By 1 & 2 Vict. c. 106, repealing the former Acts on the subject, every spiritual person holding a benefice (a term, which as used in this Act, comprises all parochial churches, perpetual curacies, chapels, and church or chapel districts whatever, if with cure of souls) shall keep residence on his benefice, and in the house of residence belonging thereto; and if he absent himself therefrom for a period exceeding three months, either accounted together or several times, in any one year, he shall forfeit, unless resident at some other of his benefices, a certain portion (increasing with the length of absence) of the annual value of his benefice. The exceptions and modifications to which are:—

1stly. No heads of houses in the University of Cambridge or Oxford, or warden of the University of Durham, or head master of Eton, Winchester or Westminster School, who shall have respectively not more than one benefice, shall be liable to the penalties of non-residence.

2ndly. Deans and archdeacons, and various public professors, readers, preachers, and chaplains, the provost of Eton, the warden of Winchester, the master of the Charterhouse, the principal of St. David's and of King's College, London; and also (provided they are not absent from their benefices more than five months in the year) the fellows of Eton and Winchester and all canons, minor canons, priests, vicars, and vicars choral, are entitled to count the time of their official residences or duties as if it had been passed upon their benefices.

3rdly. If there be no house, or no fit house of residence, the bishop may license the holder of the benefice from time to time to reside in some fit house elsewhere, provided it be within a certain specified distance from his church or chapel, and the same shall thereupon become a legal house of residence for all purposes.

4thly. If there be no house, or no fit house of residence, and such certificate be also produced as by the Act provided, that no house convenient for the residence of the holder of the benefice can be obtained within the parish, or within the specified distance from the church or chapel, or if the residence of the holder of any benefice within those limits is prevented by any incapacity of mind or body, or by the dangerous illness of his wife or child (but subject in the latter case to certain restrictions as to time and otherwise), the bishop may grant a license of non-residence, or, in case of his refusal, there may be an appeal to the archbishop of the province.

5thly. If the holder of any benefice happen to occupy in the same parish any mansion or messuage whereof he is the owner, the bishop may grant him a license to reside therein, and if he refuse, remedy may be had by the same course of appeal.

6thly. The bishop is empowered, in any other case besides those enumerated, to grant, if he shall think it expedient, a license to reside out of the limits of the benefice; but in a case of this description the special circumstances and reasons must be transmitted to the archbishop of the province, without whose allowance the license will be ineffectual.

It is further provided by this Act, that annual returns of residents and non-residents shall be made to her Majesty in council; and that in case of non-residence, the bishop, instead of proceeding to enforce the penalties, may issue a monition against the offender, to be followed up, where requisite, by an order to reside; and in case of non-compliance with such order, may sequester the profits of the benefice, and apply them to the purposes in the Act specified. In case also of long-continued or repeated sequestration, the benefice is to become void, and a new presentation may be made, as if the former holder were dead.

For the more effectual promotion of this important duty of residence among the parochial clergy, there is also contained in this Act (as in several others) a variety of provisions for repairing the houses in which they are to reside, and for building and purchasing new ones, and for raising money for these purposes by mortgage of the benefices.—3 *Step. Com.* 33.

Resident, an agent, minister, or officer residing in any distant place with the dignity of an ambassador. Residents are a class of public ministers inferior to ambassadors and envoys; but, like them, they are under the protection of the law of nations.—*Encyc. Lond.*

Also, a tenant who was obliged to reside on his lord's land, and not to depart from the same; called also, *homme levant et couchant*, and in Normandy, *resseant du fief.*—*Leg. H. I.*

Residual, or **Residuary,** relating to the residue; relating to the part remaining.

Residuary devisee, the person named in a will who is to take all the real property remaining over and above the other devises.

It is provided by 1 Vict. c. 26, s. 25, 'that unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.'

Residuary legatee, the person to whom the surplus of the personal estate, after the discharge of all debts and particular legacies, is left by the testator's will.—2 *Wms. Exs.* 1310.

Residuum, the surplus of a testator's or intestate's estate after discharging all his liabilities. Unless it appear in the will that the executor was intended to have the residue, he will be deemed by a court of equity as trustee for the next of kin (11 Geo. IV. and 1 Wm. IV. c. 40). The distribution of the surplusage of intestate's estate is provided for by 22 & 23 Car. II. c. 10, explained by 29 Car. II. c. 3; and 1 Jac. II. c. 17.

Resignatio est juris proprii spontanea refutatio.—Godb. 284.—(Resignation is a spontaneous relinquishment of one's own right.)

Resignation, the giving up a claim, office, or possession; also, the yielding up a benefice into the hands of the ordinary, called by the canonists, renunciation; and though it is synonymous with surrender, yet it is by use restrained to yielding up a spiritual living to the bishop, as surrender is the giving up of temporal land into the hands of the lord.

A bond may be taken to secure the resignation of a living, in favor of any one person whomsoever, and in favor of one of two persons, if they are the uncle, son, grandson, brother, nephew, or grandnephew of the patron. 9 *Geo. IV.* c. 94. See Bond.

The retirement of the late Bishops of London and Durham was provided for by 19 & 20 Vict. c. 115.

Resignee, one in favor of whom a resignation is made.

Res inter alios acta alteri nocere non debet. Co. Litt. 132.—(Things done between strangers ought not to injure one not a party.)

Res judicata pro veritate accipitur.—Co. Litt. 103.—(A thing adjudicated is received as true.)

Res mancipi, things which might be sold and alienated.—*Civ. Law.*

Res nova (*something new*).

Res nullius (*a thing which has not an owner*).

Resolution, a solemn judgment or decision; a revocation of a contract; an act or agreement adopted by an assembly.

Resolutory condition, one the accomplishment of which revokes a prior obligation.

Resort, the authority or jurisdiction of a court. The House of Lords is the *dernier ressort* in cases of appeal.

Respectively, particularly; as each belongs to each.

Respectu computi vicecomitis habendo, a writ for respiting a sheriff's account, addressed to the treasurer and barons of the Exchequer.—*Reg. Orig.* 139.

Respectum *challenge propter.* See Jury.

Res perit domino (*a thing lost to its owner*). *Res per pecuniam æstimatur, et non pecunia per rem.—9 Co.* 76.—(The value of a thing is estimated according to its worth in money; but the value of money is not estimated by reference to the thing.)

Respite, pause, reprieve; suspension of a capital sentence; a delay, forbearance, or continuation of time.

There are respites of execution, of debt, of homage, and of a jury.

Respiciendum est judicanti, ne quid aut durius aut remissius constituatur quam causa deposcit; nec enim aut severitatis aut clementiæ gloria affectanda est.—3 Inst. 220.—(It is a matter of import to one adjudicating that nothing either more severe or more lenient should be done than the cause itself demands, and that the glory neither of severity nor clemency should be affected.)

Respondeat ouster (*let him answer over*). If a demurrer is joined in a plea to the jurisdiction, person, or writ, &c. and it be judged that the defendant put in a more substantial plea, interlocutory judgment is given that he shall answer.

Also, if a prisoner fail upon a plea in bar, he has judgment of *respondeat ouster*, and may plead over to the offence the general issue, not guilty.

Respondeat raptor qui ignorare non potuit quod pupillum alienum abduxit.—Hob. 99.—(Let the ravisher himself answer, for he cannot be ignorant that he has taken away another's ward.)

Respondeat superior (*let the principal answer*). If a coroner of a county is insufficient, the county, as his superior, shall answer for him.—*Wood's Inst.* 83.

Responde-book (*in Exchequer*). A book kept by the directors of Chancery, in Scotland, in which are entered the accounts of all non-entry and relief duties, payable by heirs, who take precepts from Chancery.

Respondent, an answerer in a suit, whether for himself or another; the defendant in an appeal.

Respondentia, money which is borrowed not upon the vessel, as in bottomry, but upon the goods and merchandise contained in it, which must necessarily be sold or exchanged in the course of the voyage; in which case the borrower personally is bound to answer the contract.—7 *Geo. I.* c. 21, s. 2; 19 *Geo. II.* c. 37, s. 5; 2 *Selw. N. P.* 1038.

Respondere non debet [Lat.] (*he ought not to answer*).

Responsa prudentum, the opinions and decisions of learned lawyers, forming part of the Roman laws.—*Cum. C. L.* 6.

Responsalis ad lucrandum vel petendum, he who appears and answers for another in court

at a day assigned; a proctor, attorney, or deputy.—1 *Reeves*, 169.

Res profectò stulta est nequitiæ modus.—11 *Co.* 8 *b.*—(The measure of wickedness is a thing truly foolish.)

Resseiser, the taking of lands into the hands of the Crown, where a general livery or *ouster le main* was formerly misused.—*Staundf. Prærog.*

Restamping writ, passing it a second time through the proper office, whereupon it receives a new stamp.

Restaur, or **Restor,** the remedy or recourse which assurers have against each other, according to the date of their assurances; or against the master, if the loss arise through his default, as through ill-loading, want of caulking, or want of having the vessel tight; also, the remedy or recourse a person has against his guarantee or other person, who is to indemnify him from any damage sustained.—*Encyc. Lond.*

Restitutio in integrum, the rescinding of a contract or transaction, so as to place the parties to it in the same position, with respect to one another, which they occupied before the contract was made, or the transaction took place. The *restitutio* here spoken of is founded on the edict. If the contract or transaction is such as not to be valid, according to the *jus civile*, this *restitutio* is not needed, and it only applies to cases of contracts and transactions, which are not in their nature or form invalid. In order to entitle a person to the *restitutio*, he must have sustained some injury capable of being estimated, in consequence of the contract or transaction, and not through any fault of his own, except in the case of one who is *minor xxv. annorum*, who was protected by the *restitutio* against the consequences of his own carelessness.

The following are the chief cases in which a *restitutio* might be decreed:—

The case of *vis et metus.* When a man had acted under the influence of force or reasonable fear, caused by the acts of the other party, he had an *actio quod metus causa*, for restitution, against the party who was the wrong doer; and also against an innocent person, who was in possession of that which had thus illegally been got from him; and also against the *heredes* of the wrong-doer, if they were enriched by being his *heredes.* If he were sued in respect of the transaction, he could defend himself by an *exceptio quod metus causa.* The *actio quod metus* was given by the *prætor*, L. Octavius, a contemporary of Cicero.

The case of *dolus.* When a man was fraudulently induced to become a party to a transaction, which was legal in all respects saving the fraud, he had his *actio de dolo malo* against the guilty person and his *heredes*, so far as they were made richer by the fraud, for the restoration of the thing of which he had been defrauded; and if that were not possible, for compensation. Against a third party, who was in *bonâ fide* possession of the thing, he had no action. If he were sued in respect of the transaction, he could defend himself by the *exceptio doli mali.*

The case of *minores xxv. annorum.* A minor could by himself do no legal act, for which the assent of a *tutor* or *curator* was required; and, therefore, if he did such act by himself, no *restitutio* was necessary. If the *tutor* had given his *auctoritas*, or the *curator* his assent, the transaction was legally binding; but yet the minor could claim *restitutio* if he had sustained injury by the transaction.

There were, however, cases in which *minores* could obtain no *restitutio*; for instance, when a minor with a fraudulent design gave himself out to be a major, when he confirmed the transaction after coming of age, and in other cases.

The case of *absentia*, which comprehends not merely absence in the ordinary sense of the word, but absence owing to madness or imprisonment, and the like causes.

The case of error. Mistake comprehends such error as cannot be imputed to blame; and in such case a man could always have *restitutio* when another was enriched by his loss.

The case of *alienatio in fraudem creditorum facta* (*Dig.* xlii. tit. 8). When a man was insolvent (*non solvendo*), and alienated his property for the purpose of injuring his creditors, the prætor's edict gave the creditors a remedy.

In the imperial times *restitutio* was also applied to the remission of a punishment (*Tac. Ann.* xiv. 12; *Plin. Ep.* x. 64, 55; *Dig.* xlviii. tit. 19, s. 27), which could only be done by the imperial grace.—*Smith's Dict. of Antiq.*; *Sand. Just.* 130.

Restitution, the restoring anything unjustly taken from another; also, putting in possession of lands or tenements him who had been unlawfully disseised of them; a person being attainted of treason, &c. he or his heirs may be restored to his lands, &c. by royal charter of pardon.

Restitution of conjugal rights, a species of matrimonial cause, which is brought whenever the husband or wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason, in which case the Divorce and Matrimonial Court will compel them to come together again, if either party desire it.—2 *Step. Com.* 253. See MARRIAGE.

Restitution of minors, a restoring them to rights lost by deeds executed during their minority.

Restitution of stolen goods. By the common law there was no restitution of goods upon an indictment, because it is at the suit of the Crown only, therefore the party was enforced to bring an appeal of robbery in order to have

his goods again; but latterly it has been the practice of the court, upon the conviction of a felon, to order immediate restitution of such goods as are brought into court to be made to the several prosecutors. A writ or order of restitution may be issued by virtue of the Larceny Act, 24 & 25 Vict. c. 96, s. 100, which enacts, that if any person guilty of any felony or misdemeanor under that Act (with an exception as to convictions of trustees, bankers, and other agents for misdemeanors under the Act in respect of goods or documents of title entrusted to them), in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving any chattel, money, valuable security, or other property, shall be indicted for the same, by or on behalf of the owner, his executor or administrator, and be convicted thereof, the property shall in such case be restored to the owner or his representative, and the court shall have power to award from time to time writs of restitution for such property, or to order the restitution thereof in a summary manner. This, however, is subject to a proviso as to valuable securities, that if before the award of restitution, it shall appear that they have been *bonâ fide* paid or discharged by some person liable to the payment thereof, or, being negotiable instruments, shall have been *bonâ fide* taken by transfer or delivery, by some person for a just and valuable consideration, without any notice or reasonable cause to suspect that they had been stolen, taken, obtained, extorted, embezzled, converted, or disposed of by means of any felony, or misdemeanor, in such case no restitution shall be awarded.—4 *Step. Com.* 521.

Restitution, *Writ of.* If the judgment below be reversed in a court of error, the plaintiff in error may have a writ of restitution in order that he may be restored to all he has lost by the judgment. If execution on the former judgment have been actually executed, and the money paid over, the writ of restitution may issue without any previous *scire facias*, but if the money have not been paid over, a *scire facias quare restitutionem non*, suggesting the matter of fact, viz., the sum levied, &c., must previously issue.

And, generally, if money, &c., be levied under a writ of execution, and the judgment be afterwards reversed or set aside, the party against whom the execution was sued out may have this writ of restitution; but where the judgment is set aside for irregularity, &c., restitution (when necessary) forms part of the rule; and if the goods or money be not restored, the court will grant an attachment.

A writ of restitution may also be awarded when a judgment in ejectment is upset.

Re-restitution takes place when there has been a writ of restitution before granted; and restitution is generally a matter of duty, but re-restitution is matter of grace.—*Raym.* 35.

Restitutione extracti ab ecclesia, a writ to restore a man to the church, which he had recovered for his sanctuary, being suspected of felony.—*Reg. Orig.* 69.

Restitutione temporalium, a writ addressed to the sheriff, to restore the temporalities of a bishopric to the bishop elected and confirmed.—*F. N. B.* 169.

Restraining Order. The 5th Vict. c. 5, s. 4, extends the preventive powers of Chancery by giving its judges authority, upon the application of any party interested, by motion or petition, supported by an affidavit of the necessity for such an intervention, in a summary way, without bill filed, to restrain the governor and company of the Bank of England, or any other public company, whether incorporated or not, from permitting the transfer of any stock in the public funds, or any stock or shares in any public company, which may be standing in the name or names of any person or persons or body politic or corporate, in the books of the governor and company of the Bank of England, or in the books of any such public company, or from paying any dividend or dividends due or to become due thereon; and every such order is to specify the amount of the stock or the particular shares to be affected thereby, and the name or names of the person or persons, body politic or corporate, in which the same shall be standing. The court has full power, upon the application of any party interested, to discharge or vary such order, and to award costs.

The restraining order continues in force until discharged under the court's authority; but as this order is intended for interim purposes only, it will be discharged if a bill be not filed within such a period as the court may consider reasonable. Obedience to the order is enforced by the ordinary process of contempt.

Restraining powers, those which involve restrictions.

Restraining statutes, those which restrict previous rights and powers, as 1 *Eliz.* c. 19; 13 *Eliz.* cc. 10 & 20; 14 *Eliz.* c. 11; 18 *Eliz.* cc. 6 & 11; and 43 *Eliz.* c. 9. See 5 *Reeves*, c. xxiii., p. 26.

Restrictive endorsement, one limiting the payment of money to a named person only.

Resulting trust, one that arises from the operation or construction of equity, and in pursuance of the rule that trusts result to the person from whom the consideration moves, of which the following are instances:—

(1) Upon a contract to purchase a real-estate, a trust immediately results to the vendee, since equity looks upon things agreed to be done as actually performed.

(2) Where a purchase is made in the name of one, and the consideration is given, or paid by another, a trust results in favor of the latter, though there be no express declaration for the purpose; but not so, if the purchase-money were paid by several, for that would be to introduce all the mischiefs which the statute of frauds was intended to prevent. There must then be a written declaration of trust. To raise a trust of this kind, the fact of the ownership of the money should appear upon the face of the deed, either by a recital, or by expressions which amount to a necessary implication, or presumptive proof of it.

(3) A purchase by a trustee with the trust-money, will raise a resulting trust to the person entitled to such money.

(4) A conveyance to a man, without consideration, raises a resulting trust for the original owner.

(5) Where a trust is declared in part of an estate only, what remains undisposed of results to the grantor or his heir-at-law.

(6) When the trusts created cannot take effect, a trust will result to the original owner or his heir.

(7) Where a conveyance is made to trustees, upon such trusts, and for such intents and purposes as A. shall appoint, and A. never appoints, the trust results to him and his heirs.

(8) If a trustee renew a lease in his own name, such lease will be subject to the trust affecting the old lease.

(9) Where there is fraud in obtaining a conveyance, the grantee will be held, in equity, a trustee for the person defrauded.

(10) A wife cannot be a trustee for her husband; if then a husband purchase lands in his wife's name, it is presumed to be a provision for her.

(11) Where a son is married in the lifetime of his father, and by him fully advanced and emancipated, a purchase by the father, in the name of his son, may be a trust for the father, as much as if it had been in the name of a stranger; because, in that case, all presumptions and obligations of advancement cease. But, where the son is not advanced, or but advanced or emancipated in part, there is no room for any construction of a trust by implication; and without clear proof to the contrary, it ought to be taken as an advancement of the son, although the father take the possession, and receive the rents and profits. If a grandfather purchase lands in the name of his grandchild, the father being dead, it is an advancement, and not a trust; for the grandfather is *in loco parentis*. And it is the same, if a father purchase in the names of his son and a trustee, or in the names of himself and son; but, in this case, a moiety of the estate will be subject to the father's debts.

Resulting use, an implied use.

A resulting use arises where the legal seisin is transferred, and no use is expressly declared, nor any consideration nor evidence of intent to direct the use; the use then remains in the original grantor, for it cannot be supposed that the estate was intended to be given away, and the statute immediately transfers the legal estate to such resulting use.

If the intent of the parties that the use should not result be plainly manifested, it will remain in the persons to whom the legal estate is limited. Parol evidence is admissible to show this intent, for the statute of frauds requiring declaration of uses to be in writing and signed by the party, extends, in cases of conveyances to uses, to third persons only, and not to the persons conveying or those to whom lands are conveyed to uses.—29 *Car. II.* c. 3, s. 8; but see *Lamplugh* v. *Lamplugh*, 1 *P. Wms.* 112.

The doctrine of resulting uses extends only to those cases where an estate in fee-simple passes; it is not applicable where an estate-tail, an estate for life, or an estate for years is granted; for a consideration or declaration of the use prevents its resulting, and a tenure is a consideration, in consequence of the rent or service which it includes; a use, therefore, cannot result on the conveyance of a particular estate, i.e. an estate less than fee simple.

When any particular uses are declared, which do not exhaust the whole estate, so much of the use as the owner of the lands does not dispose of, remains in him. The operation of this rule takes place in transfers operating by non-transmutation of possession; that part of the use undisposed of by the bargainor or covenantor is retained by him as his old estate, and is denominated a use by implication; *ex. gra.* if D. covenant to stand seised to the use of his heirs male, begotten or to be begotten, D. takes an estate for life by implication, for it is impossible for him to have any such heirs during his life, consequently the use undisposed of during his life remains in D.—*Pybus* v. *Mitford*, 1 *Vent.* 327. Neither resulting uses nor uses by implication can ever arise to any person other than the original owner of the estate.

And where a use is expressly limited to the owner of the estate, he will not be allowed to take any resulting or implied use inconsistent with the use limited to him.

Re-summons, a second summons, calling upon a person to answer an action where the first summons is defeated.

Resumption, the taking again by the Crown of such lands or tenements, &c. as on false suggestion had been granted by letters-patent. *Broke*, 298.

Res Universitatis, property belonging to a city or municipal corporation.

Retail, to sell goods in small parcels and not in gross.

Retainer, a servant who does not continually dwell in his master's abode, but only wears his livery, and attends sometimes upon special occasions; also, a special authority given by a client to his attorney or solicitor to institute a suit or conduct a defence for him.

Retainer of debts. Among debtors of equal degree an executor or administrator is allowed to pay himself first, by retaining in his hands so much as his debt amounts to.—2 *Wms. Exs.* 936.

Retaining fee [fr. *merces retinens*, Lat.], a preliminary fee given to a counsel in order to ensure his advocacy.

Retaliation, the *lex talionis*, which see.

Retenementum, detaining, withholding, or keeping back.

Retention, the right of withholding a debt or retaining property until a debt due to the person claiming the right of retention shall be paid; a lien.

Retinentia, a retinue, or persons retained by a prince or nobleman.

Retiring a bill, taking up and paying a bill of exchange when due.

Retorna brevium, the return of writs.

Retorno habendo, when the defendant has judgment in replevin for the return of the goods, there issues in his favor a writ *de retorno habendo*, whereby the goods are returned again into his custody, to be sold or otherwise disposed of, as if no replevin had been made. See REPLEVIN.

Retorsion, retaliation.

Retour, an extract from the Chancery of the service of an heir to his ancestors.—*Scotch term.*

Retour sans protêt [Fr.] (*return without protest*), a request or direction by a drawer of a bill of exchange, that should the bill be dishonored by the drawee, it be returned without protest or without expense (*sans frais*).—*Chit. on Bills.*

Retoured duty, the valuation, both new and old, of lands expressed in the retour to the Chancery, when any is returned or served there.—*Scotch phrase.*

Retractus aquæ, the ebb or return of a tide.

Retractus feudalis, a power anciently claimed by the superior of an estate to pay off a debt adjudged, and to take a conveyance of the estate.—*Scotch phrase.*

Retraxit (*he has withdrawn*), a proceeding somewhat similar to a *nolle prosequi*, except that a *retraxit* is a bar to any future action for the same cause, whereas a *nolle prosequi* is not, unless made after judgment. The former is made in person, in open court, when the trial is called on; the latter is made by a mere entry on the roll out of court.

This proceeding is very unusual in practice. 2 *Chit. Arch. Prac: by Pren.* 1502.

Retrocession, a reassignment of inheritable rights to the cedent or original assignor.—*Civ. Law.*

Rette, a charge or accusation.

Return-days, certain days in term for the return of writs.

Returning officer, the official who conducts a parliamentary election. He is the sheriff in counties, and the mayor in boroughs.—2 *Wm. IV.* c. 45, s. 11; and 5 & 6 *Wm. IV.* c. 76, s. 57. As to an action against him, see 11 & 12 *Vict.* c. 98. s. 103.

Returning from transportation, coming back to this country before the term of punishment is determined. It is an offence against public justice.—4 & 5 *Wm. IV.* c. 67. The punishment of transportation is abolished. See PENAL SERVITUDE.

Returno habendo. See RETORNO HABENDO.

Returnum averiorum, a judicial writ, similar to the *retorno habendo.*

Returnum irreplegiabile, a judicial writ addressed to the sheriff for the final restitution or return of cattle to the owner when unjustly taken or distrained, and so found by verdict; it is granted after a nonsuit in a second deliverance.—*Reg. Judic.* 27.

Reus, *a defendant*, properly the debtor to whom the question was put. *Rei*, the parties or litigants.—*Cum. C. L.* 251.

Reus læsæ majestatis punitur, ut pereat unus ne pereant omnes.—4 *Co.* 124.—(A traitor is punished that one may perish, and not all perish.)

Reve, or **Greeve,** the bailiff of a franchise or manor, an officer in parishes within forests, who marks the commonable cattle.

Revelach, rebellion.

Reveland, the land which in Domesday is said to have been thane-land, and afterwards converted into reveland. It seems to have been land which having reverted to the king after the death of the thane, who had it for life, was not granted out to any by the king, but rested in charge upon the account of the reve or bailiff of the manor.—*Spelm. Feuds*, c. xxiv.

Revels, sports of dancing, masking, &c. formerly used in princes' courts, the inns of court, and noblemen's houses, commonly performed by night; there was an officer to order and supervise them, who was entitled the Master of the Revels.—*Cowel.*

Revendication. Upon the sale of goods on credit, by the law of some commercial countries, a right is reserved to the vendor to retake them, or he has a lien upon them for the price, if unpaid; and in other countries he possesses a right

of stoppage *in transitu*, only in cases of insolvency of the vendee. The Roman law did not generally consider the transfer of property to be complete by sale and delivery alone without payment or security given for the price, unless the vendor agreed to give a general credit to the purchaser; but it allowed the vendor to reclaim the goods out of the possession of the purchaser; as being still his own property. *Quod vendidi* (say the Pandects), *non aliter fit accipientis, quam si aut pretium nobis solutum sit, aut satis eo nomine datum, vel etiam fidem habuerimus emptori sine ullâ satisfactione.* The present code of France gives a privilege or right of revendication against the purchaser for the price of goods sold, so long as they remain in the possession of the debtor. In respect to ships, a privilege is given by the same code to certain classes of creditors, such as vendors, builders, repairers, mariners, &c. upon the ship, which takes effect even against subsequent purchasers, until the ship has made a voyage after the purchase; and, by the general maritime law, acknowledged in most, if not in all, commercial countries, hypothecations and liens are recognised to exist for seamen's wages and for repairs of foreign ships, and for salvage. *Story's Confl. Laws*, sect. 401.

Revenue, income, annual profit received from land or other funds; also, the profits or fiscal prerogatives of the Crown.

Revenue-causes are peculiarly within the province of the Court of Exchequer.

Reversal of judgment, a judgment may be reversed without a writ of error, for matters foreign to or *dehors* the record, that is not apparent upon the face of it, so that they cannot be assigned for error in the superior court, which can only judge from what appears in the record itself; or by writ of error, which lies from all inferior jurisdictions to the Queen's Bench and thence to the Exchequer Chamber and the House of Lords. It is brought for mistakes as to matters of substance, appearing in the judgment or other parts of the record. See 8 & 9 *Vict.* c. 68, amended by 9 & 10 *Vict.* c. 24; 11 & 12 *Vict.* c. 78; and 16 & 17 *Vict.* c. 32; and 4 *Step. Com.* 547. As to reversal of outlawry, see OUTLAWRY.

Reverse, to undo, repeal, or make void.

Reverser, a reversioner.

Reversion [fr. *revertor*, Lat.], that portion left of an estate after a grant of a particular portion of it, short of the whole estate, has been made by the owner to another person. It is thus described by Mr. Watkins (*Conv.* c. xvi.): When a person has an interest in lands, and grants *a portion of that interest*, or in other terms, *a less estate than he has in himself*, the possession of those lands shall, on the determination of the granted interest or estate, *return* or *revert to the grantor*. This interest is what is called the grantor's reversion, or, more properly, his right of reverter, which, however, is deemed an actual estate in the land, bearing the fruits of seignory. Thus, a grant of an estate by the owner of the fee-simple 'to A. for life,' leaves in the grantor the reversion in fee-simple, which will commence in possession after the determination of A's life-estate; and this is called the particular estate; particular as carved or sliced out of the larger estate or reversion.

This right of reverter arises by construction of law; it cannot be created by the act of the parties, and if before the 3 & 4 Wm. IV. c. 106, s. 3, a person made a lease for life, remainder to his own right heirs, the remainder was void, and the lessor took the reversion, but since this Act he takes the remainder in fee by purchase. A reversion, being an immediate interest, may be granted over to another person; it may be charged, and is also devisable, and liable to its owner's debts, and to the leases of prior tenants-in-tail. Although a person can only be said to be entitled to, not seised of, a reversion, yet reversions are vested interests which may be aliened and charged much in the same manner as estates in possession.—*Wiscot's case*, 2 *Rep.* 61. A reversion expectant on an estate for years is present assets for the payment of debts; while it is *quasi* assets when expectant on a life-estate, and only assets when it comes into possession after an estate-tail, since the tenant-in-tail may bar it.—2 *Com. Dig.* 339.

The usual incidents to every reversion are fealty and rent, because the grantee of the particular estate holds as tenant of the reversioner.

When rent is not reserved on the particular estate, fealty, however, results of course, as an incident quite inseparable; and when rent is reserved, it is also an incident, though not inseparably so, to the reversion. The rent may be granted to another, and the reversion retained, and the reversion may be granted to another, specially reserving the rent; but by a general grant of the reversion the rent will pass by it as incident thereto, though by a grant of the rent generally the reversion will not pass. The incident (which is a thing appertaining to or following another, as more worthy or principal) passes by the grant of the principal, but not *è converso*; for the maxim of law is *accessorium non ducit, sed sequitur, suum principale.*

As the creation of a particular estate is absolutely essential to give existence to a reversion, so the continuation of the reversion depends upon the continuance of the particular estate; for if, by any means, as by forfeiture, surrender, or regular expiration, such particular estate determine, the interest of the grantor must necessarily cease to be an estate in reversion, and will become an estate in possession, into which he may immediately enter. Any particular estate

may merge in a reversion, unless it be an estate-tail.

A man will not be entitled to tenancy by the curtesy of, nor a woman to dower out of, a reversion or remainder *expectant upon an estate of freehold*; but upon a reversion expectant upon an estate for years, both these rights (of dower and of curtesy) accrue (*Stoughton* v. *Leigh*, 1 *Taunt.* 410); for the possession of the tenant for years constitutes a legal seisin of the freehold in reversion (*De Gray* v. *Richardson*, 3 *Atk.* 470; *Goodtitle* v. *Newman*, 3 *Wils.* 521).

In order to assist such persons as have any estate in remainder, reversion, or expectancy, after the death of others, against fraudulent concealments of their deaths, it is enacted by the statute 6 Anne, c. 18, that all persons on whose lives any lands or tenements are holden, shall (upon application to the Court of Chancery and order made thereupon) once in every year, if required, be produced to the court, or its commissioners; or, upon neglect or refusal, they shall be taken to be actually dead, and the person entitled to such expectant estate may enter upon and hold the lands and tenements till the party shall appear to be living. See 2 *Prest. on Abstracts*, p. 83, *et seq.*

Reversionary, that which is to be enjoyed in succession.

Reversionary interests *of married women in personalty.* See HUSBAND AND WIFE.

Reversionary lease, one to take effect *in futuro.* A second lease to commence after the expiration of a former lease. All leases where a particular estate subsists are leases in reversion.—*Woodf. L. and T.* 150, 151, 159.

Reversioner, one who has a reversion.

Reversio terræ est tanquam terra revertens in possessione donatori, sive hæredibus suis post donum finitum.—Co. Litt. 142.—(A reversion of land is as it were the return of the land to the possession of the donor or his heirs after the termination of the estate granted.)

Reversor, a debtor who makes a wadset; a reversioner.

Reverter, reversion.

Re, verbis, scripto, consensu, traditione, junctura, vestes sumere pacta solent.—Plow. Com. 161 *b.*—(Compacts are accustomed to be made by the thing itself, by words, by writing, by consent, by delivery, by hand-sale.)

Review, *Bill of,* it is in the nature of proceedings in error, and its object is to procure an examination and alteration or reversal of a final decree in Chancery duly signed and enrolled. If the decree be not enrolled, a petition of rehearing is the proper proceeding.

The bill is filed either for error of law, apparent upon the face of the decree, without any further examination of matters of fact (as for being contrary to the statute-law, or unwarranted by the allegations in the bill); or, with leave of the court, upon the discovery of new matter as a release or receipt: which leave (though discretionary with the court) is obtained upon an attendable petition and an affidavit, stating that the new matter could not be produced or used by the party claiming the benefit of it in the original cause, and also stating the nature of the new matter, in order that the court may exercise its judgment upon its relevancy and materiality. The matter must not only be new, but such as the party, by the use of reasonable diligence, could not have known; for negligence would destroy all claim to the relief.

The bill should state the former bill, and the proceedings under it; the decree, and the point in which the party exhibiting the bill conceives himself aggrieved by it; the ground of relief, or matter discovered, upon which he seeks to impeach the decree. Should the decree be impeached on the latter ground, it then seems necessary to state the leave obtained to file it, and the fact of the discovery.

The bill may simply pray that the decree may be reviewed, and reversed in the point complained of, if it has not been carried into execution; but if it has, the bill may also pray the further decree of the court, to place the party complaining of the former decree in the situation in which he would have been if such decree had not been executed. If a bill be brought to review the reversal of a former decree, it should then pray that the original decree may stand.

To entitle a person to bring this bill, it is necessary that he should have obeyed and performed the decree, unless the act decreed to be done would extinguish his right at the common law, in which case the court would make an order to dispense with its performance until the hearing of the bill of review. The filing of this bill does not prevent the execution of the decree impeached; an order of the court should be obtained to stay it.

No persons, except the parties and their privies in representation, such as heirs, executors, and administrators, are entitled to this bill, which should be filed *within twenty years* after the decree. The sum of 50*l.* must be deposited with the registrar, to answer costs upon the filing. See *Consol. Ord.* 1860, xxi., 2, which also includes a supplemental bill in the nature of a bill of review. See *Morgan's Chancery Acts and Orders*, 506.

Review, *Bill in the nature of bill of,* this is filed where the decree has not been enrolled. As, however, a decree not signed and enrolled may be altered or reversed upon a rehearing, without the assistance of such bill, if there is sufficient matter to alter or reverse it appearing upon the former proceedings, the new

investigation of the decree must be, or at least usually is, brought on by a petition for a rehearing, when there is no defect to be supplied. *Sto. Eq. Pl.* s. 421.

Review, *Supplemental bill in the nature of a bill of.* It nearly resembles, in its frame, a bill of review, except that, instead of praying that the former decree may be reviewed or reversed, it prays that the cause may be heard with respect to the new matter made the subject of the supplemental bill, at the same time that it is reheard upon the original bill, and that the plaintiff may have such relief as the nature of the case made by the supplemental bill requires. *Story's Eq. Plead.* s. 425.

Review, *Commission of,* a commission which was sometimes granted in extraordinary cases, to revise the sentence of the court of delegates, when it was apprehended they had been led into a material error. The court of delegates is abolished.

Review, *Court of,* the appeal-court from the Commissioners in Bankruptcy, established by 1 & 2 Wm. IV. c. 56. It adjudicated upon such matters in bankruptcy as before were within the jurisdiction of the Lord Chancellor. An appeal lay to the Lord Chancellor on matters of law and equity, or on the rejection or admission of evidence. This court was abolished by 10 & 11 Vict. c. 102, and its jurisdiction subsequently transferred to the appeal-court in Chancery, by 14 & 15 Vict. c. 83, s. 7.

Reviling church ordinances, an offence against religion, punishable by fine and imprisonment.—4 *Step. Com.* 287.

Revising Barristers' Courts, courts held in the autumn throughout the country, to revise the list of voters for county and borough members of Parliament. An appeal lies to the Court of Common Pleas, under 6 & 7 Vict. c. 18.

Revivor, *Bill of,* a bill filed to revive and continue the proceedings, whenever there was an abatement of the suit before its final consummation, either by death or marriage. Bills of Revivor are virtually abolished by 15 & 16 Vict. c. 86, s. 52. See ORDER OF REVIVOR.

Revivor, *Bill in the nature of a bill of.* The distinction between bills of revivor and bills in the nature of bills of revivor, seemed to be, that the former, in case of death, were founded upon mere privity of blood or representation by operation of law; the latter upon privity of estate or title by the act of the party. In the former case, nothing could be in contest, except where the party was heir or personal representative; in the latter, the nature and operation of the whole act, by which the privity of estate or title was created, was open to controversy.

Revivor and Supplement, *Bill of.* This bill was a mere compound of the two preceding species of bills, and in its separate parts it must have been framed and proceeded upon in the same manner. It was resorted to where not only an abatement had taken place in a suit, but defects were to be supplied, or new events were to be stated which had arisen since the commencement of the suit. Thus, if a suit became abated, and by any fact other than the event by which the abatement happened, the rights of the parties were affected, as by a settlement or a devise, under certain circumstances, though a mere bill of revivor might continue the suit, so as to enable the parties to prosecute it, yet to bring before the court the whole matter necessary for its consideration, the parties must, by supplemental bill, added to and made part of the bill of revivor, have shown the settlement or devise, or other act by which their rights were affected.—*Story's Eq. Plead.* 309.

Revivor, *Order of.* See ORDER OF REVIVOR.

Revivor, *Writ of.* In cases where it shall become necessary to revive a judgment, by reason either of lapse of time, or of a change by death or otherwise, of the parties entitled or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form set forth in the Act, or apply to the court or a judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the court that such party is entitled to have execution of the judgment, and to issue execution thereupon; such leave to be granted by the court or a judge upon a rule to show cause or a summons, to be served according to the present practice, or in such other manner as such court or a judge may direct, and which rule or summons may be in the form contained in the schedule (A) to the Act annexed, marked No. 7, or to the like effect.—*C. L. P. A.* (1852), s. 129.

Upon such application, in case it manifestly appears that the party making the same is entitled to execution, the court or judge shall allow such suggestion as aforesaid to be entered in the form contained in schedule A to the Act annexed, marked No. 8, or to the like effect, and execution to issue thereupon; and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the court or judge shall discharge the rule or dismiss the summons, with or without costs; provided, nevertheless, that in such last-mentioned case, the party making such application shall be at liberty to proceed by writ of revivor or action upon the judgment (s. 130).

The writ of revivor shall be directed to the party called upon to show cause why execution should not be awarded, and shall bear teste on the day of its issuing; and after reciting the reason why such writ has become necessary, it shall call upon the party to whom it is directed

to appear within eight days after service thereof, in the court out of which it issues, to show cause why the party at whose instance such writ has been issued should not have execution against the party to whom such writ is directed, and it shall give notice that, in default of appearance, the party issuing such writ may proceed to execution, and such writ may be in the form contained in schedule A to the Act annexed, marked No. 9, or to the like effect, and may be served in any county, and otherwise proceeded upon, whether in term or vacation, in the same manner as a writ of summons; and the venue in a declaration upon such writ may be laid in any county, and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action (s. 131).

Notice in writing to the plaintiff, his attorney or agent, shall be sufficient appearance to a writ of revivor (s. 132).

A writ of revivor to revive a judgment less than ten years old shall be allowed without any rule or order; if more than ten years old, not without a rule of court or a judge's order; nor, if more than fifteen, without a rule to show cause (s. 134).

A plaintiff shall not be allowed a rule to quash his own writ of *scire facias* or revivor, after a defendant has appeared, except on payment of costs.—*H. T.* 1853, *r.* 78. See *Chit. Arch. Prac. by Pren.* 1125.

Revocation, the calling back of a thing granted; or a destroying or making void of some deed that had existence until the act of revocation made it void. It may be either *general*, of all acts and things done before; or *special*, to revoke a particular thing.—5 *Rep.* 90.

Revocation and new appointment. The appointer may reserve a power of revocation and new appointment in the deed of appointment, although not expressly authorized so to do, by the assurance creating the power; and such a power may be reserved *toties quoties*. By a revocation the original power revives. When a deed of appointment contains no power of revocation, it is absolute and cannot be revoked, although there be a power of revocation in the assurance creating the power. When a power is executed by will, an express power of revocation need not be reserved, since a will is revocable.

Revocation of agency. An agency is dissolved or determined in several ways:—

(I.) By the act of the principal, either

(*a*) Express, as

(1) By direct and formal writing, publicly advertized;

(2) By informal writing to the agent privately;

(3) By parol; or

(*b*) Implied from circumstances, as by appointing another person to do the same act, where the authority of both would be incompatible.

The exceptions to the power of the principal to revoke his agent's authority at mere pleasure, are

(1) When the principal has expressly stipulated that the authority shall be irrevocable, and the agent has also an interest in its execution.

(2) Where an authority or power is coupled with an interest, or where it is given for a valuable consideration, or where it is a part of a security, unless there is an express stipulation that it shall be revocable.

(3) When an agent's act in pursuance of his authority has become obligatory, for *nemo potest mutare consilium suum in alterius injuriam.*

(II.) By the agent's giving notice to his principal that he renounces the agency; but the principal must sustain no damage thereby; otherwise the agent would be responsible therefor.

(III.) By operation of law, as

(*a*) By the expiration of the period during which the agency was to exist or to have effect.

(*b*) By a change of condition or of state, producing an incapacity of either the principal or the agent, as:—

(1) Marriage of a *feme sole*, principal.

(2) Mental disability established by inquisition, or where the party is placed under guardianship.

(3) Bankruptcy, excepting as to such rights as do not pass to the assignees under the adjudication.

(4) Death, unless the authority is coupled with an interest in the thing vested in the agent. See *Bailey* v. *Collett*, 18 *Beav.* 179.

(5) By the extinction of the subject of the agency.

(6) By the ceasing of the principal's power.

(7) By the complete execution of the trust confided to the agent, who then is *functus officio.*

Revocation of probate and letters of administration. This is effected in two ways: (1) on a suit by citation; (2) on an appeal to a higher tribunal to reverse the sentence by which they are granted.—1 *Wms. Exs.* 493, *et seq.*

Revocation of will. There are now only four modes in which a will can be revoked, viz.: (1) by another inconsistent will, or writing executed in the same manner as the original will; (2) by burning, or any other act of the same nature, done *animo revocandi*; (3) by the disposition of the property by the testator in his lifetime; (4) by marriage. By the 1st and 3rd of these modes, the will may be revoked either entirely or partially; by the

second and last, the revocation will be total.—*St. Leon V. and P.* 385; 1 *Wms. Exs.* 109.

Revocatione parliamenti, an ancient writ for recalling a parliament.—4 *Inst.* 44.

Revocatur [Lat.] (*it is recalled*).

Reward, a recompense for anything done.

In order to encourage the apprehending of certain felons, rewards and immunities were heretofore bestowed on such as brought them to justice, by several statutes. Most of them have been repealed.

By 39 & 40 Geo. III. c. 89, s. 8, persons discovering or apprehending any offender concealing or embezzling royal stores, or being guilty of any offence against that Act or the 9 & 10 Wm. III. c. 41, not prosecuted in a summary way, shall, on conviction, receive a reward of 20*l.* over the share of penalty, if not more than that sum.

The 7 Geo. IV. c. 64, s. 28, enables the courts to order the sheriff of the county in which certain enumerated offences have been committed, to pay to the person active in or towards the apprehension of persons charged with murder, felonies, shooting, or attempting to shoot, stabbing, cutting, or poisoning, or administering anything to procure miscarriage, or with rape, burglary, or felonious housebreaking, bullock stealing, or sheep stealing, or with being accessory before the fact to any of such offences, or to receiving, knowingly, any stolen property, such sum as to the court shall seem reasonable, and sufficient to compensate such person for their expense, exertion, and loss of time. By section 29, such orders are directed to be paid by the sheriff, who shall be forthwith reimbursed by the treasury. By section 30, if a man be killed in attempting to take such offenders, the court may order compensation to his wife or relatives. See 14 & 15 *Vict.* c. 55, and 19 & 20 *Vict.* c. 16, s. 13.

As to taking a reward for helping to the recovery of stolen property without bringing the offender to trial, see 24 & 25 *Vict.* c. 96, s. 101. As to advertising a reward for the return of stolen or lost property, see ADVERTISING FOR STOLEN OR LOST PROPERTY.

Rex est caput et salus reipublicæ.—4 *Co.* 124. (The king is the head and safety of the commonwealth.)

Rex est legalis et politicus.—*Lane,* 27.—(The king is both legal and politic.)

Rex est lex vivens.—*Jenk. Cent.* 17.—(The king is the living law.)

Rex est major singulis, minor universis.—*Bract.* lib. 1, c. viii.—(The king is greater than any single person—less than all.)

Rex est monarcha et imperator in regno suo.—*Dav.* 61.—(The king is monarch and emperor in his own kingdom.)

Rex est persona mixta, medicus regni; pater patriæ; et sponsus regni.—11 *Co.* 80.—(The king is a mixed person; the physician of the state; the father of the country; and the husband of the kingdom.)

Rex est persona sacra et mixta cum sacerdote. 5 *Co. Eccl. L.*—(The king is a sacred person, and mixed with the priesthood.)

Rex hoc solum non potest facere quod non potest injustè agere.—11 *Co.* 72.—(The king can do everything but an injustice.)

Rex in regno suo non habet parem.—(The king has no equal in his own kingdom.)

Rex ipse non debet esse sub homine sed sub Deo et lege, quia lex facit regem; attribuat igitur rex legi quod lex attribuit ei, viz. *dominationem et imperium, non est enim rex ubi dominatur voluntas et non lex.*— 4 *Co. Ad Lect.*—(The king himself ought not to be under the dominion of man, but only under that of God and of the law, because the law makes the king; let, therefore, the king render to the law what the law renders to him, viz. domination and command, for where the will and not the law commands, there is no king.)

Rex non debet judicare sed secundum legem.—*Jenk. Cent.* 9.—(The king ought to judge only according to law.)

Rex non potest fallere, nec falli.—*Jenk. Cent.* 48.—(The king is not able to deceive, nor be deceived.)

Rex nunquam moritur.—(The king never dies.)

Rex præsumitur habere omnia jura in scrinio pectoris sui.—*Co. Litt.* 99.—(The king is presumed to have all the laws in the recess of his own breast.)

Rex prosequi in judicio potest in quâcunque curiâ sibi visum fuerit. — *Jenk. Cent.* — (The king can proceed to judgment in whatever court he pleases.)

Rex quod injustum est facere non potest.—*Jenk. Cent.* 9.—(The king cannot do what is unjust.)

Rex semper præsumitur attendere ardua regni pro bono publico omnium.—4 *Co.* 56.—(The king is always presumed to attend to the difficulties of the realm, for the public good of all.)

Rex summus dominus supra omnes.—2 *Inst.* 501.—(The king is the greatest lord over all.)

Rex tuetur legem et lex tuetur jus.—*Co. Litt.* 130.—(The king protects law, and the law protects right.)

Rhandir, a part in the division of Wales before the Conquest; every township comprehended four gavels, and every gavel had four rhandirs, and four houses or tenements constituted every rhandir.—*Taylor's Hist. Gav.* 69.

Rhodian law, a code of maritime law made by the people of Rhodes.

Rial [fr. *reale,* Span., royal money], a piece of gold coin current for 10*s.* in the reign of Henry VI. at which time there were half rials and quarter rials, or rial-farthings. In the be-

ginning of Queen Elizabeth's reign, golden rials were coined at 15*s.* a piece; and in James I. there were rose-rials of gold at 30*s.*, and spur-rials at 15*s.*—*Lowndes' Essay on Coins*, 38.

Ribaud, a rogue, vagrant, whoremonger; a person given to all manner of wickedness.

Richmond Forest, a royal forest founded by Charles I. As to Richmond Park, see 2 *Hall. Const. Hist.* 14.

Rider, an inserted leaf; an additional clause tacked to a bill passing through Parliament.

Rider-roll, a schedule, or small piece of parchment, often added to some part of a roll, record, or Act of Parliament.

Riding armed. The offence of riding or going armed with dangerous or unusual weapons, is a misdemeanor tending to disturb the public peace by terrifying the good people of the land.—4 *Step. Com.* 337.

Riding clerk, one of the six clerks in Chancery, who, in his turn, for one year, kept the controlment books of all grants that passed the Great Seal. The six clerks were superseded by the clerks of records and writs.

Ridings [corrupted from *trithings*], the names of the parts or divisions of Yorkshire, which, of course, are three only, viz. East Riding, North Riding, and West Riding.

Riens in arrear, a plea used in an action of debt for arrearages of account, whereby the defendant alleges that there is nothing in arrear.

Riens passe per le fait (*nothing passes by the deed*), the form of an exception taken in some cases to an action on a deed.

Riens per descent (*nothing by descent*), the plea of an heir where he is sued for his ancestor's debts, and has no land from him by descent or assets in his hands.—3 *Cro.* 151.

Rier or **Reer-county** [fr. *retro-comitatus*, Lat.], close county, in opposition to open county. It appears to be some public place which the sheriff appoints for the receipt of the king's money after the end of the county court. Fleta says it is *dies crastinus post comitatum.*—*Encyc. Lond.*

Rifflare [fr. *reife*, Sax.], to take away any thing by force.

Right [fr. *recht*, Germ. and Teut.; *ritto*, Ital.; *rectus*, Lat. The application of the same word to denote *a straight line* and *moral rectitude of conduct*, has obtained in every language I know.—*Dugald Stewart*], in its primitive sense, that which the law directs; in popular acceptation, that which is so directed for the protection and advantage of an individual, is said to be his right.—1 *Stark. Evid.* 1, n. (b.) In other words, it is a liberty of doing or possessing something consistently with law.

Right close, *Writ of*, an abolished writ which lay for tenants in ancient demesne, and others of a similar nature, to try the right of their lands and tenements in the court of the lord exclusively.

Right in court. See RECTUS IN CURIÂ.

Right of discussion, the right which a cautioner or surety has to insist that the creditor shall do his best to compel the performance of the contract by the principal debtor, before he shall be called upon.—*Scotch Law.*

Right of division, the right which each of several cautioners or sureties has to refuse to answer for more than his own share of the debt.

To entitle the cautioner to his right, the other cautioner must be solvent, and there must be no words in the bond to exclude it.—*Ibid.*

Right of relief, the right which a cautioner or surety has against the principal debtor, when he has been compelled to pay the debt.—*Ibid.*

Right patent. An obsolete writ, which was brought for lands and tenements, and not for an advowson, or common, and lay only for an estate in fee-simple, and not for him who had a lessor estate, as tenant-in-tail, tenant-in-frank-marriage, or tenant for life.—*F. N. B.* 1.

Right to begin. If the affirmative of the issue is on the plaintiff, he, as a general rule, has a right to begin. In replevin, any issue in which the affirmative is on the plaintiff entitles him to begin. And if, in replevin, the defendant avow for rent in arrear, and the plaintiff reply riens in arrear, the plaintiff must begin. If the affirmative of any one material issue is on the plaintiff, and he undertakes to give evidence upon it, he is entitled to begin. In general, if the affirmative of the issue lies on the defendant, and there is not a judgment by default as to part, and the plaintiff does not seek to recover unascertained damages, the defendant is to begin. In cases of *slander*, *libel*, and other actions for *personal injuries*, where the plaintiff seeks to recover actual damages of an unascertained amount, he is entitled to begin, although the affirmative of the issue may in point of form be with the defendant. And this is now decided to be the rule in other cases, where the plaintiff seeks to recover unascertained damages.

In considering, however, which party ought to begin, it is not so much the form of the issue which is to be considered, as the substance and effect of it, and the judge will consider what is the substantial fact to be made out, and on whom it lies to make it out. And it seems that, as a general rule, the party entitled to begin is he who would have a verdict against him if no evidence were given on either side.

On a plea in abatement for non-joinder, the defendant's counsel was formerly considered as in general entitled to begin; but it has since been settled to be otherwise, unless the damages are admitted.

In ejectment, by an heir-at-law, against a devisee, the latter admitting the seisin of the ancestor, and that the plaintiff is heir, is entitled to begin.

By 15 & 16 Vict. c. 83, s. 41, it is provided that, at the trial of any proceeding by *scire facias* to repeal letters-patent, the defendant shall be entitled to begin, and to give evidence in support of such letters-patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such letters-patent, the defendant shall be entitled to the reply.

A new trial will not be granted because a judge has wrongly ruled at *nisi prius* as to which party was entitled to begin, unless such ruling did clear and manifest injustice. See 1 *Chit. Arch. Prac. by Pren.* 383.

On the hearing of a petition of appeal or rehearing in Chancery, the appellant's counsel is entitled to begin, excepting where a defendant appeals from the whole of a decree. On an appeal from the whole of an order made on a claim and on a motion for decree, the plaintiff is entitled to begin.—*Smi. Ch. Pr.* 485.

Right, *Writ of* [*breve de recto*, Lat.], the highest writ in the law, sometimes called, to distinguish it from others of the droitural class, the writ of right proper. Abolished by 3 & 4 Wm. IV. c. 27.

Rights, *Bill of.* See Bill of Rights.

Rights, *Petition of.* See Petition of Rights.

Ring-dropping, a trick thus practised:—The prisoner, with some accomplices, being in company with the prosecutor, pretends to find a valuable ring wrapped up in paper, appearing to be a jeweller's receipt for a 'rich brilliant diamond ring.' They offer to leave the ring with the prosecutor, if he will deposit some money and his watch, as a security. The prosecutor having accordingly laid down his watch and money on a table, is beckoned out of the room by one of the confederates, while the others take away his watch and money. This amounts to a larceny.—2 *East. Pl.* 678.

Ringing the changes, a trick practised by a criminal, by which, on receiving a good piece of money in payment of an article, he pretends it is not good, and, changing it, returns to the buyer a counterfeit one, as in the following case:—The prosecutor having bargained with the prisoner, who was selling fruit about the streets, to have five apricots for sixpence, gave him a good shilling to change. The prisoner put the shilling into his mouth, as if to bite it in order to try its goodness, and returning a shilling to the prosecutor, told him it was a bad one. The prosecutor gave him another good shilling, which he also affected to bite, and then returned another shilling, saying it was a bad one. The prosecutor gave him another good shilling, with which he practised this trick a third time; the shillings returned by him being in every respect bad. This was held to be an uttering of false money.—1 *Russ. on Cr.* 114.

Riot, a tumultuous disturbance of the peace by three persons or more, assembling of their own authority, with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature, and afterwards actually executing the same in a violent and turbulent manner to the terror of the people, whether the act intended were of itself lawful or unlawful. The punishment for riots not falling within the provisions of the Riot Act, is fine and imprisonment, to which hard labour may, by 3 Geo. IV. c. 114, be superadded.

As to riots at elections, see 2 *Wm. IV.* c. 45, s. 70.

Riot Act, 1 Geo. I. st. 2, c. 5, amended as to punishment, by 7 Wm. IV. and 1 Vict. c. 99, 16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3.

Riotous assembling. If twelve or more persons assemble unlawfully, to the disturbance of the peace, and do not disperse after proclamation, they are felons. See Riot Act.

Riotously demolishing Buildings or **Machinery.** By 24 & 25 Vict. c. 97, s. 11, it is enacted that if any persons riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, or pull down, or destroy, or begin to demolish, pull down, or destroy any church, chapel, meeting-house, or other place of divine worship, or any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hop vat, barn, grannery, shed, hovel, or fold, or any building or erection used in farming land, or in carrying on any trade or manufacture, or any part thereof, or any building other than such as are in this section before mentioned belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish, or place, or belonging to any university, or college, or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery, whether fixed or movable, prepared for, or employed in, any manufacture or in any branch thereof, or any steam engine or other engine for sinking, working, ventilating, or draining any mine, or any staith building or erection used in conducting the business of any mine, or any bridge, waggon-way, or truck for conveying minerals from any mine, every such offender shall be guilty of felony, and, being convicted thereof, shall be liable at the discretion of the court to be kept in penal servitude for life, or for any term not less than three years, or to be im-

prisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement. By sec. 12, if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force injure or damage any such church, &c. as in the last preceding section mentioned, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable at the discretion of the court to be kept in penal servitude for any term not exceeding seven years, and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labor, provided that if upon the trial of any person for any felony in the last preceding section mentioned, the jury shall not be satisfied that he is guilty thereof, but shall be satisfied that he is guilty of any offence in this section mentioned, then the jury may find him guilty thereof, and he may be punished accordingly.

By 7 & 8 Geo. IV. c. 31, s. 23, if any church, or chapel, house, or such buildings or machinery, as in the Act mentioned, shall be feloniously demolished, wholly or in part, by persons riotously and tumultuously assembled, the inhabitants of the hundred shall be liable to yield full compensation, provided that the persons damnified, or such of them as have knowledge of the circumstances, or the servants who had the care of the property, shall, within seven days, go before some justice of the peace, residing near and having jurisdiction, and state upon oath the names of the offenders, if known, and submit to examination touching the circumstances, and become bound by recognizance to prosecute; and provided also, that any action against the hundred be commenced within three calendar months after the offence.

See 2 & 3 *Wm. IV.* c. 72, as to the riotous destruction of threshing machines; and 17 & 18 *Vict.* c. 104, s. 477, as to the plunder and destruction of ships or boats stranded or in distress.

Riparia, a river, or water running between banks.

Riparian nations, those who possess opposite banks or different parts of banks of one and the same river.—*Inter. Law.*

Riparian proprietors, owners of lands bounded by a river or water-course.

Ripon, *Bishopric of,* created pursuant to the report of the Ecclesiastical Commissioners.

Riptowell, a gratuity or reward given to tenants after they had reaped their lord's corn.

Ripuarian laws, a code of laws belonging to the Franks who occupied the country upon the Rhine.

Rivage, or **Rivagium,** a toll anciently paid to the Crown for the passage of boats or vessels on certain rivers.

Riveare, to have the liberty of a river for fishing and fowling.

Rivers, *injuries to,* common nuisances. See 24 & 25 *Vict.* c. 97, ss. 30 & 31.

Rixa, a dispute, a quarrel.—*Civ. Law.*

Rixatrix communis, a common scold.—4 *Step. Com.* 357.

Road, a way, or passage; a secure place for the anchoring of vessels.

Robbery, the unlawful and forcible taking, from the person of another, of goods or money, to any value, by violence or putting him in fear.

(1) There must be an unlawful taking, otherwise it is no robbery.

(2) It is immaterial of what value the thing taken is.

(3.) The taking must be by force or by a previous putting in fear, which makes the violation of the person more atrocious than privately stealing. For, according to the civil law maxim, *qui vi rapuit, fur improbior esse videtur.* This previous violence or putting in fear is the criterion that distinguishes robbery from other larcenies.—4 *Step. Com.* 208–213.

Roberdsman, or **Robertsman,** a bold and stout robber or night thief, so called from Robin Hood, the famous robber, but perhaps a corruption of 'robber's man.'

Robes, *Master of the,* an officer of the household, who has the ordering of the sovereign's robes. He has several officers under him, as a clerk of the robes, a yeoman, three grooms, a page, a brusher, furrier, sempstress, laundress, starcher, and standing wardrobe-keepers, at St. James's, Windsor Castle, Hampton Court, &c. There are also a mistress of the robes and two keepers of the robes.

Rod, a measure of sixteen feet and a half long, otherwise called a perch.

Rod Knights, certain servitors who held their land by serving their lords on horseback.

Roe, Richard, the casual ejector and fictitious defendant in ejectment whose services are no longer invoked. See EJECTMENT.

Rogation [fr. *rogatio,* Lat.], the demand by the consul or tribunes of a law to be passed by the people.—*Civ. Law.*

Rogationes, quæstiones, et positiones debent esse simplices.—*Hob.* 143.—(Demands, questions, and claims, ought to be simple.)

Rogation week [fr. *rogando* (*Deum*), Lat., petitioning or supplicating God], the second week before Whit Sunday, thus called from three fasts observed therein, the Monday, Tuesday, and Wednesday, called rogation days, because of the extraordinary prayers and processions then made for the fruits of the earth, or as a preparation for the devotion of Holy Thursday.

Rogatio testium, bidding persons present to be witnesses to a nuncupative will.—1 *Wm. Exs.* 105.

Rogatory letters, a commission from one judge to another requesting him to examine a witness.

Rogue [Horne Tooke pronounces it to be the past participle of the Saxon *wrigan,* and means covered, cloaked.—*Div. of Purley,* ii. 227. Rogues in our old books are 'sturdy beggars.' This is the earliest acceptation of the word. I conceive it therefore to descend from the Dutch *prachgen,* to go a begging, whence our *prog,* written also *progue,* a word of bad meaning; and thence, omitting *p,* the word before us.—*Todd*], a wandering beggar, vagrant, vagabond. See VAGRANCY.

Rogus, a funeral-pile; a great fire wherein dead bodies were burned; a pile of wood.—*Claus.* 5 *Hen. III.*

Rôle d'équipage [Fr.], the list of a ship's crew; a muster-roll.

Roll, a schedule of parchment that may be turned up with the hand in the form of a pipe. All pleadings, memorials, and acts of court are entered on rolls, and filed with the proper officers, and then they become records of the court.

Roll of Court, the court-roll in a manor, wherein the business of the court, the admissions, surrenders, names, rents, and services of the tenants are copied and enrolled.

Rolls, *Master of the.* See MASTER OF THE ROLLS.

Rolls Office of the Chancery, an office in Chancery Lane, London, which contains rolls and records of the High Court of Chancery, the master whereof is the second person in the Chancery, &c. The Rolls Court is here held when the Master of the Rolls sits.

This house or office was anciently called *Domus Conversorum,* as being appointed, by King Henry III. for the use of converted Jews, but their irregularities occasioned King Edward II. to expel them thence, upon which the place was deputed for the custody of the rolls.—*Encyc. Lond.*

Rolls of the Exchequer. There are several in this court relating to the revenue of the country.

Rolls of Parliament, the manuscript registers of the proceedings of our old Parliament; in these rolls are likewise a great many decisions of difficult points of law, which were frequently, in former times, referred to the determination of this supreme court by the judges of both benches, &c.

Rolls of the Temple. In each of the two Temples is a roll called the calves-head roll, wherein every bencher, barrister, and student is taxed yearly; also, meals to the cook and other officers of the houses, in consideration of a dinner of calves-head, provided in Easter term.—*Orig. Jurid.* 199.

Roman Catholics, *Relief of.* There are several statutes upon this subject, the principal of which are, 10 Geo. IV. c. 7; 2 & 3 Wm. IV. c. 115; 7 & 8 Vict. c. 102; 9 & 10 Vict. c. 59; and 21 & 22 Vict. c. 48, s. 6.

Roman Catholics (the) Charities Act, 23 & 24 Vict. c. 134.

Roman Civil Law. See CIVIL LAW.

Roman Law of Descartes. See *Hale's Hist.* p. 29.

Roma-Peditæ, pilgrims that travelled to Rome on foot.

Rome, *Diplomatic relations with,* are expressly authorized by 11 & 12 Vict. c. 108.

Rome-scot, or **Rome-penny,** Peterpence, which see.

Romilly's Act, 52 Geo. III. c. 101, as to charity abuses.—*Lewin's Trusts,* 779. See CHARITY.

Romney Marsh, a tract of land, in Kent, governed by certain ancient and equitable laws of sewers, from which commissioners of sewers may receive light and direction.—4 *Inst.* 276.

Rood, or **Holy Rood,** holy cross.

Rood of land, the fourth part of an acre in square measure, or 1,210 square yards.

Rooks are animals, *feræ naturæ.* See *Hannam* v. *Mockett,* 2 *B & C.* 934.

Rope-dancers. Unlicensed booths and stages, for rope-dancers and mountebanks, are public nuisances, and may, upon indictment, be suppressed, and the keepers of them fined.—1 *Hawk. P. C.* 75, s. 6. But see 6 & 7 *Vict.* c. 68, s. 3.

Roulette and **Rolypoly.** See GAMING.

Ros, a kind of rushes, which some tenants were obliged by their tenure to furnish their lords with.

Rosland, heathy ground, or ground full of ling; also, watery and moorish land.—1 *Inst.* 5.

Roster, a list of persons, who are to perform certain legal duties when called upon in their turn.

Rother-beasts, oxen, cows, steers, heifers, and such like horned animals.

Rotulus Wintoniæ (*the roll of Winton*), an exact survey of all England, made by Alfred, not unlike that of Domesday; and it was so called for that it was kept at Winchester, among other records of the kingdom; but this roll time has destroyed.—*Ingulph. Hist.* 516.

Round-robin, a circle divided from the centre, like Arthur's round table, whence its supposed origin. In each compartment is a signature, so that the entire circle, when filled, exhibits a list, without priority being given to any name. It is the mode in which British sailors petition their superiors.

Rout, a disturbance of the peace by persons assembling with an intention to do a thing,

which, if it be executed, will make them rioters, and actually making a motion towards its execution.

Roy, Royan, a Hindoo title, given to the principal officer of the *Khalsa*, or chief treasurer of the Exchequer.—*Indian.*

Royal assent, the act by which the Crown agrees to a bill which has already passed both Houses, is called 'The Royal Assent,' which may be given by the Sovereign in person, robed, crowned, and seated on the throne in the House of Lords, the Commons standing at the bar; or by Commissioners appointed by the Crown for that special purpose and for the single occasion. The forms observed in both cases do not vary, and are as follow: The Lords being assembled in their own House, the Sovereign or the Commissioners seated, and the Commons at the bar, the titles of the several bills which have passed both Houses are read, and the King's or Queen's answer is declared by the Clerk of the Parliaments in Norman-French. To a bill of supply, the assent is given in the following words: '*Le roy* (or, *la reine*) *remercie ses loyal subjects, accepte leur benevolence et ainsi le veut.*' To a private bill it is thus declared: '*Soit fait comme il est desiré.*' And to public general bills it is given in these terms: '*Le roy* (or, *la reine*) *le veut.*' Should the Sovereign refuse assent, it is in the gentle language of '*Le roy* (or, *la reine*) *s'avisera.*' As acts of grace and amnesty originate with the Crown, the clerk, expressing the gratitude of the subject, addresses the throne as follows: '*Les prélats, seigneurs, et commons, en ce présent Parliament assemblés aŭ nom de tout vous autres subjects remercient très humblement votre majesté et prient à Dieu vous donner en santé bonne vie et longue.*' The moment the royal assent has been given, that which was a bill becomes an Act, and instantly has the force and effect of law, unless some time for the commencement of its operation should have been specially appointed.

Queen Elizabeth, at the end of one session, rejected 48 bills agreed to by both Houses. The power of rejection was exercised in the year 1692, by William III., who at first refused, but in two years afterwards yielded assent to the bill for triennial parliaments; and for the last time in 1707, when Queen Anne refused her assent to a Scotch militia bill.—*Dod's Parl. Comp.* 94.

Royal burghs, incorporations in Scotland, created by royal charter, giving jurisdiction to the magistrates within certain bounds, and vesting certain privileges in the inhabitants and burgesses. A burgh is called a royal burgh if it hold of the Crown; if it hold of a subject it is termed a burgh of barony.—3 & 4 *Wm. IV.* c. 46; 3 & 4 *Wm. IV.* c. 77, explained by 4 & 5 *Wm. IV.* c. 87.

Royal fish. See REGAL FISH.

Royal forces, the army, navy, marines, and militia.

Royal grants, conveyances of record. They are of two kinds: (1) letters-patent, and (2) letters-close, or writs-close

Royal Marriage Act, 12 Geo. III. c. 11.

Royal mines, gold and silver mines.

Royalties, regalities, royal property.

Roy est l'original de touts franchises.—Keilw. 138.—(The king is the original of all franchises.)

Roy n'est lie per ascun statute si il ne soit expressment nosme.—Jenk Cent. 307.—(The king is not bound by any statute, unless expressly named.)

Roy poet dispenser ove malum prohibitum, *mais non* malum per se.—*Ibid.*—(The king can grant a dispensation for a *malum prohibitum*, but not for a *malum per se.*)

Rubric, directions printed in books of law and in prayer-books, so termed because they were originally distinguished by red ink.

Rubric of a statute, its title, which was anciently printed in red letters. It serves to show the object of the legislature, and thence affords the means of interpreting the body of the act. Hence the phrase of an argument, *à rubro ad nigrum.*

Rubricas, constitutions of the church founded upon the statutes of uniformity and public prayer, viz. 5 & 6 Edw. VI. c. 1; 1 Eliz. c. 2; 13 & 14 Car. II. c. 4.

Rudmas-day [fr. *rode*, Sax., cross, and mass-day], the feast of the holy cross. There are two of these feasts: one on the third of May, the Invention of the Cross; and the other on the fourteenth of September, called the Holy Rood-day, the Exaltation of the Cross.

Ruffanamah, an agreement.—*Indian.*

Rules, guides or decisions; also orders regulating the practice of the courts, or orders made between parties to an action or suit.

At common law, rules on the plea side of the courts are *common*, being obtained from the master, without motions by counsel; or *special*, obtained upon motion by counsel.

Those granted upon motion by counsel may be classed under the following heads: 1st. Those which are granted upon the motion-paper, being merely signed by counsel without any motion being actually made in court. 2ndly. Those which are considered so much as a matter of course, that the grounds of the motion are not particularised by counsel, and where, in some instances, counsel may hand the motion-paper to one of the masters, without making the motion *vivâ voce*; and, 3rdly. Those which are granted upon the grounds of the motion being particularised by counsel.

The first class of the above rules are absolute in the first instance; the second and third are either absolute in the first instance, or rules to

show cause, commonly called rules *nisi*, which are made absolute after service, unless good cause shown to the contrary.—2 *Chit. Arch. Prac. by Pren.* 1564.

Rule in Shelley's case. See SHELLEY'S CASE.

Runcaria, land full of brambles and briars.—1 *Inst.* 5 *a.*

Runcilus, Runcinus, a load-horse, sumpter-horse, cart-horse.—*Cowel.*

Rundlet, or **Runlet,** a measure of wine, oil, &c., containing eighteen gallons and a half.—1 *R. III.* c. 13.

Running-days. See LAY DAYS.

Running with the land, said of a covenant-real, which affects real property.

Runrig lands. Lands in Scotland where the ridges of a field belong alternately to different proprietors. Anciently, this kind of possession was advantageous in giving an united interest to tenants to resist inroads. By the Act 1695, c. 23, a division of these lands was authorized, with the exception of lands belonging to corporations.

Rupee, a silver coin, rated at 2*s.* for the current, and 2*s.* 3*d.* for the Bombay, rupee.—*Indian.*

Ruptarii, or **Ruttarii,** soldiers, or rather robbers.

Ruptura, arable land, or ground broke up.

Rural deanery, the circuit of an archdeacon's and rural dean's jurisdiction. Every rural deanery is divided into parishes.

Rural Deans, very ancient officers of the church, but, until recently, almost grown out of use, though their deaneries still subsist as an ecclesiastical division of the diocese or archdeaconry. They seem to have been deputies of the bishop, planted all round his diocese, the better to inspect the conduct of the parochial clergy, to inquire into and report dilapidations, and to examine the candidates for confirmation, and armed, in minuter matters, with an inferior degree of judicial and coercive authority.—3 *Step. Com.* 18 & 19.

Ruse de guerre [Fr.], a trick in war, a stratagem.

Rustici, churls, clowns, or inferior country tenants, who held cottages and lands by the services of ploughing, and other labors of agriculture, for the lord. The land of such ignoble tenure was called by the Saxons *gafalland*, as afterwards socage tenure, and was sometimes distinguished by the name of *terra rusticorum. Paroch. Antiq.* 136.

Ruta, things extracted from land, as sand, chalk, coal, and such other matters.—*Civ. Law.*

Rutland, *Statute of,* 12 Edw. I.

Ryot, a peasant, subject, tenant of house or land.—*Indian.*

S.

Sabbath, *Profanation of,* commonly, but improperly, called *Sabbath-breaking,* an offence against religion; for it is deemed to be a violation of the divine law, both under the old and the new dispensations, and is in fact a notorious indecency and scandal. It is therefore punished by various statutes.—4 *Step. Com.* 292.

Sabbatum, the Sabbath; also, peace.—*Domesday.*

Sabbulonarium, a gravel-pit, or liberty to dig gravel and sand; also, money paid for the same.

Sable, the heraldic term for black. It is called *Saturn* by those who blazon by planets, and *Diamond* by those who use the names of jewels. Engravers commonly represent it by numerous perpendicular and horizontal lines crossing each other.

Sac, the privilege enjoyed by a lord of a manor, of holding courts, trying causes, and imposing fines.

Saca, cause, sake.

Sacaburth, Sacabere, Sakabere. He that is robbed, or by theft deprived of his money or goods, and puts in surety to prosecute the felon with fresh suit. The Scots term it *sikerborgh. Spelm.*

Sacculatii, cut-purses.—*Roman term.*

Saccus cum brochia, a service or tenure of finding a sack and a broach (pitcher) to the sovereign for the use of the army.—*Bract.* l. 2, c. xvi.

Sachel, or **Satchel,** a bag to carry papers and books.

Sacquier, an ancient officer, whose business was to load and unload vessels laden with salt, corn, or fish, to prevent the ship's crew defrauding the merchant by false tale, or cheating him of his merchandise.—*Mar. Law.*

Sacrament, *Reviling the,* an indecent and arrogant crime against religion, punished by fine and imprisonment.—1 *Edw. VI.* c. 1; 1 *Eliz.* c. 1; 1 *Eliz.* c. 2; and 9 & 10 *Wm. III.* c. 32.

Sacramentum, an oath As to the *sacramenti actio* of the Civil Law, see *Sand. Just.* 64, and *Cum. C. L.* 313.

Sacramentum à sacra et mente, quia jurare est Deum in testem vocare, et est actus divini cultus.—3 *Inst.* 165.—(An oath, '*sacra mentum,*' so called from *sacra,* sacred, and *mente,* with a mind, because to swear is to call God as a witness, and is an act of divine worship.)

Sacramentum habet in se tres comites, veritatem, justitiam et judicium: veritas habenda est in jurato, justitia et judicium in judice.—3 *Inst.* 160.—(An oath has in it three component parts, truth, justice and judgment: truth is

requisite in the party swearing, justice and judgment in the judge administering the oath.)

Sacramentum si fatuum fuerit, licet falsum, tamen non committit perjurium.—2 *Inst.* 167.—(A foolish oath, though false, makes not perjury.)

Sacrilege, larceny from a church. See LARCENY (3).

Sacrilegus omnium prædonum cupiditatem et scelera superat.—4 *Co.* 106.—(A sacrilegious person transcends the cupidity and wickedness of all other robbers.)

Sacristan, a sexton, anciently called *sagerson*, or *sagiston*; the keeper of things belonging to divine worship.

Sadberge, a denomination of part of the county-palatine of Durham.—*Camd. Brit.*

Sæmend, an umpire, arbitrator.—*Anc. Inst. Eng.*

Sæpenumero ubi proprietas verborum attenditur sensus veritatis amittitur.—7 *Co.* 27.—(Many a time where the propriety of words is attended to, the meaning of truth is lost.)

Sæpe viatorem nova, non vetus, orbita fallit.—4 *Inst.* 34.—(A new road, not an old one, often deceives the traveller.)

Sævitia [Lat.], cruelty.

Safe-conduct, convoy; guard through an enemy's country. It is a prerogative of the Crown to grant safe-conducts.

Safe-guard, a protection of the Crown to one who is a stranger, that fears violence from some of its subjects, for seeking his right by course of law.—*Reg. Orig.* 26.

Safe-pledge, a surety appointed for one's appearance at a day assigned.—*Bract.* l. 4.

Sagaman, a tale-teller; secret accuser.

Sagibaro, Sachbaro, a judge.—*Leg. Inæ.* c. vi.

Said, aforesaid.

Sailing instructions, written or printed directions, delivered by the commanding officer of a convoy to the several masters of the ships under his care, by which they are enabled to understand and answer his signals, to know the place of rendezvous appointed for the fleet, in case of dispersion by storm, by an enemy, or by any other accident. Without sailing instructions no vessel can have the full protection and benefit of convoy.—*Mar. Ins.* 368.

Saint Martin le Grand, *Court of.* A writ of error formerly lay from the sheriff's courts in the city of London to the court of hustings, before the mayor, recorder, and sheriffs; and thence to justices appointed by the royal commission, who used to sit in the church of St. Martin le Grand; and from the judgment of those justices a writ of error lay immediately to the House of Lords.—*F. N. B.* 32.

Saio [fr. *sagol*, Sax., a staff], a tipstaff or serjeant-at-arms.

Saisie-arret [Fr.], an attachment of property in the possession of a third person.

Saladine Tenth, a tax imposed in England and France, in 1188, by Pope Innocent III. to raise a fund for the crusade undertaken by Richard I. of England, and Philip Augustus of France, against Saladin, Sultan of Egypt, then going to besiege Jerusalem.

By this tax every person who did not enter himself a crusader was obliged to pay a tenth of his yearly revenue and of the value of all his movables, except his wearing apparel, books, and arms.

The Carthusians, Bernardines, and some other religious persons, were exempted from the saladine.

Gibbon remarks, that, when the necessity for this tax no longer existed, the church still clung to it as too lucrative to be abandoned, and thus arose the tithing of ecclesiastical benefices for the benefit of the Pope or other sovereigns.—*Encyc. Lond.*

Salary, a recompense or consideration made to a person for his pains and industry in another person's business; also, wages, stipend, or annual allowance.—*Cowel.*

The ancients derive the word from *sal*, salt (*Plin. H. n.* xxxi. 41); the most necessary thing to support human life being thus mentioned as a representative of all others. *Salarium*, therefore, composed all the provisions with which the Roman officers were supplied, as well as their pay in money. In the time of the republic, the name *salarium* does not appear to have been used; it was Augustus who, in order to place the governors of provinces and other military officers in a greater state of dependence, gave salaries to them, or certain sums of money, to which afterwards various supplies in land were added. *Smith's Dict. of Antiq.*

Sale, the act of selling. See BILL OF SALE.

Sale notes. See BOUGHT AND SOLD NOTES.

Sale of Crown waste lands in Australia, 18 & 19 Vict. c. 56.

Sale of settled estates. See LEASES and SALES OF SETTLED ESTATES, and 25 & 26 *Vict.* c. 107.

Salic, or **Salique** [*lex salica*, Lat.], an ancient and fundamental law of the kingdom of France, usually supposed to have been made by Pharamond, or at least by Clovis, in virtue of which males only are to reign.

Some, as Postellus, will have it to have been called *Salic, q. d. Gallic*, because peculiar to the Gauls. Cenal takes the reason to be, that the law was only ordained for the royal *salles* or palaces. Fer. Montanus insists it was because Pharamond was at first called *Salicus*; others, with the Abbot of Usperg, derive its name from Salogast, Pharamond's principal minister; and others from the

frequent repetitions of the words *si aliqua*, at the beginning of the articles. The most probable opinion is that which derives the word from the ancient Franks, who were called *Sali*, *Salici*, and *Salinge*, on account of the Sala, a river of ancient Germany. Bouterone gives another plausible origin to the word; he says it comes from the word *salich*, which, in the old Teutonic language, signified salutary; and that the French in this law imitated the policy of the ancient Romans, who made salutary laws, which the magistrates were to have before them when they administered justice. This he confirms by a curious figure taken out of the *Notitia Imperii*, where the book is represented covered with gold, with the inscription, *leges salutariæ*.

It is a popular error to suppose that the Salic law was established purely on account of the succession to the Crown, since it extends to private persons as much as to the royal family.

The Salic law had not in view a preference of one sex to the other, much less had it a regard to the perpetuity of a family, a name, or the succession of land. It was purely a law of economy which gave the house, and the land dependent on the house, to the males who should dwell in it, and to whom it consequently was of more service.

In proof of this, the title of allodial lands of the Salic law is subscribed:—

(1) If a man die without issue, his father or mother shall succeed him.

(2) If he have neither father nor mother, his brother or sister shall succeed him.

(3) If he have neither brother nor sister, the sister of his mother shall succeed him.

(4) If his mother have no sister, the sister of his father shall succeed him.

(5) If his father have no sister, the nearest relation by the male shall succeed him.

(6) Not any part of the Salic land shall pass to the females, but it shall belong to the males, i. e. the male children shall succeed their father.—*Encyc. Lond.*; 1 *Hall. M. A.* note 3 to c. ii., p. 278.

Salt duty in London, a custom in the city of London called *granage*, formerly payable to the Lord Mayor, &c. for salt brought to the port of London, being the twentieth part.

Salt-silver, one penny paid at the feast day of St. Martin, by the tenants of some manors, as a commutation for the service of carrying their lord's salt from market to his larder.—*Paroch. Antiq.* 496.

Saltus, a high thick wood or forest.

Salus populi est suprema lex.—13 *Co.* 139.—(The safety of the people is the supreme law.)

Salus ubi multi consiliarii.—4 *Inst.* 1.—(Where there are many counsellors, there is safety.)

Salute, a coin made by Henry V. after his conquests in France, whereon the arms of England and France were stamped and quartered.—*Stow's Chron.* 589.

Salvage, an allowance or compensation made to those by whose exertions ships or goods have been saved from the dangers of the seas, fire, pirates, or enemies.

This was allowed by the laws of Rhodes, Oleron, and Wisby, and has been allowed by all modern maritime states. At common law, the person who has saved the goods of another from loss or any imminent peril, has a lien upon them, and may retain them in his possession till payment of a reasonable salvage.

If the salvage be performed at sea, or within high or low water-mark, the Court of Admiralty has jurisdiction over the subject, and will fix the sum to be paid, and adjust the proportions, and take care of the property pending the suit; or, if a sale be necessary, direct it to be made, and divide the proceeds between the salvors and the proprietors, according to equity and reason. In fixing the rate of salvage, the court usually has regard, not only to the labor and peril incurred by the salvors, but also to the situation in which they may happen to stand in respect of the property saved, to the promptitude and alacrity manifested by them, and to the value of the ship and cargo, as well as the degree of danger from which they were rescued. In some cases as large a proportion as a half of the property saved has been allowed as salvage; and in others not more than a tenth.

The crew of a ship are not entitled to salvage or any unusual remuneration for the extraordinary efforts they may have made in saving her; it being their duty as well as interest to contribute their utmost upon such occasions, the whole of their possible service being pledged to the master and owners. Neither are passengers entitled to claim anything for the ordinary assistance they may have been able to afford to a vessel in distress. But a passenger is not bound to remain on board a ship in the hour of danger, provided he can leave her; and if he performs any extraordinary service, he is entitled to a proportionable recompense.—*Marshall on Insur.* b. 1, c. 12, s. 8; *Park on Insurance*, c. 8; *Abbott on the Law of Shipping*, p. iii. c. 10; *Maude and Pollock on Shipping*. See 17 & 18 *Vict.* c. 104, ss. 458–470, 484–498; and 18 & 19 *Vict.* c. 91, ss. 19, 20.

As to salvage in the cinque ports, see 1 & 2 *Geo. IV.* c. 76, ss. 1–5, 15–18; 17 & 18 *Vict.* c. 104, s. 460, and 17 & 18 *Vict.* c. 120, sche.

Salvage-loss, the difference between the amount of salvage, after deducting the charges, and the original value of the property.

Salvo [*salvo jure*, Lat.], an exception, reservation, or excuse.

Salvor, a person who renders assistance to a ship or vessel in distress, whereby he becomes entitled to a reward. See SALVAGE.

Sample, a small quantity of a commodity exhibited at public or private sales as a specimen. Where goods are warehoused, certain small specified quantities are, by the regulations at the Custom House, allowed to be taken out as samples, without payment of duty.

Sanatory Inspectors, appointed by 18 & 19 Vict. c. 121.

Sancta, reliques of saints, upon which oaths were made.

Sanction of a law, the provision for enforcing or promoting its observance.

Sanctuary, a place privileged for the safeguard of offenders' lives, being founded on the law of mercy, and the great reverence and devotion which the prince bears to the place whereunto he grants such privilege.—3 *Hall. M. A.* c. ix. pt. 1, p. 302.

In Scotland they call the sanctuary *girtholl*, or *gyrthol*; the Saxons called it *frodmortel* and *fridstoll.*

All privilege of sanctuary, and abjuration consequent thereon, is utterly taken away and abolished.—21 *Jac. I.* c. 28.

Sand-gavel, a payment due to the lord of the manor of Rodley, in the county of Gloucester, for liberty granted to the tenants to dig sand for their common use.

Sandhurst Vesting Act (the), 1862, 25 & 26 Vict. c. 33.

Sane memory, perfect and sound mind and memory to do any lawful act, &c.

Sang, or **Sane,** blood.

Sanguine, or **Murrey,** blood-color, called in the arms of princes *Dragon's tail*, and in those of lords *Sardonyx*. It is a tincture of very unfrequent occurrence, and not recognised by some writers. In engraving, it is denoted by numerous lines in saltire.—*Heraldic term.*

Sanguinem emere, a redemption, by villeins, of their blood or tenure, in order to become freemen.

Sanguis, the right or power which the chief lord of the fee had to judge and determine cases where blood was shed.

Sanis [fr. *σανίς*, Gk.], a kind of punishment among the Greeks, inflicted by binding the malefactor fast to a piece of wood.—*Encyc. Lond.*

Sanity, sound understanding.

Sans ceo que [Nor.-Fr.] (*without this*). See ABSQUE HOC.

Sans frais (*without expense*). See RETOUR SANS PROTÊT.

Sans nombre, *common*, a common in gross, which is absolutely unlimited; a common without stint.

Sans recours [Fr.] (*without recourse to me*), which see.

Sapiens incipit à fine: et quod primum est in intentione, ultimum est in executione.—10 *Co.* 25.—(A wise man begins with the last: and what is first in intention, is last in execution.)

Sapiens omnia agit cum consilio.—4 *Inst.* 4. (A wise man does everything advisedly.)

Sapientia legis nummario pretio non est æstimanda.—*Jenk. Cent.* 168.—(The wisdom of the law cannot be valued by money.)

Sapientis judicis est cogitare tantum sibi esse permissum, quantum commissum et creditum.—(It is the part of a wise judge to consider that so much only is permitted to him as is committed and entrusted to him.)

Sarculatura una, a tenant's service of one year's weeding for his lord.—*Paroch. Antiq.* 403.

Sardin-time, the time or season when husbandmen weed their corn.—*Cowel.*

Sarkellus, an unlawful net or engine for destroying fish.

Sart, a pice of woodland turned into arable. See ASSART.

Sassons, the corruption of Saxons; a name of contempt formerly given to the English, while they affected to be called Angles; they are still so called by the Welsh.

Satisdaction, satisfaction; suretyship.—*Civ. Law.*

Satisdare, to guarantee the obligation of a principal.—*Civ. Law.*

Satisfaction, legal compensation; the recompense for an injury done, or the payment of money due and owing.

The doctrine of satisfaction of legacies, portions, and debts, means the gift of a thing with the intention, either expressed or implied, that it is to be taken either wholly or partly in extinguishment of some prior claim or demand. Of course, it is perfectly open to a donor to expressly provide that his subsequent gift shall be a satisfaction of a prior demand which the donee may have against him, so as to prevent such donee from claiming the gift as well as the demand. With regard to implied or presumable satisfactions, they have been divided into the three following classes:—

(1) The satisfaction of legacies by portions, otherwise called the ademption of legacies. Upon this subject Lord Eldon thus laid down the rule in *Ex parte Pye* (18 *Ves.* 140), that 'where a parent (or person *in loco parentis*) gives a legacy to a child not stating the purpose with reference to which he gives it, the court understands him as giving a portion; and by a sort of artificial rule—upon an artificial notion, and a sort of feeling upon what is called a leaning against double portions, if the father (or *quasi* parent) afterwards advance a portion on

the marriage, or preferment in life, of that child, though of less amount, it is a satisfaction of the whole, or in part;' i. e. if the portion be equal to or greater than the legacy, it operates a total ademption of such legacy; but if it be of a lesser amount than the legacy, such portion will then only adeem the legacy *pro tanto*.

But this presumption may, however, be rebutted by the fact that the testamentary portion and subsequent advancement are not *ejusdem generis*, e. g. as when the portion is certain, but the advancement depends upon a contingency.

Sir J. Leach, in *Weall* v. *Rice*, 2 *Russ. and M.* 266 (1831), stated that the following principles were to be extracted from the cases upon this point:—'Where the two provisions are of the same nature, or there are but slight differences, the two instruments afford intrinsic evidence against a double provision. Where the two provisions are of a different nature, the two instruments afford intrinsic evidence in favor of a double provision. It is not possible to define what are to be considered as slight differences between two provisions. Slight differences are such as in the opinion of the judge leave the two provisions substantially of the same nature; and every judge must decide that question for himself.'

(2) The satisfaction of a portion by a legacy. The rule is, that wherever a legacy given by a parent, or a person standing *in loco parentis*, is as great as, or greater than, a portion or provision previously secured to the legatee upon marriage or otherwise, then, from the already-quoted inclination of equity against double portions, a presumption arises that the legacy was intended by the testator as a complete satisfaction. When the legacy, however, is not so great as the portion or provision, it is then only a satisfaction *pro tanto*.—*Hinchcliffe* v. *Hinchcliffe*, 3 *Ves.* 516 (1797). The bequest of a whole or part of a residue will, according to its amount, be presumed either a satisfaction of a portion in full or *pro tanto*.

(3) The satisfaction of a debt by a legacy. If a debtor bequeath to his creditor a sum of money as great as, or greater than, the debt, without taking any notice at all of the debt, this shall be deemed a satisfaction of the debt, so that the creditor cannot have the debt and also the legacy, a doctrine founded upon the maxim, *Debitor non præsumitur donâre*. There is in this class of satisfaction a leaning against, as in the two former classes a leaning in favor of, the presumption. Thus, where the legacy is of lesser amount than the debt, the presumption is that it was not intended to be given in lieu of it, and is, therefore, not considered a satisfaction, even *pro tanto*. This presumption will also be rebutted where the legacy, though in amount equal to or greater than the debt, is payable at different times, so as not to be equally advantageous to the legatee as the payment of the debt; or where the legacy and debt are of a different nature, either with reference to the subjects themselves, or with respect to the interest given; or where the interest given is of a different nature, or not co-extensive with the debt, or where there is a particular motive assigned for the gift, or where the debt was contracted subsequently to the will, or where the legacy is contingent or uncertain, or if the debt itself be contingent or uncertain, as a debt upon an open or running account or upon a negotiable bill of exchange.

Satisfaction on the roll, *Entry of.* As soon as a judgment is satisfied, by payment, levy, or otherwise, the defendant is entitled to have satisfaction entered upon the roll.—1 *Chit. Arch. Prac. by Pren.* 709.

Satisfied Terms Act, 8 & 9 Vict. c. 112. See TERMS FOR YEARS.

Satius est petere fontes quam sectari rivulos. 10 *Co.* 113.—(It is better to seek the sources than to follow the streams.)

Saturday's stop, a space of time from even-song on Saturday till sun-rising on Monday, in which it was not lawful to take salmon in Scotland and the northern parts of England.—*Cowel.*

Saunkefin, the determination of the lineal race; a descent of kindred.—*Brit.* c. cxix.

Saver-de-fault, to excuse.—*Termes de la Ley.*

Savings' Banks, institutions for the safe custody and increase of the small savings of the industrious poor. When regulated according to Act of Parliament, certain benefits and protections are afforded to them by law. By 26 & 27 Vict. c. 87, several statutes regulating Savings' Banks were repealed, and the law relating to Savings' Banks in England and Scotland and Ireland was consolidated and amended. The institutions, sanctioned by these Acts, consist of banks to receive small deposits of money, the produce of which is to accumulate at compound interest, and the principal and interest whereof are to be paid out to the depositors as required, deducting only from the produce the necessary expenses of management. The deposits are not to exceed 30*l.* in the whole in any one year; and no fresh deposit is to be received when the sum to which the depositor is entitled amounts to 150*l.*; and where the sum standing in the name of any depositor amounts to 200*l.* (principal and interest included), no interest shall be paid on such deposit so long as it remains at that amount. The management is vested in trustees, who are prohibited from receiving directly or indirectly any benefit from the institution; and are required to invest the money deposited (beyond what necessarily remains in the hands of the treasurer to answer exigencies) in the Bank of England or Ireland, as the case may require. The monies invested

are to be carried to an account kept in the names of the Commissioners for the Reduction of the National Debt, and denominated 'The Fund for the Banks for Savings,' which affords interest to the trustees at the rate of 3*l.* 5*s.* per cent. per annum, the arrears of which are to be carried half-yearly to the account of the principal. The interest payable to depositors is limited to 3*l.* 0*s.* 10*d.* per cent., but the Acts permit its accumulation by yearly or half-yearly rests. By way of further protection to the funds of the society, every treasurer or cashier is to give security for the due execution of his office, and in case of his refusal to account to the trustees, or to pay over the monies in his hands, may be compelled to do so, in a summary way, by petition to the justices at quarter-sessions. The trustees are also required to send to the office of the Commissioners for Reduction of the National Debt annual accounts exhibiting the balance due to the depositors, and to affix publicly to some conspicuous part of the office of the savings bank a duplicate of such account, and a list of the trustees and managers. To guard, on the other hand, against abuses of another description, no deposit is to be received without a disclosure of the name, occupation, and residence of the depositor, who is also at the same time, or at any other time, when required by the trustees, to sign a declaration that he is entitled to no benefit from any other bank of the same description; and it is provided, that if such declaration be untruly made, he shall forfeit his deposit. Provisions are also made of a nature calculated to save expense to the members of these institutions. In case of the decease of a depositor whose estate does not exceed 50*l.* no legacy duty attaches; and no stamp duty is payable on the probate or administration; and if any person die having a deposit not exceeding 50*l.* exclusive of interest, and no will or letters of administration be produced within one month afterwards, the money may be paid to or among such person or persons as shall appear to the trustees or managers to be the widow, or entitled under the statute of distributions. Upon the same principle, it is directed that the trustees may pay upon any deposit by a woman to the woman herself, unless her husband or his representative interfere, and that all disputes between the institution at large, and any of its members or representatives, shall be settled by a cheap method of arbitration pointed out for that purpose.

Any persons forming themselves into a society for the purpose of establishing a savings bank, are entitled to claim for it the benefit of the parliamentary provisions, upon causing the rules and regulations which they shall frame for its management to be entered in a book to be kept by one of its officers, for the inspection of depositors. It is, however, requisite that two copies of the rules should be submitted to a barrister officially appointed for that purpose, who is to certify whether the rules are in conformity to law and pursuant to the legislative enactments. One of the copies so certified is to be returned to the trustees, and the other is to be transmitted to the Commissioners for Reduction of the National Debt.

Friendly societies, penny savings banks, charitable and provident societies, may invest their funds to any amount in a savings bank. By 26 Vict. c. 25, provision is made for the investment of monies received by the Commissioners for the Reduction of the National Debt from the Trustees of Savings Banks.

Post-office Savings' Banks are established under the provisions of 24 Vict. c. 14, which after enacting that it is expedient to enlarge the facilities available for the deposit of small savings, and to give the direct security of the State to depositors for the re-payment of monies deposited with interest, enacts that the Postmaster-General, with the consent of the Treasury Commissioners, may direct such of his officers as he shall see fit to receive deposits for remittance to the principal office, and repay the same under such regulations as may be prescribed (s. 1). Every such deposit (which may not be of less amount than one shilling, nor of any sum not a multiple thereof) is to be entered in the depositor's book attested by the receiving officer and by the dated stamp of his office, and the amount received is to be reported on the same day to the Postmaster-General; and an acknowledgment is to be transmitted to the depositor, which is to be conclusive evidence of his claim to repayment with interest; but for ten days after the deposit the signature of the receiving officer is sufficient. If within that time the acknowledgment has not been received, written application must be made to the Postmaster-General, the book then becoming evidence for another ten days (s. 2). The depositor is entitled to repayment of the whole or any part of the deposit on making a demand in a prescribed form, at any post-office where deposits are received or paid, within ten days at farthest after sending in the demand (s. 3). The names of the depositors and the amount paid in or withdrawn are not to be disclosed to any one except the Postmaster-General and the officers appointed by him to carry this Act into effect (s. 4). The monies received are to be paid over to the Commissioners for the Reduction of the National Debt, and all sums withdrawn are to be repaid by them through the post-office (s. 5). Any deficiency in the deposit fund is to be made good out of the consolidated fund (s. 6). The rate of interest is to be 2½ per cent. on sums not less

than 1*l.*, or a multiple thereof (s. 7). The interest to be calculated to December 31st in every year, and to be added to and become part of the principal (s. 8). The monies remitted to the National Debt Commissioners are to be invested in the same way as those from Savings' Banks. A separate account is to be kept, and a balance-sheet from January 1st to December 31st of each year to be laid before Parliament not later than March 31st of the following year (s. 9). Depositors wishing to transfer their deposits to a Savings' Bank will be furnished with a certificate of the whole amount due to them, and with such certificate an account is opened with the selected Savings' Bank and closed with the Post-office, or the transaction may be reversed and the depositor in a Savings' Bank may have his deposit transferred to the Post-office by a certificate signed by two trustees of the Bank (s. 10). The Postmaster-General is authorized to make regulations from time to time for the effective working of this Act, such regulations to be laid before Parliament (s. 11); as are also the accounts annually, not later than March 31st (s. 12), such accounts to be previously examined and audited by the audit commissioners (s. 13). All existing provisions relating to Savings' Banks to be deemed applicable to this Act so far as they are not repugnant (s. 14), and all expenses incurred in the execution of this Act are to be paid out of the monies received (s. 15). This Act was amended by 26 Vict. c. 14, which *inter alia* enacts that money standing in the name of a minor in any Savings' Bank or in a Post-office Savings' Bank, may, on the application of a parent or friend of the minor, if under the age of seven years, or upon his own application if above that age, be transferred to any other Savings' Bank, but may not be withdrawn without the consent of the Postmaster-General or two of the trustees or managers of the Savings' Bank until the minor shall have attained the age at which it might have been withdrawn under the rules of the Savings' Bank from which it shall have been transferred. See MILITARY SAVINGS' BANKS, and NAVAL AND MERCANTILE SAVINGS' BANKS.

Savoy, one of the old privileged places, or sanctuaries.

Saxon-lage, the law of the West Saxons.

Sayer, that which moves; variable imposts distinct from land, rents, or revenues; consisting of customs, tolls, licenses, duties on goods; also taxes on houses, shops, bazaars, &c.—*Indian.*

Scabini, wardens at Lynn, Norfolk.

Scaccarium, a chequered cloth resembling a chess-board which covered the table in the Exchequer, and on which, when certain of the King's accounts were made up, the sums were marked and scored with counters. Hence the Court of Exchequer or *curia scaccarii* derived its name.—3 *Bl. Com.* 44.

Scalam [fr. *ad scalam,* Lat., at the scale], the old way of paying money into the Exchequer.

Scandal, a report or rumour, or an action whereby one is affronted in public.

Scandal, in pleadings in equity, is calculated to do great and permanent injury to all persons whom it affects, by making the records of the court the means of perpetuating libellous and malignant slanders; and the court, in aid of the public morals, is bound to interfere to suppress such indecencies, which may stain the reputation and wound the feelings of the parties and their relatives and friends.

'If that which is stated,' said Lord Eldon, 'is material to the issue, it may be false, but cannot be scadalous; if relevant it is not impertinent, though scandalous in its nature; if relevant and pertinent, it cannot be treated as scandalous; and if false, it must be dealt with in another way. But if irrelevant, and especially if also scandalous, there would be much greater reason to regret that a court should not be armed with the power to protect parties from the expense, and its records from the stain which too frequently arises from the introduction of irrelevant and scandalous matter, upon affidavit, in this jnrisdiction.'—*Exp. Simpson* 15 *Ves.* 477; *Smi. Ch. Pr.* 786.

There was a stone of scandal raised in the great portal of the Capitol in Rome, whereon was engraven the figure of a lion, upon which bankrupts or cessionaries being seated bare-breeched, cried with a loud voice, *cedo bonis* (I surrender my effects); when, squatting their breech violently three times on the stone, they were acquitted. It was called the stone of scandal, because thenceforward the cessionary became intestable and incapable of giving any evidence. Julius Cæsar introduced this form of surrender, after abrogating that article of the laws of the Twelve Tables which allowed creditors to cut their insolvent debtors in pieces, and take each his member, or at least to make a slave of him.—*Encyc. Lond.*

Scandalum magnatum, words spoken in derogation of a peer or judge, or other great officer of the realm. They are held to be particularly heinous, and although they may be such as would not be actionable in the case of a common person, yet when spoken in disgrace of such high and respectable characters, they amount to an atrocious injury, which is redressed by an action on the case, founded on many ancient statutes, as well on behalf of the Crown, to inflict the punishment of imprisonment on the slanderer, as on behalf of the party, to recover damages for the injury sustained. But this action is now obsolete.—3 *Step. Com.* 632; 3 *Ibid.* 491 n.

Scavage, Schevage, Schewage, or **Shewage,** a kind of toll or custom, exacted by mayors, sheriffs, &c. of merchant strangers, for wares showed or offered for sale within their liberties. Prohibited by 19 Hen. VII. c. 7.

Scavaidus, the officer who collected the scavage money.—*Cowel.*

Sceat, a small coin among the Saxons, equal to four farthings.

Sceithman, a pirate or thief.

Sceppa salis, an ancient measure of salt, the quantity of which is now not known.

Schaffa, a sheaf.

Schar-penny, Scharn-penny, or **Schorn-penny,** a small duty or compensation.—*Cowel.*

Schedule, a small scroll; a writing additional or appendant; an inventory.

Schetes, usury.—*Cowel.*

Schilla, a little bell used in monasteries.

Schireman, a sheriff; the ancient name for an earl.

Schirrens-geld [fr. *shiregeld*, Sax.], a tax paid to sheriffs for keeping the shire or county court.

Schism-bill, the name of an Act passed in the reign of Queen Anne, which restrained Protestant dissenters from educating their own children, and forbade all tutors and schoolmasters to be present at any conventicle or dissenting place of worship. The Queen died on the day when this Act was to have taken effect (August 1, 1714), and it was repealed in the fifth year of George I.

Schools of anatomy regulated by 2 & 3 Wm. IV. c. 75.

Sciendum [Lat.], a clause inserted in the record by which it is made known that the justice here in court, in this same term, delivered a writ thereupon to the deputy sheriff of the county aforesaid, to be executed in due form of law.

Scienter [Lat.] (*knowingly, wilfully*). In an action of deceit, the *scienter* must be averred in the declaration, and proved.—1 *Selw. N. P.* 641.

Scientia sciolorum est mixta ignorantia.—8 *Co.* 159.—(The knowledge of smatterers is mixed ignorance.)

Scientia utrinque par pares contrahentes facit. 3 *Burr.* 1910.—(Equal knowledge on both sides makes the contracting parties equal.)

Scilicet [Lat., abbrev. *scil.* or *sc.*, i. e. *scire licet*] (*that is to say, to wit*).

This is not a direct and separate clause, nor a direct and entire clause, in a conveyance, but *intermedia*; neither is it a substantive clause of itself, but it is rather to usher in the sentence of another, and to particularise that which was too general before, or distribute that which was too gross, or to explain that which was doubtful and obscure; and it must neither increase nor diminish the premises or *habendum*, for it gives nothing of itself; but it may make a restriction where the precedent words are not so very express but that they may be restrained. *Hob.* 171.

Scintilla juris et tituli [Lat.] (*a spark of law and title*).

A possibility of seisin, which is supposed to exist in the grantee to uses, when all actual seisin is taken from him by the operation of the statute, upon a limitation of springing uses, and the creation of contingent ones.

To illustrate this, let us take a springing use: a grant to A. and his heirs to the use of B. and his heirs, until C. perform an act, and then to the use of C. and his heirs. Here the statute executes the use in B. which, being co-extensive with A.'s seisin, leaves no actual seisin in A. When, however, C. performs the act, B.'s use ceases, and C.'s use springs up and he enjoys the fee-simple; upon which the question arises, out of what seisin is C.'s use served? It is said to be served out of A.'s original seisin, for upon the cessor of B.'s use, it is contended that the original seisin reverted to A. for the purpose of serving C.'s use, and is a possibility of seisin or *scintilla juris.*

If there must be a seisin somewhere to serve the future uses when they arise, it must be either in the original grantee or feoffee to uses or the *cestui que* use, but the seisin of the *cestui que* use cannot serve any other uses, because that would be a use upon a use, which the common law repudiates. There only remains then the grantee or feoffee, who is capable of the requisite seisin, which cannot be a vested interest, but is what is known as a *scintilla juris.*

Again, a feoffment to A. in fee to the use of B. for life, remainder to the use of his first son unborn in tail, with remainder to the use of C. in fee. What seisin remains in A. until the birth of a son of B? A. has not an actual seisin during the suspense of the contingency, but there is a possibility of seisin reverting to him, for upon the birth of B.'s son, a seisin co-extensive with the use limited to such son, will vest in A. for the purpose of serving it.

This doctrine of *scintilla juris* has been warmly contested. Lord Coke admitted it (*Chudleigh's case*, 1 *Co.* p. 120 *a*), so did Mr. Booth (see his opinion at the end of Sheppard's *Touchstone*), Mr. Sanders (1 *Uses and Trusts*, c. 2, s. 2, p. 107, *et seq.*), and Mr. Burton (*Comp.* p. 59, 6th ed.); but Lord Bacon (*On Uses*, p. 47), Mr. Fearne (*Cont. Rem.* p. 300), Lord St. Leonards (1 *Powers*, c. 1, s. 3, and note 10 to Gilb. *Uses*, p. 296), and Mr. Preston (1 *Prest. Est.* p. 170, and 1 *Hayes's Conv.* p. 61), opposed it; and Lord St. Leonards contends that the doctrine never received a regular judicial decision; and see now 23 & 24 Vict. c. 38, s. 7.

Scire debes cum quo contrahis.—(You ought to know with whom you bargain.)

Scire facias [Lat.] (*that you cause to know*), a judicial writ, founded upon some record, and requiring the person against whom it is brought to show cause why the party bringing it should not have advantage of such record, or (as in the case of a *scire facias* to repeal letters-patent), why the record should not be annulled and vacated. It is deemed an action, and in the nature of a new original.

In the following instances this writ is considered as an *original proceeding*:—

(1) *Scire facias* to repeal letters-patent, charters, &c.

The writ is issued out of the common law jurisdiction of the Court of Chancery, and is returnable there, and entered in the office called the Petty-Bag-Office; or out of the Court of Queen's Bench. When the parties proceed to issue, the clerk of the Petty-Bag delivers the record to the Queen's Bench to be tried by a jury or at bar; it is recorded in Chancery after trial and judgment and execution had thereon. If the writ is to repeal a charter, the record is transmitted to the Crown-Office of the Queen's Bench, and the cause is tried at the bar of that court.

(2) When special bail become fixed by the recognizance being forfeited, one of the modes of proceeding against them is by *scire facias* on the recognizance.

(3) *Scire facias* against the pledges in replevin and the registrar is obsolete, it being the practice to proceed upon the replevin-bond against the former, and by action on the case against the latter, for taking insufficient pledges or no pledges.

In the following instances the writ is a *continuation* of an original action.

(1) Upon the marriage of *feme*-parties.

(*a*) If a *feme sole* obtain judgment, and marry before execution, a *scire facias* must be brought by husband and wife, in order to have execution on the judgment; and if, after judgment awarded on this *scire facias*, but before execution, the wife die, the husband alone may have execution upon the judgment, without even taking out administration.

(*β*) If judgment be recovered against a *feme sole*, and she marry before execution, a *scire facias* must be brought against the husband and wife before the judgment can be executed; and if, after execution awarded upon this *scire facias*, but before execution, the wife die, the husband shall be liable to the execution.

(2) On a judgment in debt on bond.

In debt on bond or other instrument in a penal sum, conditioned for the performance of covenants, or for the doing of any other specific act, although the judgment is entered up for the entire penalty, yet execution is sued out for the amount of such damages only as the jury assess upon the breaches aforesaid suggested. The judgment, however, still remains as a security to the plaintiff for such damages as he may sustain by any further breaches; and in case of any such further breaches, the plaintiff shall have a *scire facias* upon the judgment against the defendant, his heirs, terre-tenants, or executors or administrators, suggesting such other breaches, and summoning him or them to show cause why execution should not be awarded upon the judgment, upon which there shall be the like proceeding as was in the action of debt upon the bond for assessing damages upon trial of issues, joined upon such breaches or inquiry thereof, upon a writ to be awarded for that purpose.—2 *Chit. Arch. Prac. by Pren.* 997.

(3) On a judgment *quando acciderint* against an executor, &c.

If on a plea of *plene administravit* in an action against an executor or administrator, or on a plea of *riens per descent* in an action against an heir, the plaintiff instead of taking issue on the plea, take judgment of assets *quando acciderint*; in this case, if assets afterwards come to the hands of the executor or heir, the plaintiff must first sue out a *scire facias* against such executor or heir, before he can have execution. It is necessary that the writ should state that the assets came to the executor's hands after the judgment; otherwise it would be bad. If assets be found for part, the plaintiff may have judgment to recover so much immediately, and the residue of the assets *in futuro*.—17 & 18 *Vict.* c. 125, s. 91.

On an abatement of a judgment by lapse of time, death of parties, &c. it is now revived by suggestion or writ of revivor.

All writs of *scire facias* are tested, directed, and proceeded upon, in like manner as writs of revivor.—*C. L. P. A.* 1852, s. 132; 2 *Chit. Arch. Prac. by Pren.* 1090. See ABATEMENT (5) and REVIVOR, WRIT OF.

In the following instance the writ is an *interlocutory* proceeding, and in the nature of process:

(1) *Scire facias ad audiendum errores*: abolished, except in case of a change of parties.—*C. L. P. A.* 1852, s. 132.

The following issue after the action is terminated:—

(1) *Scire facias quare restitutionem non*, for restitution after reversal in error.

(2) *Scire facias ad rehabendam terram*, to recover lands extended under an *elegit*.

(3) *Scire facias* against the sheriff, after returning to a *fi. fa.* that he has levied the debt, to compel him to pay over the money retained in his hands.

(4) When an outlaw receives the Queen's pardon, he sues out a *scire facias* requiring the

plaintiff to appear and prosecute his action against him. The plaintiff is summoned thereon.

(5) A *scire facias* against the representatives of a deceased judge that they certify a bill of exceptions.

(6) *Scire facias* against members of a public company to obtain execution against them, upon judgment signed against their public officer, or other person sued as representing such company or body, or against such company or body itself.

A *scire facias* was formerly resorted to in Chancery suits, when they became abated; but this mode has been superseded in practice by the order of revivor, which see.

Scire facias for the Crown, the summary proceeding by extent is only resorted to when a Crown-debtor is insolvent, or there is good ground for supposing that the debt may be lost by delay. In ordinary cases where a debt or duty appears by record to be owing to the Crown, the process for the Crown is a writ of *sci. fa. quare executionem non*; but should the defendant become insolvent pending this writ, the Crown may abandon the proceeding and resort to an extent.

Scire feci, the sheriff's return on a *scire facias*, that he has caused notice to be given to the party against whom the writ was issued.

Scire proprie est rem ratione et per causam cognoscere.—Co. Litt. 183.—(To know properly, is to know the reason and cause of a thing.)

Scirewyte, the annual tax or prestation paid to the sheriff for holding the assizes or county courts.—*Paroch. Antiq.* 573.

Scite [fr. *situs*, Lat.], the setting or standing of any place; the seat or situation of a capital messuage, or the ground whereon it stands.

Scito, quod [*ut*] *modus est,* [*si*] *conditio,* [*quia*] *causa.—Dyer*, 138.—(Know that the word *ut* relates to the mode, *si* to the condition, *quia* to the reason.)

Scold [*communis rixatrix*, Lat.], a troublesome and angry woman who, by brawling and wrangling amongst her neighbors, breaks the public peace, increases discord, and becomes a public nuisance to the neighbourhood. See CASTIGATORY.

Sconce, a mulct or fine.

Scot and Lot [fr. *sceat*, Sax., part, and *lot*], a customary contribution laid upon all subjects according to their ability. Whoever were assessed to any contribution, though not by equal portions, were said to pay scot and lot.

Scotal, or **Scotale,** an extortionate practice by officers of the forest who kept ale-houses, and compelled the people to drink at their houses for fear of their displeasure. Prohibited by the Charter of the Forest, c. 7.

Scotch Peers, the sixteen lords temporal, who represent in our House of Lords the body of the Scottish nobility. They are elected for one Parliament only. See 6 *Anne*, c. 23, amended by 10 & 11 Vict. c. 52; 14 & 15 Vict. c. 87; and 15 & 16 Vict. c. 35.

Scotch Prisons. The law for their administration is consolidated by 23 & 24 Vict. c. 105.

Scotland, the northern portion of the island of Great Britain. It was united to England by 5 Anne, c. 8, May 1, 1707.

Scots, assessments by commissioners of sewers.

Scottare, tenants whose lands are subject to pay scot.

Scottish Universities. The 21 & 22 Vict. c. 83, and 25 & 26 Vict. c. 28, provide for the better government and discipline of the Scottish Universities.

Scribere est agere.—2 Rol. Rep. 89.—(To write is to act.)

Scrip, a certificate or schedule; also evidence of the right to obtain shares in a public company, sometimes called 'scrip-certificate,' to distinguish it from the real title to shares.

Script, a writing; the original or principal document.

Scriptæ obligationes scriptis tolluntur, et nudi consensûs obligatio, contrario consensu dissolvitur.—Jur. Civ.—(Written obligations are superseded by writings, and an obligation of naked assent is dissolved by assent to the contrary.)

Scripture. All profane scoffing of the holy Scripture, or exposing any part thereof to contempt and ridicule, is punishable by fine and imprisonment.

Scrivener [fr. *scrivano*, Ital.; *escrivain*, Fr.], one who draws contracts; one whose business is to place out money at interest, receiving a bonus or commission for his trouble.

When an attorney is the general depositary of money of his clients and other persons who employ him, not simply in his character of attorney, but as a money agent, to invest their money on securities at his discretion, allowing him procuration fees for any sum laid out on bond or mortgage, as well as a fee or charge for preparing the deeds, such a course of dealing is substantially the business of scrivener.—1 *Holt*, 507; 3 *Camp.* 539.

Scroll, a mark which supplies the place of a seal.

Scroop's Inn, an obsolete law society, also called *Serjeants' Place*, opposite to St. Andrew's Church, Holborn, London.

Sculptures, *Copyright in*, provided for by 54 Geo. III. c. 56, giving fourteen years certain, with an additional fourteen years, if the proprietor be then alive, and have not assigned his property.

Scutage, a tax or contribution raised by those that held lands by knight's service, towards furnishing the king's army, at the rate of one, two, or three marks for every knight's fee.

Scutagio habendo, a writ that anciently lay against tenants by knight's service to serve in

the wars, or send sufficient persons, or pay a certain sum.—*F. N. B.* 83.

Scute, a French gold coin of the value of 3*s.* 4*d.*

Scutella, a skuttle; anything of a flat or broad shape, like a shield.

Scutella eleemosynaria, an alms-basket.

Scutum armorum, a shield or coat of arms.

Scyldwit, a mulct for any fault.

Scyra, a fine imposed upon such as neglected to attend the *scyregemot* courts, which all tenants were bound to do.

Scyre-gemot, or **Sciremot,** a court held by the Saxons twice every year, by the bishop of the diocese and the earldorman in shires that had earldormen; and by the bishop and the sheriff where the counties were committed to the sheriff, &c. wherein both the ecclesiastical and temporal laws were given in charge to the county.—*Seld. Titles Hon.* 628.

Sea, the main or high seas are part of the realm of England, for thereon the courts of Admiralty have jurisdiction, but they are not subject to the common law. The main sea begins at the low water-mark, but between the high water-mark and the low water-mark, where the sea ebbs and flows, the common law and Admiralty have, *divisum imperium*, an alternate jurisdiction; one upon the water when it is full sea; the other upon the land when it is an ebb.

Sea-batteries, assaults by masters in the merchant service upon seamen at sea.

Sea-greens, grounds overflowed by the sea in spring-tides.

Sea-laws, laws relating to the sea, as the the Laws of Oleron, &c.

Sea-letter, or **Sea-brief,** a document expected to be found on board of every neutral ship. It specifies the nature and quantity of the cargo, the place whence it comes, and its destination.

Sea-marks. See BEACON.

Seal, wax or wafer with an impression.

Sealer [fr. *sigillator*, Lat.], an officer in Chancery who sealed the writs and instruments. The offices of sealer and deputy-sealer are abolished by 15 & 16 Vict. c. 87, s. 23.

Seal-paper, a document issued by the Lord Chancellor previously to the commencement of the sittings, detailing the business to be done for each day in his court, and in the courts of the Lords Justices and Vice Chancellors. The Master of the Rolls in like manner issues a seal-paper in respect of the business to be heard before him.—*Smi. Ch. Pr.* 9.

Seamen, persons engaged in navigating ships, barges, &c. upon the high seas. Those employed for this purpose upon rivers, lakes, or canals, are denominated watermen.

A British seaman must be a natural born subject, or be naturalized, or made a denizen, or have become a British subject by the conquest or cession of some newly acquired territory; or (being a foreigner) have served on board her Majesty's ships of war, in time of war, for the space of three years. But the Queen may, by proclamation, during war, declare that foreigners who have served two years in the royal navy, during such war, shall be deemed British seamen.

Various regulations have been enacted with respect to the hiring of seamen, their conduct while on board, and the payment of their wages. These regulations differ in different countries; but in all they have been intended to obviate the dispute that might otherwise arise between a master and seaman as to the terms of the contract between them, to secure due obedience to the master's orders, and to interest the seamen in the completion of the voyage, by making their earnings depend on its successful termination. See 17 & 18 *Vict.* c. 104, s. 146, *et seq.*

The statute law does not render a verbal agreement for wages absolutely void; but imposes a penalty on the master if a written agreement be not made. When a written agreement is made, it becomes the only evidence of the contract between the parties; and a seaman cannot recover anything agreed to be given in reward for his services, which is not specified in the articles.

A seaman who is engaged to serve on board a ship is bound to exert himself to the utmost in the service of the ship; and, therefore, a promise made by the master of a ship in distress to pay an extra sum to a seaman, as an inducement to extraordinary exertion on his part, is held to be void.

Neglect of duty, disobedience of orders, habitual drunkenness, or any cause which will justify the master in discharging a seaman, during a voyage, will also deprive the seaman of his wages. See REGISTRAR-GENERAL OF SEAMEN, and *Maude and Pollock on Shipping.*

Seamen's will. See 1 *Williams on Executors*, and NUNCUPATIVE WILL.

Séance [Fr.], session, as of some public body.

Searcher, an officer of the customs, whose business it is to examine ships outward-bound, in order to ascertain if they have any prohibited or unaccustomed goods on board, &c.

Search warrant, an authority requiring the officer to whom it is addressed to search a house or other place therein specified, for property therein alleged to have been stolen or secreted.

Sea-reeve, an officer in maritime towns and places, who takes care of the maritime rights of the lord of the manor, watches the shore, and collects the wreck.

Sea-rovers, pirates and robbers at sea.

Seashore, the space of land between high and low water-mark.

Sea-thief, a pirate.

Seaworthy, a term applied to a ship, indicating that she is, in every respect, fit for her voyage.

It is provided in all charter-parties that the vessels chartered shall be tight, staunch, and strong, well apparelled, furnished with an adequate number of mariners, sufficient tackle, provisions, &c. If the ship be insufficient in any of these particulars, the owners, though ignorant of the circumstance, will be liable for whatever damage may in consequence be done to the goods of the merchant, and if any insurance have been effected upon her, it will be void.

But whether the condition of seaworthiness be expressed in the contract or not, it is always implied.—*Holt's Law of Shipping; Abbott's Treatise.*

Sebastomania [fr. σεβαστός, Gk., worshipped, and μανία, frenzy], religious insanity, demonomania.

Seck, a warrant of remedy by distress.—*Litt.* s. 218. Also, barren or profitless. See RENT SECK.

Secondary of the Queen's Bench for registering deeds in Middlesex. See 7 *Wm. IV.* & 1 *Vict.* c. 30, s. 28.

Secondary, an officer who is second and next to the chief officer.—2 *Lill. Abr.* 506. A delegate, a deputy.

Secondary conveyances, those which presuppose some other conveyance precedent, and only serve to confirm, alter, restrain, restore, or transfer the interest granted by the original conveyance. They are otherwise called derivative, and are:—(α) Releases. (β) Confirmations. (γ) Surrenders. (δ) Assignments; and (ε) Defeazances.

Secondary evidence, that species of proof which is admitted on the loss of primary evidence. There are no degrees of this evidence.

Secondary use, a use limited to take effect in derogation of a preceding estate; otherwise called a shifting use, as a conveyance to the use of A. and his heirs, with a proviso that when B. returns from India, then to the use of C. and his heirs.

Second deliverance, *Writ of,* a judicial writ that lies, after a nonsuit of the plaintiff in replevin, and a *retorno habendo* of the cattle replevied, adjudged to him that distrained them, commanding the sheriff to replevy the same cattle again, upon security given by the plaintiff in the replevin for the re-delivery of them if the distress be justified. It is a second writ of replevin, and is practically obsolete.—*F. N. B.* 68; 2 *Chit. Arch. Prac. by Pren.* 1041; 2 *Selw. N. P.* 1221.

Second distress. By 17 Car. II. c. 7, s. 4, in all cases where the value of the cattle distrained shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears are due, his executors or administrators, may distrain again for the said arrears; but a second distress cannot, it seems, be at all justified, where there is enough which might have been taken upon the first, if the distrainer had then thought proper; for a man who has an entire duty, as rent, for example, shall not split the entire sum, and distrain for one part of it at one time, and for the other part of it at another time, and so *toties quoties* for several times; for that would be great oppression.

Second surcharge, *Writ of.* If after admeasurement of common, upon a writ of admeasurement of pasture, the same defendant surcharges the common again, the plaintiff may have this writ of second surcharge *de secundâ superoneratione,* which is given by the Stat. West. 2, 13 Edw. I. c. 8.

Seconds, assistants at a duel.

Secretaries of State, cabinet ministers attending the sovereign, for the receipt and dispatch of letters, grants, petitions, and many of the most important affairs of the kingdom, both foreign and domestic.

There are five principal secretaries, one for the home department, another for foreign affairs, a third for the colonies, a fourth for war (26 & 27 Vict. c. 22), and a fifth for India (21 & 22 Vict. c. 106). These have under their management the most considerable affairs of the nation, and are obliged to a constant attendance on the sovereign; they receive and despatch whatever comes to their hands, be it for the Crown, the church, the army, private grants, pardons, dispensations, &c., as likewise petitions to the Crown, which, when read, are returned to the secretaries for answer; all which they despatch according to the sovereign's command and direction. Each of them has two under-secretaries, and one or more chief clerks, besides a number of other clerks and officers, wholly depending on them. The Secretaries of State are allowed power to commit persons for treason and other offences against the State in order to bring them to their trial. Some have said that this power is incident to their office, and others that they derive it in virtue of their being named in the commissions of the peace for every county in England and Wales. They have the custody of the signet, and the direction of the signet office and the paper office.

Ireland is under the direction of a chief secretary to the Lord-Lieutenant, who has under him a resident under-secretary.—*Encyc. Lond.*

Secretary, one intrusted with the management of business; one who writes for another; an officer attached to a public establishment.

Secretary of Decrees and Injunctions, an officer of Chancery. The office was abolished by 15 & 16 Vict. c. 87, s. 23.

Secta [fr. *sequendo*, Lat.], the witnesses or followers of a plaintiff.

Secta ad curiam, a writ that lay against him who refused to perform his suit either to the county-court or the court-baron.

Secta ad furnum, suit to a public oven or bake-house. Abolished.

Secta ad justiciam faciendam, a service which a man is bound to perform by his fee.—*Bract.*

Secta ad molendinum, a writ that lay where a man, by usage, had ground his corn at the mill of a certain person, and afterwards went to another mill with his corn, thereby withdrawing his suit to the former.—*F. N. B.* 123. Abolished by 3 & 4 Wm. IV. c. 27, s. 36.

Secta ad torrale, suit to a kiln or malt-house. Abolished.

Secta curiæ, suit and service done by tenants at the lord's court.

Secta est pugna civilis : sicut actores, armantur actionibus, et quasi gladiis accinguntur, ita rei muniuntur exceptionibus et defenduntur quasi clypeis.—Hob. 20.—(A suit is a civil warfare; for as the plaintiffs are armed with actions, and as it were girded with swords, so the defendants are fortified with pleas, and are defended as it were by shields.)

Sectâ faciendâ per illam quæ habet eniciam partem, a writ to compel the heir, who has the elder's part of the co-heirs, to perform suit and service for all the coparceners.

Secta non faciendis, a writ for a woman, who, for her dower, ought not to perform suit of court.

Secta quæ scripto nititur à scripto variari non debet.—Jenk. Cent. 65.—(A suit which relies upon a writing, ought not to vary from the writing.)

Secta regalis, a suit or service by which all persons were bound twice in a year to attend the sheriff's tourn.

Sectâ unicâ tantum faciendâ pro pluribus hæreditatibus, a writ for an heir who was distrained by the lord to do more suits than one, that he should be allowed to do one suit only in respect of the land of divers heirs descended to him.

Sectatores, suitors of court who, amongst the Saxons, gave their judgment or verdict in civil suits upon the matter of fact and law.—1 *Reeves's Hist. Eng. Law*, 22.

Sectores, bidders at an auction.—*Civil Law.*

Secular, not spiritual; relating to affairs of the present world (*in seculo*).

Secular clergy, parochial clergy who perform their ministry in the world.—3 *Step. Com.* 24 n.

Secundâ superoneratione pasturæ. See SECOND SURCHARGE, *Writ of.*

Secundum statutum. See APPEARANCE SEC. STAT.

Securitatem inveniendi, &c., an ancient writ, lying for the sovereign, against any of his subjects, to stay them from going out of the kingdom to foreign parts; the ground whereof is, that every man is bound to serve and defend the commonwealth as the Crown shall think fit. *F. N. B.* 115.

Securitatis pacis, a writ that lay for one who was threatened with death or bodily harm by another, against him who so threatened.—*Reg. Orig.* 88.

Security for costs. At *common law*, if a plaintiff, whether suing in an individual or a representative capacity, and whether for his own benefit or that of another, reside abroad, or even in Ireland or Scotland, the court or a judge, upon application, will stay the proceedings until he give security for costs, and this although the defendant have no defence on the merits. If a second action of ejectment for the same premises be brought, proceedings will be staid until security be given (C. L. A. P. 1854, s. 93).

A defendant will not be compelled to give this security, unless, perhaps, in replevin, in which action he is deemed a plaintiff. If a plaintiff be convicted of felony, and under sentence of transportation, proceedings will be stayed until security be given. Where another person is proceeding with an action in the name of the party on the record, and that party is insolvent, the court will, by staying proceedings, compel him for whose benefit the action is proceeding, to come in and give security for costs. But if one of several plaintiffs reside in this country, security will not generally be given. If the plaintiff, however, be out of the kingdom on a mere temporary absence, especially if he be a seaman or foreigner serving on board an English vessel, or on board a foreign vessel, constantly sailing to and from this country, he will not be compelled to give this security, unless where his absence commenced before action brought; but the absence must be temporary. And it is no ground to obtain this security that the plaintiff is about to leave the country, or is a foreigner, unless he reside abroad. It will not be granted when the absence is not voluntary, as in the case of naval and military officers and other persons engaged abroad in the public service.

If, after the security given, one or both of the sureties become bankrupt or insolvent, that is no ground for fresh security.

The defendant should apply to the plaintiff's attorney or agent for security, and on refusal, give two days' notice of application, which must be made before issue joined. The amount and

sufficiency of the security is decided by one of the masters. The court will not order the bond to be cancelled on an affidavit that the plaintiff has returned to England, and is resident here.—2 *Chit. Arch. Prac by Pren.* 1349.

In *Chancery*, security for costs can be obtained under similar circumstances. If it appear by the bill that the plaintiff is abroad, the application is either by motion or petition, as of course; but otherwise, it must be made upon notice of motion, supported by an affidavit of the facts. The application should be made as soon as the defendant is aware of the plaintiff's absence; for should he take another step in the suit, after knowing it, he waives all right to security. A bond is given to a clerk of records and writs in the penal sum of 100*l.*—*Smi. Ch. Pr.* 772.

Security for good behaviour, or abearance. See KEEPING THE PEACE.

Security for keeping the peace. See KEEPING THE PEACE.

Security of the Crown. See 11 & 12 *Vict.* c. 12.

Securius expediuntur negotia commissa pluribus: et plus vident oculi quam oculus.—4 *Co.* 46.—(Business entrusted to many speeds best; and many eyes see more than one eye.)

Secus [Lat.] (*otherwise*).

Se defendendo, *homicide*, excusable manslaying in defence of one's own life, when attacked and put in jeopardy.

Sederunt, *Acts of*, ordinances of the Court of Session in Scotland, under authority of the Statute 1540, c. 93, by which authority is given to the court to make such regulations as may be necessary for the ordering of processes and the expediting of justice.

Sedition, an offence against the Crown and government, not capital, and not amounting to treason. All contempts against the sovereign and the government, and riotous assemblies for political purposes, may be ranked under the head of sedition.

In the Scotch law, an attempt made by meeting, or by speeches or publications, to disturb the tranquillity of the state is distinguished from leasing-making, which has in view to diminish or affect the sovereign's private character.

Seditious libel. See 60 *Geo. III.* and 1 *Geo. IV.* c. 8.

Seducing to desert, or **desertion,** from the army or navy, an offence against the government, provided against by the Annual Mutiny Acts and Marine Acts. See 1 *Geo. I.* c. 47; 37 *Geo. III.* c. 70; and 1 *Vict.* c. 91.

Seducing to leave service, an injury for which a master may have an action on the case.

Seduction, the corruption of women.

An action of seduction is frequently brought by a parent for the purpose of obtaining a compensation, in damages, for the debauching of his daughter, and getting her with child; *per quod servitium amisit.* A master also, not standing in the relation of a parent, may maintain this action for debauching his servant. In ascertaining the amount of damages, a jury should regard not merely the injury sustained by the loss of service, but also the wounded feeling of the parent or person standing *in loco parentis.* Our criminal code has not provided any punishment for this offence.

See [fr. *sedes*, Lat.], the dignity of a bishop.

Seignior, or **Seigneur,** a lord of a fee or manor.

Seignior in gross, a lord without a manor, simply enjoying superiority and services.

Seigniorage, a royalty or prerogative of the Crown, whereby an allowance of gold and silver, brought in the mass to be exchanged for coin, is claimed.

Seigniory, a manor or lordship.

Seisin, possession.

There is a seisin in deed, as when an actual possession is taken; or in law, where lands descend, and one has not actually entered upon them.

Seisin, *Livery of*, delivery of possession, called by the Feudists investiture.

Seisina facit stipitem.—*Wright's Ten.* 185.—(Seisin makes the heir.) Exploded by 3 & 4 Wm. IV. c. 106.

Seisinâ habendâ, &c. a writ for delivery of seisin to the lord, of lands and tenements, after the sovereign, in right of his prerogative, had had the year, day, and waste, on a felony committed, &c.—*Reg. Orig.* 165.

Seisin-ox, a perquisite formerly due to the Sheriff of Scotland when he gave infeftment to an heir holding Crown-lands. It is now converted into a money-payment, proportioned to the value of the estate.

Seizing of heriots, taking the best beast, &c. where an heriot is due, on the death of the tenant. It is a species of self-remedy, not much unlike that of taking goods or cattle in distress; but, in the latter case, they are seized as a pledge, in the former, as the property of the person for whom seized.

Seizure of goods for offences. No goods of a felon or other offender can be taken to the use of the Crown before they are forfeited. There are two kinds of seizure: (1) *verbal*, to take an inventory, and charge the town or place where the owner is indicted for the offence; and (2) *actual*, which is taking them away after conviction.—3 *Inst.* 103.

Sel, denotes the bigness of a thing to which it is added, as *Selwood*, a big wood.

Selda [fr. *selde*, Sax., a seat], a shop, shed, or stall in a market; a wood of sallows or willows; also a saw-pit.—*Co. Litt.* 4.

Select Vestry Act, called also Sturges Bourne's Act, 59 Geo. III. c. 12.

Selecti judices, Roman judges returned by the prætor, drawn by lot, and subject to be challenged and sworn like our juries.—3 *Bl. Com.* 366.

Self-defence. Both the life and limbs of a man are of such high value, in the estimation of the law of England, that it pardons even homicide, if committed *se defendendo*, or in order to preserve them. See DEFENCE, HOMICIDE.

Self-homicide, the killing of one's self; suicide.

Self-murder, or **Self-slaughter.** See FELO DE SE.

Selion of land, a ridge of ground rising between two furrows, containing no certain quantity, but sometimes more and sometimes less.—*Termes de la Ley.*

Seller, a vendor, one who disposes of chattels for money.

Selling public offices, an offence against the government.

It is provided by 5 & 6 Edw. VI. c. 16, confirmed and extended by 49 Geo. III. c. 126, that persons buying or selling, or receiving or paying money or reward for any office in the gift of the Crown (with certain exceptions), and persons receiving or paying money for, or soliciting or obtaining any such office, or making any negotiation or pretended negotiation relating thereto, and persons opening or advertising houses for transacting business relating to the sale of any such office, shall respectively be deemed guilty of a misdemeanor.—6 *Geo. IV.* cc. 82, 83, 105.

Selling a wife. It is a popular error that a husband can get rid of his wife by selling her in the open market-place with a halter round her neck.

Semble [abbrev. *semb.* or *sem.*, Fr.] (*it seems*).

Semel malus semper præsumitur esse malus in eodem genere.—*Cro. Car.* 317.—(Whoever is once guilty, is always presumed to be guilty in the same kind.)

Semestria, the collected decisions of the emperors in their councils.—*Civ. Law.*

Seminaufragium, half-shipwreck, as casting goods overboard in a storm; also, where a ship has been so much damaged that her repair costs more than her worth.

Semi-plena probatio, a semi-proof; the testimony of one person, upon which the civilians will not allow any sentence to be founded.

Semper ita fiat relatio ut valeat dispositio.—6 *Co.* 76.—(Let the reference always be so made, that the disposition may avail.)

Semper paratus [Lat.] (*always ready*).

Semper præsumitur pro legitimatione puerorum; et filiatio non potest probari.—*Co. Litt.* 126 *a.*—(The presumption is always in favor of the legitimacy of children, and filiation cannot be proved.)

Semper præsumitur pro sententiâ.—3 *Buls.* 42.—(Presumption is always for the sentence.)

Sen, justice.—*Co. Litt.* 61 *a.*

Senage, money paid for synodals.

Senator, a Member of Parliament.

The judges of the Court of Sessions in Scotland are entitled Senators of the College of Justice.—*Act,* 1540, c. 93.

Senatores sunt partes corporis regis.—4 *Inst.* 53.—(The senators are part of the king's body.)

Senatus consulta (*ordinances of the senate*), public acts, among the Romans, which regarded the whole community.—*Sand. Just.* 90.

Senatus decreta (*decisions of the senate*), private acts, which concerned particular persons or personal matters.—*Civ. Law.*

Seneschal [*sein*, Germ., a house, and *schale*, an office], a steward; also, one who has the dispensing of justice.—*Co. Litt.* 61 *a*; *Kitch.* 13.

Seneschallo et mareshallo quod non teneat placita de libero tenemento, a writ addressed to the steward and marshal of England, inhibiting them to take cognizance of an action in their court that concerns freehold.—*Reg. Orig.* 185. Abolished.

Seneucia, widowhood.

Seney-days, play-days, or times of pleasure and diversion.

Senior [Lat.] (*the elder*).

Sensus verborum est anima legis.—5 *Co.* 2.—(The meaning of the words is the spirit of the law.)

Sensus verborum ex causâ dicendi accipiendus est: et sermones semper accipiendi sunt secundum subjectam materiam.—4 *Co.* 14.—(The sense of words is to be taken according as the words are used; and discourses are always to be interpreted according to the subject-matter.)

Sensus verborum est duplex, mitis et asper, et verba semper acoipienda sunt in mitiore sensu.—4 *Co.* 13.—(The meaning of words is twofold, mild and harsh; and words are to be received in their milder sense.)

Sentence of a court, a definitive judgment pronounced in a cause or criminal proceeding.

Sentence of death recorded. This being entered on the record, has the same effect as if it had been pronounced, and the offender reprieved.

Sententia contra matrimonium nunquam transit in rem judicatam.—7 *Co.* 43.—(A sentence against marriage never becomes a matter finally adjudged.)

Sententia facit jus, et legis interpretatio legis vim obtinet.—*Ellesm. Postn.* 55.—(Judgment creates the right, and the interpretation of the law has the force of law.)

Sententia facit jus, et res judicata pro veritate accipitur.—*Ellesm. Postn.* 55.—(Judgment

creates the right, and what is adjudicated is taken for truth.)

Sententia interlocutoria revocari potest, definitiva non potest.—*Bacon.*— (An interlocutory judgment may be recalled, but not a final.)

Sententia non fertur de rebus non liquidis: et oportet quod certa res deducatur in judicium.—*Jenk. Cent.* 7.—(Judgment is not given on things not liquidated: and something certain ought to be brought to judgment.)

Separaliter [Lat.] (*separately or distributively*).

Separate estate. The common law does not allow a married woman to possess any property independently of her husband, but when property is settled to her separate use and benefit, equity treats her, in respect to that property, as a *feme sole*, or unmarried woman. A wife's separate property may be acquired by a pre-nuptial contract with her husband, or by gift, either from the husband, or from any other person.

A power is frequently given to the wife to dispose of her own or her husband's real or personal property notwithstanding her coverture. This power is sometimes a *general* one, unrestrained, both as to the mode of exercising it, and as to the objects in whose favor it is to be exercised. At other times, a *special* power only is given, being restrained, either as to the contemplated beneficiaries of the power, or as to the mode or form in which it shall be exercised, and sometimes as to both.

With regard to personalty, whether in possession or expectancy, a mere limitation of it to her separate use will enable her in equity to dispose of it to the full extent of her interest, either by deed or will, unless she be restrained from doing so by the instrument giving it to her.

As to the rents and profits of realty, a gift of them to, or in trust for, the wife, to her separate use, enables her to dispose of them also as a *feme sole*. But a limitation of realty to her in fee for her sole and separate use, without expressing more, will not enable her to dispose of it during the marriage, otherwise than under the 3 & 4 Wm. IV. c. 74, because, no power of disposition having been given to her, she can only dispose of it by the mode prescribed by the general law; and if she omit to do so, her heir will take the estate. And she cannot make a will of such realty.

In order to assure to the wife a full protection against marital influence, she herself should be incapacitated from affecting her interest, or even anticipating it.

Lord *Langdale*, the late Master of the Rolls, thus stated (*Tullet* v. *Armstrong*, 1 *Beav.* 1) the summary of this doctrine: 'It appears to me, as the result of the authorities, and of the constant practice of conveyancers, which great and eminent judges have considered to be no mean evidence of the law:—

(1) 'That property (whether real or personal) given to a woman for her separate use, independent of any husband, may, under the authority of this court, be enjoyed by her during her coverture, as her separate estate, although the property originally, or at any subsequent period, became vested in her when discovert.

(2) 'That, in respect of such separate estate, she is, by this court, considered as a *feme sole*, although *covert*. Her faculties as such, and the nature and extent of them, are to be collected from the terms in which the gift is made to her, and will be supported by this court for her protection.

(3) 'The words "independent of a husband," whether expressed or implied in the terms of the gift, mean no more than that this court will not permit the marital power of the husband to be used in contravention of the enjoyment of the property according to the terms of the gift.

(4) 'If the gift be made for her sole and separate use, without more, she has, during the coverture, an alienable estate independent of her husband.

(5) 'If the gift be made for her sole and separate use, without power to alienate, she has, during coverture, the present enjoyment of an unalienable estate, independent of her husband.

(6) 'In either case she has, when discovert, a power of alienation; the restraint is annexed to the separate estate only, and the separate estate has its existence only during coverture; whilst the woman is discovert, the separate estate, whether modified by restraint or not, is suspended, and has no operation, though it is capable of arising upon the happening of a marriage.

'The restriction cannot be considered distinctly from the separate estate, of which it is only a modification; to say that the restriction exists, is saying no more than that the separate estate is so modified; the donor in giving the woman, when married, some of the faculties of a *feme sole*, has withheld the power of alienation; under the terms of the gift, and by the aid of equity, the woman is a *feme sole* as to the present enjoyment of the property, but no further; measuring her faculty by the terms of the gift, she is not a *feme sole* as to the disposition of her property in anticipation of her intended provision. If there be no separate estate, there can be no such restriction as that which is now under consideration. The separate estate may, and often does, exist without the restriction, but the restriction has no independent existence; when found, it is a

modification of the separate estate, and inseparable from it.'

Separate maintenance. If a husband and wife cannot agree so as to carry out the great purpose of their union—mutual love and respect, the contributing to the happiness of one another, and their solemn duty to their children, they should resolve to live apart. A deed of separation, containing the terms and reciprocal conditions upon which an *actual* and *immediate* separation is to be arranged and governed, will be valid, so far as relates to the trusts and covenants of the husband, and his indemnity by the trustees for the wife; but if it only contemplate a *contingent* or *future* separation, it will be void, as obviously opposed to the policy of marriage, and the sound well-being of the community.

The trustees usually covenant with the husband, to indemnify him against any debts which the wife may incur during the separation, whereupon the husband covenants to provide a given maintenance for the wife, which will secure the deed from being upset by his creditors or subsequent purchasers for value, the trustees' indemnity being a valuable and binding consideration validating the settlement. The absence of this indemnity would render the deed void as against creditors and subsequent purchasers; unless the consideration be the relinquishment by the wife of her alimony, or the compromise of a suit by the wife, either of which would be valuable and binding.

A mere agreement for a separation will not be specifically enforced in equity, by a decree establishing it personally, whether the covenants be or be not binding on the husband and trustees; for the effect of the decree would be to make them binding on the wife, and to permit married people to effect, at their pleasure, a partial dissolution of their solemn contract.

If, after the separation, the husband and wife be reconciled, and live together again, that circumstance will avoid and put an end to the deed or agreement, and, consequently, determine the separate allowance; for by cohabiting, the maintenance, which was merely accessory to the separation, must expire with it.

Separation, the cessation of conjugal cohabitation of man and wife.

Separation of benefices, &c. See 1 & 2 *Vict.* c. 106; 6 & 7 *Vict.* c. 37; 7 & 8 *Vict.* c. 94; and 19 & 20 *Vict.* c. 104.

Separatists, seceders from the church. They, like Quakers, solemnly affirm, instead of taking the usual oath, before they give evidence. See QUAKERS for the statutes.

Separia, several or severed and divided from other ground.—*Paroch. Antiq.* 336.

Sepoy, or **Sipoy** [fr. *sip.* Hind., a bow and arrow], an Indian native soldier.

Septennial elections. Our parliament must expire or die a natural death at the end of every seventh year, if not previously dissolved by the royal prerogative.—1 *Geo. I.* st. 2, c. 38.

Septuagesima, the third Sunday before *Quadragesima* Sunday in Lent, being about the 70th day before Easter.

Septum, an enclosure; any place paled in.

Sepultura, an offering to the priest, for the burial of a dead body.

Sequamur vestigia patrum nostrorum.—Jenk. Cent.—(Let us follow the footsteps of our fathers.)

Sequatur sub suo periculo, a writ that lay against one where a summons *ad warrantizandum* was awarded against one, and the sheriff returned that he had nothing whereby he might be summoned; then issued an *alias* and a *pluries*, and if he came not in on the *pluries*, this writ issued.—*O. N. B.* 163.

Sequela causæ, the process and depending issue of a cause for trial.

Sequela curiæ, suit of court.

Sequela molendina. See SECTA AD MOLENDINUM.

Sequela villanorum, the family retinue and appurtenances to the goods and chattels of villeins, which were at the absolute disposal of the lord.—*Paroch. Antiq.* 216.

Sequels, small allowances of meal, or manufactured victual made to the servants at a mill where corn was ground, by tenure in Scotland, for their work. See THIRLAGE.

Sequendum et prosequendum, to follow and prosecute a cause.

Sequester, to renounce; to set aside from the use of the owners to that of others.

Sequestrari facias, *Writ of,* a process of execution issued against a beneficed clerk, commanding the bishop to enter into the rectory and parish church, and to take and sequester the same, and hold them until, of the rents, tithes, and profits thereof, and of the other ecclesiastical goods of the defendant, he have levied the plaintiff's debt. It is in the nature of a *levari facias.*—2 *Chit. Arch. Prac. by Pren.* 1273.

Sequestrari facias de bonis ecclesiasticis, a writ issued out of Chancery, and directed to the bishop of the diocese in which the rectory or vicarage of a beneficed clerk is situate, commanding him to enter into the benefice and sequester, and hold the same until he shall of the rents, tithes, &c., and other ecclesiastical goods belonging to the said rectory or vicarage, have levied a sum of money which the beneficed clerk has been ordered by the court to pay. Before this writ can be issued, it is necessary that the person to whom such money has been ordered to be paid should have sued out a writ of *fieri facias* or of

elegit, and that the sheriff should have returned that the person against whom such writ issued is a beneficed clerk, and has no goods or chattels in his bailiwick, and that immediately after such return the said writ with such return shall have been filed as of record.—*Consol. Ord.* 1860, xxix., r. 11.

Sequestratio, the separating or setting aside of a thing in controversy, from the possession of both the parties that contend for it; it is twofold, *voluntary*, done by consent of all parties, and *necessary*, when a judge orders it.—*Civ. Law.*

Sequestration in Chancery, a prerogative process addressed to certain commissioners, empowering them to enter upon the real estates, and sequester the rents thereof, as also upon the goods, chattels, and personal estate of a person in contempt for disobedience of a decree or order, and keep the same until the defendant shall clear his contempt. It has no return, and is granted as of course upon a return of *non est inventus* by the serjeant-at-arms, or by a sheriff on an attachment.—*Consol. Ord.* 1860, xxix., r. 3; 1 *Eq. Rep.* 261.

As against peers, members of Parliament, and corporations, the sequestration is *nisi* only in the first instance.

The sequestrators are officers of the court, and as such are amenable thereto, and are to act from time to time in the execution of their office as the court shall direct; they are to account for what comes to their hands, and are to bring the money into court as ordered, to be put out at interest or otherwise, as shall be found necessary; this money is not usually paid to the plaintiff, but remains in court until the defendant has appeared or answered and cleared his contempt, and then whatever has been seized shall be accounted for and paid over to him; the court, however, having the whole under their power, may do therein as they please, and as shall be most agreeable to the justice and equity of the case.—*Smi. Ch. Pr.* 121.

Sequestration of a benefice. See SEQUESTRARI FACIAS.

Sequestro habendo, a judicial writ for the discharging a sequestration of the profits of a church benefice, granted by the bishop at the sovereign's command, thereby to compel the parson to appear at the suit of another; upon his appearance, the parson may have this writ for the release of the sequestration.—*Reg. Judic.* 36.

Sequi debet potentia justitiam non præcedere. 2 *Inst.* 454.—(Power should follow justice, not precede it.)

Serf, the slave of feudalism.

Seriatim [Lat.] (*severally*).

Serjeant, or **Serjeants** [fr. *serviens*, Lat.], used in several senses:—

(1) *Serjeants-at-law*, or *of the coif* (*servientes ad legem*), otherwise called serjeants counter, the highest degree in the common law, as doctors in the civil law; but, according to Spelman, a doctor of law is superior to a serjeant, for the very name of a doctor is magisterial, but that of a serjeant is only ministerial. Serjeants-at-law are made by the Queen's writ, addressed unto such as are called, commanding them to take upon them that degree by a certain day.—*Fortescue*, c. 50; 3 *Cro. I.*; *Dyer*, 72; 2 *Inst.* 213. See PRECEDENCE.

The monopoly enjoyed by the serjeants in the Court of Common Pleas, during term time, has been abolished, and the court thrown open to the bar generally.—9 & 10 *Vict.* c. 54. See PREAUDIENCE.

(2) *Serjeants-at-arms*, officers attending the sovereign's person to arrest individuals of distinction offending, and give attendance on the Lord High Steward of England, sitting in judgment on any traitor, &c. Two of these, by the royal permission, attend on the two Houses of Parliament, and each has a deputy; the office of him in the House of Commons is the keeping of the doors, and the execution of such commands, touching the apprehension and taking into custody of any offender, as that House shall enjoin him. Another of them attends in the Court of Chancery, and one on the Lord Treasurer of England; also, one upon the Lord Mayor of London on extraordinary solemnities, &c. They are in the old books called *virgatories*, because they carried silver rods gilded, as they now do maces, before the sovereign.—*Fleta*, l. 2, c. xxxviii.

(3) *Serjeants of the household* are officers who execute several functions within the royal household.—33 *Hen. VIII.* c. 12.

(4) *The common serjeant*, a judicial officer in the city of London, who attends the Lord Mayor and Court of Aldermen on court days, and is in council with them on all occasions within or without the precincts or liberties of the city.

(5) *Inferior serjeants*, such as serjeants of the mace in corporations, officers of the county; and there are serjeants of manors, of the police, &c.

Serjeantia idem est quod servitium.—*Co. Litt.* 105.—(Serjeanty is the same as service.)

Serjeants' Inn, called formerly *Faryndon Inn*, Chancery Lane, a law-society. There is one in Fleet Street, but it is not a law-society.

Serjeanty, or **Sergeanty**, or **Seargeanty**, a service anciently due to the Crown for lands held of it, and which could not be due to any other lord. It was divided into *grand* and *petit*. See TENURE.

Sermo index animi.—5 *Co.* 118.—(Speech is an index of the mind.)

Sermo relatus ad personam intelligi debet de conditione personæ.—4 *Co.* 16.—(A speech relating to the person is to be understood as relating to his condition.)

Sermones semper accipiendi sunt secundum subjectam materiam, et conditionem personarum. 4 *Co.* 14.—(Discourses are to be understood according to their subject-matter, and the condition of the persons.)

Servage, when a tenant, besides payment of a certain rent, finds one or more workmen for his lord's service. King John brought the Crown of England in servage to the see of Rome.—2 *Inst.* 174; 1 *Ric. II.* c. 6.

Servants. See MASTER AND SERVANT.

Servi, bondmen or servile tenants.

They were of four sorts: (1) Such as sold themselves for a livelihood. (2) Debtors sold because they were unable to pay their debts. (3) Captives in war, retained and employed as perfect slaves. (4) *Nativi*, born servants, as such, solely belonged to the lord. There were also said to be *servi testimentales*, those which were afterwards called covenant-servants.—*Cowel.*

Servi redemptione [Lat.], criminal slaves in the time of Hen. I.—1 *Kemble's Saxons*, 197 (1849).

Service [fr. *servitium*, Lat.], that duty which a tenant, by reason of his estate, owes to his lord. There are many divisions of this duty in our ancient law books, as into personal and real, which is either *urbane* or *rustic*, free and base, continual or annual, casual and accidental, intrinsic and extrinsic, certain and uncertain, &c. See TENURE. Also, the formal mode of bringing a writ or other process, or a notice in a suit, to the knowledge of the person affected by it.

Service in the Army. The 18 & 19 Vict. c. 4, having enacted that for three years after its passing any person might be enlisted to serve her Majesty as a soldier for any term not exceeding ten years in the infantry, or twelve years in the cavalry or artillery, or other ordnance corps, as might be authorized by any order or orders of her Majesty in council in that behalf; the 21 & 22 Vict. c. 55, continues such Act in force 'as if six years after the passing of the said Act had been mentioned therein, instead of three years, and shall be deemed and taken to have had effect accordingly, to all intents and purposes, as if this Act had actually passed before the expiration of the said term of three years.'

Service of an heir. By the law of Scotland, before an heir can regularly acquire a right to the ancestor's estate, he ought to be served heir, which is one of the old forms of the law of Scotland, proceeding upon a writ, and including in it the decision of a jury, fixing the right and character of the heir to the estate of the ancestor.

Service secular, worldly service, as contrasted with spiritual or ecclesiastical.

Servientibus, certain writs touching servants and their masters violating the statutes made against their abuses.—*Reg. Orig.* 189.

Servient tenement, an estate in respect of which a service is owing, as the *dominant tenement* is that to which the service is due.

Servile est expilationis crimen; sola innocentia libera.—2 *Inst.* 573.—(The crime of theft is slavish; innocence alone is free.)

Serving foreign states, an offence against the government, as being a breach of a subject's allegiance.—3 *Jac. I.* c. 4, s. 18; 59 *Geo. III.* c. 69.

Servitia personalia sequuntur personam.—2 *Inst.* 374.—(Personal services follow the person.)

Servitium feodale et prædiale, a personal service, but due only by reason of lands which were held in fee.—*Bract.* l. 2, c. xvi.

Servitium forinsecum, a service which did not belong to the chief lord, but to the king.—*Mon. Ang.* ii. 48.

Servitium, in lege Angliæ, regulariter accipitur pro servitio quod per tenentes dominis suis debetur ratione feodi sui.—*Co. Litt.* 65.—(Service, by the law of England, means the service which is due from the tenants to the lords, by reason of their fees.)

Servitium intrinsecum, that service which was due to the chief lord alone from his tenants within his manor.—*Fleta*, l. 3.

Servitium liberum, a service to be done by feudatory tenants, who were called *liberi homines*, and distinguished from vassals, as was their service; for they were not bound to any of the base services of ploughing the lord's land, &c. but were to find a man and horse, or go with the lord into the army, or to attend his court, &c. It was called also *servitium liberum armorum.*

Servitium regale, royal service, or the prerogatives that, within a royal manor, belonged to the lord of it; which were generally reckoned to be the following—viz. power of judicature in matters of property, and of life and death in felonies and murders; right to waifs and estrays; minting of money; assize of bread and beer, and weights and measures.—*Paroch. Antiq.* 60.

Servi testimentales, covenant-servants

Servitiis acquietandis, a judicial writ for a man distrained for services to one, when he owes and performs them to another, for the acquittal of such services.—*Reg. Judic.* 27.

Servitor, a serving man; particularly applied to students at Oxford, upon the foundation, who are similar to sizars at Cambridge.

Servitors of bills, servants or messengers of the marshal of the Queen's Bench, who

were sent abroad with writs, &c. to summon persons to that court.—2 *Hen. IV.* c. 23.

Servitudes, burdens affecting property and rights in Scotland; nearly resembling easements in England.

In the civil law certain portions or fragments of the right of ownership separated from the rest, and enjoyed by persons other than the owner of the thing itself. As to its various kinds, see *Sand. Just.* 206.

Servitus est constitutio jure gentium, quâ quis domino alieno contra naturam subjicitur.—Co. Litt. 116.—(Slavery is an institution by the law of nations, by which a man is subjected to a foreign master, contrary to nature.)

Sess, or **Assess,** rate, tax.

Session, *Court of,* **in Scotland,** the supreme civil court of Scotland, instituted A.D. 1532, and formerly consisting of fifteen judges—that number being reduced, in 1830, by 11 Geo. IV. and 1 Wm. IV. c. 69, s. 20, to thirteen; viz. the Lord President, the Lord Justice-Clerk, and eleven ordinary lords. This court is required, by 48 Geo. III. c. 151, to sit in two divisions; the Lord President, with three ordinary lords, form the first division; and the Lord Justice-Clerk and three other ordinary lords, form the second division. There are five permanent Lords Ordinary, not attached exclusively to either division, but equally to both, the last appointed of whom officiates in the bills, i. e. petitions to the court during session, and performs the other duties of junior Lord Ordinary; the four other lords performing, in weekly rotation, the duties of ordinary in the Outer House. The chambers of the Parliament House, in which the first and second divisions of the Court of Session hold their sittings, are called the Inner House: that in which the Lords Ordinary sit, as single judges, to hear motions and causes, is called the Outer House, which is the great hall of the Parliament House. The nomination and appointment of the judges is in the Crown. No one can be appointed who has not served as an advocate or principal clerk of session for five years, or a writer to the signet for ten years.—See JUSTICIARY, *High Court of.*

Session, *Great,* **of Wales,** a court which was abolished by 1 Wm. IV. c. 70; the proceedings now issue out of the courts at Westminster, and two of the judges of the superior courts hold the circuits in Wales and Cheshire, as in other English counties.

Session of Parliament, the sittings of the Houses of Lords and Commons, which are continued, day by day, by adjournment, until the parliament is prorogued or dissolved.

Sessional divisions of counties. See 9 *Geo. IV.* c. 43; 10 *Geo. IV.* c. 46; 6 & 7 *Wm. IV.* c. 12; and 22 & 23 *Vict.* c. 65.

Sessions, a sitting or general congregation of justices of the county in court upon their commission, as the sessions of oyer and terminer, gaol-delivery, &c.

Sessions of the Peace, sittings of justices of the peace for the execution of those powers which are confided to them by their commission, or by charter, and by numerous statutes. They are of four descriptions:—

I. Petty Sessions.

Every meeting of two or more justices in the same place, for the execution of some power vested in them by law, whether had on their own mere motion, or on the requisition of any party entitled to require their attendance in discharge of some duty, is a petty or petit session. The occasions for holding petty sessions are very numerous; among the most important of which is the bailing persons accused of felony, which may be done after a full hearing of evidence on both sides, where the presumption of guilt shall either be weak in itself, or weakened by the proofs adduced on behalf of the prisoner.

As to the right of the public to attend petty sessions, it is settled, that in cases of *preliminary* inquiry, as where magistrates sit to determine whether they shall bail or commit a party accused of felony or misdemeanor, no person, as one of the public, can claim, as of right, to be present. The 6 & 7 Wm. IV. c. 114, allowing counsel to address the jury for prisoners at their trial, does not alter the law in this respect. But when magistrates sit to *adjudicate* as upon a proceeding for a penalty, the place in which they sit is an open court of justice, to which all persons have a right of access, and from which no one may be lawfully removed, so long as he conducts himself with propriety.

II. Special Sessions.

A special session is a sitting of two or more justices, holden, not of their own mere motion and private agreement, but on a particular occasion for the execution of some given branch of their authority, after reasonable notice to all the other magistrates of the hundred or other division of the county, city, &c. for which it is convened and holden, has been served personally or by post, subject to 7 & 8 Vict. c. 33.

There are several special sessions required by law to be holden at particular periods; as for appointing overseers of the poor, by 43 Eliz. c. 2, and 54 Geo. III. c. 91, on the 25th March, or within fourteen days after; and for licensing ale-houses and victualling-houses, to sell exciseable liquors by retail, to be drunk or consumed on the premises, on some day between 20th August and 14th September inclusive, except in Surrey and Middlesex, where the meetings must be held within the first ten days of March; and for appointing the days

of holding not less than eight, nor more than twelve, special sessions in the year, for executing the purposes of the Highway Act, which, by 5 & 6 Wm. IV. c. 50, s. 45, are to be so appointed at a special sessions to be held within fourteen days after every 20th March. Also, justices acting in every petty sessions division shall, four times at least in every year, hold a special sessions to hear appeals against poor-rates, giving at least twenty-eight days' notice before the holding of the same, in pursuance of 6 & 7 Wm. IV. c. 96, s. 6, and by 5 & 6 Vict. c. 109, for increasing security of persons and property, the justices of peace of every county in England shall, on some day after 24th March and before 9th April, in each year, hold a special petty session of the peace in their several divisions, for the appointment of parochial constables; of which session due notice shall be given to every justice usually acting in that division.

III. General Sessions.

A general sessions of the peace is a court of record holden before two or more justices, whereof one is of the *quorum*, for execution of the general authority given to justices by the commission of the peace and certain Acts of Parliament. The only description of general sessions which is now usually holden is the court of General Quarter Sessions; but in the county of Middlesex, besides the four quarter sessions, four general sessions are held in the intervals, and original intermediate sessions occasionally take place. A general session may be called by any two justices within the jurisdiction, one being of the *quorum*, or by the *custos rotulorum*, and one justice; but not by one justice, or by the *custos rotulorum* alone. The presence of two justices is necessary to its being held or even adjourned so as to hold it legally at another time.

IV. General Quarter Sessions.

They are that species of general sessions which is held under authority of the commission of the peace by two or more justices (one being of the *quorum*), at some place within the county, fixed by their precept, once in every quarter of the year, as directed by various statutes. It is a court of oyer and terminer, and a court of record, and not a court of inferior jurisdiction. By 11 Geo. IV. and 1 Wm. IV. c. 70, s. 25, it was enacted, 'that in the year of our Lord 1831, and afterwards, the justices of the peace in every county, riding, or division, for which general quarter sessions of the peace by law ought to be held, shall hold their general quarter sessions of the peace in the first week after the 11th day of October; in the first week after the 28th day of December; in the first week after the 31st day of March; and in the first week after the 24th day of June; and that all acts, matters, and things done, performed, and transacted at the times appointed by this Act for the holding of the general quarter sessions of the peace, shall be as valid and binding to all intents and purposes as if the same had been done, performed, and transacted at general quarter sessions of the peace, holden at the times by law limited for the holding thereof before the passing of this Act.' This statute is merely directory, for quarter sessions of the peace would be good though held at other times than those specified. But because in some counties of England and Wales, the time usually fixed for holding the spring assizes interferes with the due holding of the sessions, appointed to be holden in the first week after the 31st of March, the 4 & 5 Wm. IV. c. 47, enacts that in every county, riding, or division, it shall be lawful for the justices assembled in their general quarter sessions, in the week next after the 28th day of December, in every year, to name, if they shall see occasion so to do, two justices of the peace, who shall be empowered, as soon as may be after the time for holding the spring assizes shall be appointed, to fix the day for holding the next general quarter sessions of the peace for such county, &c. so as such time may not be earlier than the 7th March, nor later than 22nd April; and to give notice of the day so fixed by advertisement in such newspaper as shall be directed by the justices so assembled; and in every such case the general quarter sessions, held on the day so fixed and notified, shall be valid, and it shall not be necessary to hold any sessions of the peace for such county, &c. in the next week after the 31st day of March, anything in 11 Geo. IV. and 1 Wm. IV. c. 70, to the contrary notwithstanding. Provided, that in every county, where no other day shall be fixed under this Act, the justices shall hold their general quarter sessions of the peace in the week next after the 31st March, as required by 11 Geo. IV. and 1 Wm. IV. c. 70.

The time for holding quarter sessions in boroughs is provided for by 5 & 6 Wm. IV. c. 76.

There are held in London and Middlesex at least eight sessions in every year, four of them held as quarter sessions, at periods as nearly corresponding to the quarterly periods directed by the statutes as may be, though not exactly, and the other four as original general sessions in the intermediate spaces of time. Both have the same jurisdiction, for trial of indictments, except in cases where, by statute, the quarter sessions have the power given in terms exclusively to them. Besides which the justices in Middlesex act at their sessions in a commission of *oyer and terminer*, which exists in that county, and gives them additional powers, subject, however, to s. 17 of 4 & 5 Wm. IV.

c. 36 (the Central Criminal Court Act), and 5 & 6 Vict. c. 38.

The sessions for Middlesex are held by adjournment within Westminster, with like jurisdiction as the Westminster sessions, which have ceased to be holden, had. See 7 & 8 *Vict.* c. 71, s. 11, and see 22 & 23 *Vict.* c. 4, the fourth section of which enacts, that every general sessions for Middlesex shall have the powers, &c. of a general quarter sessions of that county.

The jurisdiction of the court of quarter sessions is criminal and civil, and arises from the commission of the peace itself, as settled under 18 Edw. III. c. 2, and 34 Edw. III. c. 1.

By 5 & 6 Vict. c. 38, intituled, 'An Act to define the jurisdiction of Justices in General and Quarter Sessions of the peace,' reciting that it is expedient that the powers of justices in general and quarter sessions of the peace, with respect to the trial of offences, be better defined, it is enacted, that after the passing of this Act, neither the justices of the peace acting in and for any county, riding, division, or liberty, nor the recorder of any borough, shall at any sessions of the peace, or at any adjournment thereof, try any person or persons for any

Treason, murder, or capital felony, or for any

Felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the following offences (that is to say):

(1) Misprision of treason.

(2) Offences against the Queen's title, prerogative, person, or government, or against either House of Parliament.

(3) Offences subject to the penalties of *præmunire*.

(4) Blasphemy and offences against religion.

(5) Administering or taking unlawful oaths.

(6) Perjury and subornation of perjury.

(7) Making or suborning any other person to make a false oath, affirmation, or declaration, punishable as perjury or as a misdemeanor.

(8) Forgery.

(9) Unlawfully and maliciously setting fire to crops of corn, grain or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern.

(10) Bigamy, and offences against the laws relating to marriage.

(11) Abduction of women and girls.

(12) Endeavouring to conceal the birth of a child.

(13) Offences against any provision of the laws relating to bankrupts and insolvents.

(14) Composing, printing, or publishing blasphemous, seditious, or defamatory libels.

(15) Bribery.

(16) Unlawful combinations and conspiracies, except conspiracies and combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person.

(17) Stealing or fraudulently taking or injuring or destroying records or documents belonging to any court of law or equity, or relating to any proceedings therein.

(18) Stealing or fraudulently destroying or concealing wills or testamentary papers, or any document or written instrument being or containing evidence of the title to any real estate, or any interest in lands, tenements, or hereditaments.

Provided always, that nothing herein shall be construed to give authority to the justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, and the counties of Middlesex, Essex, Kent, and Surrey, to try any person or persons for any offence committed or alleged to be committed within the jurisdiction of the Central Criminal Court, which such justices are restrained from trying under the 4 & 5 Wm. IV. c. 36, s. 17.

Subject to the above restrictions, it seems to be clear that where an offence is created, and declared a misdemeanor by a statute passed since the institution of the office of a justice of the peace, it may be tried by a court of quarter sessions, unless there is some special direction that it shall be heard and determined by another court, and, therefore, with the exceptions above stated, the quarter sessions have power to try all indictable offences, whether offences at the common law or created by statute. See 4 & 5 *Vict.* c. 56; 9 & 10 *Vict.* c. 25; and 20 & 21 *Vict.* c. 54, s. 16.

The 9 Geo. IV. c. 69, prohibited courts of general quarter sessions from trying the offence of pursuing game by night, when committed by three or more persons; and 9 & 10 Vict. c. 25, also prohibited them from trying offences made punishable by that Act, such offences being principally malicious injuries to property. But by the 24 & 25 Vict. c. 9, the latter Act is repealed, and the Malicious Injuries to Property Act 1861 (24 & 25 Vict. c. 97), contains no such prohibitory clause. By 24 & 25 Vict. c. 96, s. 87, they are prohibited from trying misdemeanors against the twelve preceding sections of the Act, viz. frauds by agents, trustees, bankers, factors, &c.

Many other matters have been also rendered cognizable by quarter sessions as a court of appeal, pursuant to various statutes. The principal of them relate to friendly societies, appointing inspectors of weights and measures, district surveyors of highways, and licensing and conduct of publicans, the settlement and maintenance of the poor, the accounts of overseers and surveyors of the highways, bastardy, vagrancy, &c. Convictions and orders of magistrates are also often made the subject of appeal

to the quarter sessions, and several statutes, e. g. the Highway Act and Local Acts relating to Canals, &c. have empowered sheriffs to summon juries to be empanelled at the quarter sessions for trial of various questions respecting stopping or diverting roads, compensation for damages by widening roads, taking water from mills, &c. The sessions have power to try minor offences against the game laws.—*Dick. Quar. Sess.* c. i.

Set-off, any counterbalance or counterclaim.

The subject of a set-off is a cross debt or claim, on which a separate action might be sustained, due to the party defendant from the party plaintiff. It is a defence created by statute, and has no existence at common law. It can only be pleaded in respect of mutual debts of a certain and definite character, and does not apply to a claim founded in damages, or in the nature of a penalty. The debt must be due in the same right and between the same parties. It must not be a mere equitable demand.

A defendant cannot now avail himself of a notice of set-off, for it must be pleaded, and a particular thereof should be delivered with the plea. Where a defendant has pleaded a set-off, but does not appear at the trial to give evidence of it, the plaintiff may either take a verdict for the whole sum he proves to be due to him, subject to be reduced to the sum really due on a balance of accounts, if the defendant will afterwards undertake not to sue for the set-off, or he may take a verdict for the smaller sum, deducting the amount of the set off really due, with the special endorsement on the *postea*, as a foundation for the court to order a stay of proceeding, if an action should be brought for the amount of the set-off.

Where there are cross-judgments in the same or different actions, in the same or different courts, between parties substantially the same, the one may be set off against the other, and so may costs, monies, &c.—*Story on Contracts*, 427; 1 *Chit. Arch. Prac. by Pren.* 711–714; 1 *Selw. N. P.* 166.

Sets of exchange. It is common, and the practice has prevailed from a very early period, for the drawer to draw and deliver to the payee several parts, commonly called a set, of the same bill of exchange, any one part of which set being paid, the others are to be void. This is done in order to obviate delays and inconveniences which might otherwise arise from the loss or mislaying or miscarriage of the bill, and also to enable the holder to transmit the same by different conveyances to the drawee, so as to ensure the most prompt and speedy presentment for acceptance and payment. The general usage in England and America is for the drawer to deliver a set of three parts of the bill to the payee or holder.

Where a set consisting of several parts is given, each part ought to contain a condition that it shall be payable only so long as all the others remain unpaid.—*Story's Bills of Exchange*, 83.

Sett, a lease of a mine or minerals; also, an action.—*Bell's Law Dict.*

Setting spring guns, &c. It is enacted by 24° & 25 Vict. c. 100, s. 31, that whosoever shall set or place, or cause to be set or placed, any spring-gun, man-trap, or other engine calculated to destroy human life, or inflict grievous bodily harm upon a trespasser, or other person coming in contact therewith, shall be guilty of a misdemeanor. But this enactment does not extend to gins or traps, such as are usually set with the intent of destroying vermin, or to spring-guns and other engines set in a dwelling-house for the protection thereof, from sunset to sunrise.

Settled estates. See LEASES AND SALES OF SETTLED ESTATES.

Settlement, the act of giving possession by legal sanction; a jointure granted to a wife; a family arrangement of property (See PROTECTOR OF THE SETTLEMENT). The obligation of a person on becoming a pauper to remain in a particular parish to which is attached a right to be maintained by that parish. See POOR LAWS.—*Steer's Parish Laws.*

Settlement, *Act of*, a name given to the statute 12 & 13 Wm. III. c. 2, by which the Crown was limited to her present Majesty's house, being Protestants; and various provisions were made for better securing our religion, laws, and liberties, which the statute declares to be the birthright of the people of England, according to the ancient doctrine of the common law.

Settling day, the day before the account-day in the share-market, when the names of the persons for whom brokers have bought shares are furnished, and *continuances* effected.

Several action, a particular single action.

Several counts. Where a plaintiff has several distinct causes of action, he is allowed to pursue them cumulatively in the same action, subject to certain rules which the law prescribes as to joining such demands only as are of similar quality or character. Thus, he may join a claim of debt on bond with a claim of debt on simple contract, and pursue his remedy for both by the same action of debt. So if several distinct trespasses have been committed, these may all form the subject of one declaration in trespass. Different causes of action, of whatever kind, may be joined, except in actions of replevin and ejectments, by C. L. P. A. 1852, s. 41. Such different claims or complaints, when capable of being joined, constitute different parts or sections of the declaration, and are known in pleading by

the description of several counts.—*Step. Plead.* 302; 1 *Chit. Arch. Prac. by Pren.* 233.

Several covenant, a covenant by two or more separately.

Several fishery, a right to fish derived from the owner of the soil.

It is a question, however, whether a person can have a several fishery without being owner of the soil. From the case of *Seymour* v. *Lord Courtenay*, 5 *Burr.* 2816, we learn that a right of several fishery does not necessarily imply an *exclusive* right, but may exist where no other person has a *co-extensive* right in the subject claimed.—2 *Selw. N. P.* 824. See FISHERY.

Several inheritance, an inheritance conveyed so as to descend to two persons severally, by moieties, &c.

Several tail, where land is entailed on two separately.

Several tenancy [*tenura separalis*, Lat.], a tenancy which is separate, and not held jointly with another.

Several pleas. The rule against duplicity does not prevent a defendant from giving distinct answers to different claims or complaints on the part of the plaintiff; nor is the defendant, in pleading different pleas to different parts of the declaration, confined to pleas of the same kind. But several pleas, avowries, or cognizances, are not allowed, unless a distinct ground of answer or defence is intended to be established in respect of each.—1 *Chit. Arch. Prac. by Pren.* 275.

Severalty, *Estates in.* He who holds lands or tenements in severalty, or is sole tenant thereof, is he that holds them in his own right only, without any other person being joined or connected with him, in point of interest, during his estate therein.—2 *Bl. Com.* 179.

Severance, the separating or severing of two or more persons or things.

Seward, or **Seaward,** one who guards the sea-coast; *custos maris.*

Sewer, a trench or channel through which water flows.

The court of commissioners of sewers is a restricted one; it is a temporary tribunal, erected by virtue of a commission under the Great Seal, which formerly used to be granted *pro re natâ* at the pleasure of the Crown, but now at the discretion and nomination of the Lord Chancellor, Lord Treasurer, and Chief Justices, pursuant to the Statute of Sewers, 23 Hen. VIII. c. 5. Their jurisdiction is to overlook the repairs of the banks and walls of the sea-coast and navigable rivers; or, with consent of a certain proportion of the owners and occupiers, to make new ones; and to cleanse such rivers, and the streams communicating therewith, and is confined to such county or particular district as the commission shall expressly name. The commissioners are a court of record, and may fine and imprison for contempt; and in the execution of their duty may proceed by jury, or upon their own view, and may make any order for the removal of any annoyances, or the safeguard and conservation of the sewers within their commission, either according to the laws and customs of Romney Marsh, or otherwise, at their own discretion. They may also assess such rates or scots upon the owners of land within their district as they shall judge necessary; and if any person refuse to pay them, the commissioners may levy the same by distress of his goods and chattels, or they may, by 23 Hen. VIII. c. 5, sell his freehold land, and by 7 Anne, c. 10, his copyhold also, in order to pay such scots and assessments. By 4 & 5 Vict. c. 45, they are also empowered, for the purposes of defraying such expenses incident to the commission as in the Act particularised, to tax in the gross in each parish such lands as are within the jurisdiction, but so that such lands shall contribute thereto in proportion to the benefit received as compared with the lands of the other parishes; which tax shall be denominated the General Sewers-Tax, and be recoverable by distress and sale. They are subject to the discretionary consideration of the Court of Queen's Bench. See 12 & 13 *Vict.* c. 50.

By the Land Drainage Act, 1861 (24 & 25 Vict. c. 133), relating to the drainage of land for agricultural purposes, Her Majesty is empowered, upon the recommendation of the Inclosure Commissioners, to direct commissions of sewers into all parts of England, and to give them jurisdiction over such areas as, having regard to the facilities for draining, may be thought most expedient, and the powers of the commissioners are to extend to the construction of new as well as to the maintenance and improvement of old works. The Act includes all commissions of sewers granted by the Crown for the time being in force, whether granted previously to the Act or not, but does not extend to the metropolis. It also provides for the constitution of elective drainage districts, and for the appointment of boards in such districts with the same powers as commissioners of sewers. See 3 *Step. Com.* 461. As to Metropolitan Sewers, see 18 & 19 *Vict.* cc. 30, 120; 21 & 22 *Vict.* c. 104; 25 & 26 *Vict.* c. 102; and 26 & 27 *Vict.* c. 45.

Sexagesima Sunday, the second Sunday before Lent, being about the sixtieth day before Easter.

Sexhindeni, or **Sexhindmen,** the middle thanes, valued at 600*s.* See HINDENI HOMINES.

Sextery lands, lands given to a church or religious house for maintenance of a sexton or sacristan.—*Cowel.*

Sexton (probably from *sacristan*), the keeper of things belonging to divine worship. He is

ordinarily chosen by the rector, but sometimes by the parishioners, according to custom. His particular duties are to cleanse the church, to open the pews, to fill up the graves, to provide candles and other necessaries, and to prevent disturbance in the church.—59 *Geo. III.* c. 134, ss. 6, 10; and 19 & 20 *Vict.* c. 104.

Shack (*at large*), a liberty of winter pasturage.

Shack, *Common of*, the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest to feed promiscuously in such field.

Sham plea, a vexatious or false defence, resorted to for purposes of delay and annoyance. It is treated as a nullity.

Shares in public undertakings. The property in public undertakings connected with land (such as mines, canals, and railroads, to which the public subscribe) is in the nature of realty, so far as regards the land itself, or the right of using it; and is for some purposes of the same nature as regards the fixtures connected with the concern. But where the property is vested by charter or Act of Parliament in a body corporate, the shares of the individual corporators in the concern itself are personal and not real estate; for such shares are merely the rights which each individual possesses as a partner to a share in the surplus profit derived from the employment of the capital, which is always a mixed fund, consisting in part, at least, of personal chattels, as well as lands and fixtures. See 19 & 20 *Vict.* c. 47, s. 15; and the Joint Stock Companies' Act, and the Company's Act 1862 (25 & 26 Vict. c. 89, s. 22), whereby the shares in companies constituted under those Acts are personal estate, and not in the nature of real estate.—2 *Step. Com.* 236, 237.

Sharping-corn, a customary gift of corn which, at every Christmas, the farmers in some parts of England give to their smith for sharpening their plough-irons, harrow-tines, &c.—*Blount.*

Shaster, the instrument of government or instruction; any book of instructions, particularly containing Divine ordinances.—*Indian.*

Shaw, a grove or wood, an underwood.

Shawatores, soldiers.—*Cowel.*

Sheading, a riding, tithing, or division in the Isle of Man, where the whole island is divided into six sheadings, in each of which there is a coroner or chief constable appointed by the delivery of a rod at the Tinewald Court or annual convention.—*King's Isle of Man*, 7.

Sheep-silver, a service turned into money, which was paid in respect that anciently the tenants used to wash the lord's sheep.

Sheep-stealing, or *killing sheep with intent to steal*, a felony.—24 & 25 *Vict.* c. 96, ss. 10 & 11.

Shelley's case, *Rule in.* Intimately connected with the quantity of estate which a tenant may hold in realty is the antique feudal doctrine generally known as the rule in *Shelley's* case, which is reported by Lord *Coke* in 1 Rep. 93 *b.* (23 Eliz. in C. B.) This rule was not first laid down or established in that case, but was then simply admitted in argument as a well-founded and settled rule of law, and has always since been quoted as the rule in *Shelley's* case.

A thorough knowledge of the application of this rule is of great practical importance. See the elaborate exposition of the rule by Mr. *Fearne*, who debates it as the first exception to his fourth class of contingent remainders in his valuable essay on their learning, c. I., § V. pp. 27–208; and also Mr. *Preston's* Elementary Treatise on Estates (vol. 1, c. iii., pp. 263–419, 2nd edit.), in which 'the end proposed is, by negative and affirmative propositions, to exhibit, in a discussion of that rule, the instances in which several limitations, one to the ancestor, the other to the heirs, heirs of the body, or issue of the body of that person, do and do not give the inheritance to the ancestor.'

The rule may be described thus:—Where a life freehold either legal or equitable in realty (whether of freehold or copyhold tenure) is limited by any assurance to a person, and by the same assurance the inheritance of the same quality, i. e. either legal or equitable, is limited by way of remainder (with or without the interposition of any other estate) to his heirs or the heirs of his body, such remainder is immediately executed in possession in the person so taking the life-freehold, the word 'heirs' being treated as a word of limitation and not of purchase, so that the life-tenant takes the inheritance, which is neither contingent nor in abeyance; that is to say, where the inheritance is to his heirs or right heirs, he takes the fee-simple; and where it is to the heirs of his body, an estate-tail general.—1 *Step. Com.* 339 & 382.

In Coke's Reports in verse the rule has been rhymed thus:—

'Where ancestors a freehold take,
The words, "his heirs," a limitation make;'

which may serve to refresh the memory.

As examples of the application of the rule, take the following:—Land is limited to A. for life, remainder to his right heirs, the rule does not treat this remainder as contingent, but confers it upon A. at once, whereupon his life-estate merges in the remainder, and he takes the entire interest, i. e. the fee-simple. Again: Land is limited to A. for life, remainder to B. for life, remainder to the heirs male of A.'s body, the second remainder vests in A. as a remainder in tail male general, and is not in contingency or abeyance, nevertheless waiting for, and continuing expectant on, the determination of B.'s life estate, which is expectant on A.'s death; but after A.'s death, and the determination of the mesne remainder to B., A.'s heir in tail male

general shall enjoy the land as heir, and not as purchaser.

This rule is of positive institution at variance with rules of construction; for while the latter seek for the intention of parties, and strive at its accomplishment, the former combats the intention—a conflict which frequently raises immense difficulties as to whether the rule or intention should prevail. In the operation of the rule on the limitations of the two above-stated examples, it certainly contradicts the meaning of the assurance, and the intent of the parties. Two estates are created, a particular estate in the ancestor, and a remainder in his heirs. In the absence of the rule, the heir would have taken an original and independent estate by purchase, not derived from or controllable by his ancestor; but the operation of the rule places the whole power over the inheritance in the ancestor, who can partially or totally defeat the expectation of his relations.

Shepway, *Court of*, a court held before the Lord Warden of the Cinque Ports. A writ of error lies from the mayor and jurats of each port to the Lord Warden in this court, and thence to the Queen's Bench. The civil jurisdiction of the Cinque Ports is abolished by 18 & 19 Vict. c. 48.

Shereffe, the body of the lordship of Caerdiff in South Wales, excluding the members of it.

Sheriff, Shire-reve, or **Shiriff** [fr. *scire*, Sax., fr. *scyran*, to divide, and *gerefa*, a guardian (*vicecomes*)], the chief officer of the Crown in every county or shire, who does all the sovereign's business in the county, the Crown by letters-patent committing the custody of the county to him alone.

The judges, together with the other great officers and privy councillors, meet in the Exchequer on the morrow of St. Martin yearly; and then and there the judges propose three persons for each county, to be reported, if approved of, to the Queen, who afterwards appoints one of them to be sheriff, and such appointment generally takes place about the end of the following Hilary Term. If a sheriff die in office, the appointment of another is the mere act of the Crown.

By 3 & 4 Wm. IV. c. 99, it is provided that whenever any person shall be duly pricked or nominated by the sovereign to be sheriff of any county, except the county palatine of Lancaster, the same shall be forthwith notified in the *London Gazette*, and a warrant made out and signed by the clerk of the privy council, and transmitted to the person so appointed; and the appointment of sheriff thereby made shall be as valid to all intents as if it had been made by patent under the Great Seal as formerly; and the sheriff so appointed shall thereupon, and upon taking the accustomed oath of office, exercise all the authorities usually enjoyed by such officers. The oath of office here required does not affect the sheriffs of London or Middlesex. A charter of Henry I. granted the election of the sheriffs of London and Middlesex to the citizens of London for ever, upon the condition of their paying 300*l.* a year into the king's exchequer. As to their approval by the Crown, see 22 & 23 *Vict.* c. 21, s. 42. See also *Pulling's Customs of London*, 134. The Earl of Thanet was hereditary Sheriff of Westmoreland till his death in 1849 (12 & 13 Vict. c. 42, and 13 & 14 Vict. c. 30). See *Westmoreland, Shrievalty of.*) The counties of Cambridge and Huntingdon have one and the same sheriff. Sheriffs in Wales are assigned as in England, by 8 & 9 Vict. c. 11.

Sheriffs, by virtue of several old statutes, are to continue in their office no longer than one year, but a sheriff may be appointed *durante bene placito*, and so is the form of the royal writ. Therefore till a new sheriff be named his office cannot be determined. By 3 & 4 Wm. IV. c. 99, s. 7, he shall, on expiration of his office, deliver to his successor a correct list of all prisoners in his custody, and of all unexecuted process. No man that has served the office of sheriff for one year can be compelled to serve again within three years after, if there be other sufficient person within the county.—1 *Ric. II.* c. 11. The discharge of the office is in general compulsory upon the party chosen; and if he refuse to serve, having no legal exemption, he is liable to indictment or information. Certain persons, such as militia-officers, practising barristers, attorneys, and prisoners for debt, are not liable to serve; nor are persons under disability by judgment of law (as in the case of outlawry) to be appointed. By 13 & 14 Car. II. c. 21, s. 7, no person shall be assigned for sheriff unless he have sufficient lands within the same to answer the Crown and people. And this is the only qualification required for the office.

His powers and duties are various:—

Judicially, he superintends the election of knights of the shire, coroners, and verderors, and proclaims outlawries and the like. See 3 & 4 *Wm. IV.* c. 42, as to trials of issues from the superior courts not exceeding 20*l.*

As *keeper of the Queen's peace*, both by common law and special commission, he is the first man in the county, and superior in rank to any nobleman therein during his office.

Ministerially, he is bound to execute all civil and criminal process issuing out of the superior courts, and in this respect is considered an officer of these courts. He is also the returning officer for his county, and he opens the elections for members of Parliament, and has various duties to discharge in reference to such elections. See 24 *George II.* c. 24, s. 3, and 17 & 18 *Vict.* c. 1, s. 2.

As the *Queen's bailiff*, it is his business to preserve her rights within his bailiwick, i. e. county.

He has under him several inferior officers, as an under-sheriff, bailiffs, gaolers, &c., to assist him in the execution of his several offices.

By 3 & 4 Wm. IV. c. 99, it is provided that every sheriff shall, within one calendar month next after the notification of his appointment in the *Gazette*, by writing, under his hand, nominate some fit person to be his under-sheriff, and transmit a duplicate thereof to the clerk of the peace, to be by him filed among the records of his office; and that every under-sheriff (except of London and Middlesex) shall, before he enters on the execution of his office, take the oath of office.

By 3 & 4 Wm. IV. c. 42, every sheriff is also directed to appoint a sufficient deputy, having an office within a mile of the Inner Temple-hall, for the receipt of writs, granting warrants thereon, making returns thereto, and accepting all rules and orders made as to the execution of any process or writ addressed to the sheriff.—2 *Step. Com.* 644, *et seq.*

Sheriff Clerk, the clerk of the Sheriff's Court in Scotland, who alone can be notary to the seisins given by the sheriff, proceeding on precepts for infefting heirs holding of the Crown.

Sheriff Court Houses in Scotland Act, 1860, 23 & 24 *Vict.* c. 79.

Sheriff in that part or behalf, a person appointed to supply the place of the sheriff for executing process in Scotland.

Sheriffalty, Sheriffdom, Sheriffship, or **Sheriffwick** [*vicecomitatus*, Lat.], the office or jurisdiction of a sheriff.

Sheriff-geld, a rent formerly paid by a sheriff, and it is prayed that the sheriff in his account may be discharged thereof.—*Rot. Parl.* 50 *Edw. III.*

Sheriff-tooth, a tenure by the service of providing entertainment for the sheriff at his county-courts; a common tax, formerly levied for the sheriff's diet.

Sheriffs' Court in London, a tribunal having cognizance of personal actions under the London (City) Small Debts Act, 1852, 21 & 22 Vict. c. 157, s. 3. See 11 & 12 *Vict.* c. 71; 15 & 16 *Vict.* c. 77; 18 & 19 *Vict.* c. 122, s. 99; 20 & 21 *Vict.* c. 157; and 21 & 22 *Vict.* c. 104.

Sheriffs' officers, bailiffs, who are either bailiffs of hundreds or bound-bailiffs.

Sheriffs' tourn or rotation, a court of record held twice every year, within a month after Easter and Michaelmas, before the sheriff, in different parts of the county, being indeed only the *turn* of the sheriff to keep a court-leet in each respective hundred; this, therefore, is the great court-leet of the county, as the county-court is the court-baron; for out of this, for the ease of the sheriff, was taken the court-leet, or view of frank-pledge, which see.

Shewing [*monstratio*, Lat.], to be quit of attachment in a court, in plaints shewed and not avowed.

Shifting use, a secondary or executory use, which, when executed, operates in derogation of a preceding estate; as land conveyed to the use of A. and his heirs, with proviso that when B. pays a certain sum of money, the estate shall go to the use of C. and his heirs.

Shilling [fr. *solidus*, Lat.; *scilling*, Sax.] among the English Saxons passed for 5*d.*, afterwards it represented 16*d.*, and often 20*d.* In the reign of the Conqueror it was of the same denominative value as at this day.—*Domesday.*

Shilwit. See CHILDWIT.

Ship-money, an imposition formerly levied on port-towns and other places for fitting out ships; revived by Charles I., and abolished in the same reign.—17 *Car. I.* c. 14.

Shipper, or **Skipper,** master of a ship; also a seaman.

Ships, British, *Laws relating to.* See NAVIGATION ACTS, and 2 *Selw. N. P.* 1230–1251.

Ship's-husband, a peculiar sort of agent, appointed by the owner of a ship, to look after the repairs, equipment, management, and other concerns of the ship. His duties are: (1) To see to the proper outfit of the vessel in the repairs adequate to the voyage, and in the tackle and furniture necessary for a seaworthy ship. (2) To have a proper master, mate, and crew for the ship, so that in this respect it shall be seaworthy. (3) To see to the due furnishing of provisions and stores, according to the necessities of the voyage. (4) To see to the regularity of all the clearances from the custom-house, and the regularity of the registry. (5) To settle the contracts, and provide for the payment of the furnishings, which are requisite in the performance of those duties. (6) To enter into proper charter-parties, or engage the vessel for general freight, under the usual conditions; and to settle for freight and adjust averages with the merchant. (7) To preserve the proper certificates, surveys, and documents, in case of future disputes with insurers or freighters, and to keep regular books of the ship.—1 *Bell. Com.* 410, s. 428, 4th edit.; *Story's Agency*, 31.

Ship's papers, documents required for the manifestation of the property of the ship and cargo, &c.

They are of two sorts: 1st, those required by the law of a particular country, as the certificate of registry, license, charter-party, bills of lading and of health, required by the law of England to be on board all British ships; 2nd, those required by the law of nations to be on board neutral ships, to vindicate their title to that character; they are the passport, sea-brief,

or sea-letter, proofs of property, the muster-roll or *rôle d'équipage*; the charter-party, the bills of lading and invoices, the log-book or ship's journal, and the bill of health.—1 *Marshall on Insur.* c. 9, s. 6.

Shire [fr. *scyran*, Sax., to divide], a part or portion of the kingdom; called also a county [*comitatus*, Lat.] King Alfred first divided this country into *satrapias*, now called shires; shires into *centurias*, now called hundreds; and these again into *decennas*, now called tithings.—*Leg. Alfred.* See *Brompton*, 956.

Shire-clerk, he that keeps the county court.

Shire-man, or **Scyre-man,** anciently judge of the county, by whom trials for land, &c., were determined before the Conquest.

Shiremote, an assembly of the county or the shire at the assizes, &c.

Shire-reve, a sheriff, which see.

Shoofaa, pre-emption, or a power of possessing property which has been sold, by paying a sum equal to that paid by the purchaser.—*Mac. Moo. Law*, 47.

Shooting at the Queen. By 5 & 6 Vict. c. 51, it is enacted, that if any person shall wilfully discharge or point, aim, or present at the person of the Queen, any gun or other arms, whether containing explosive materials or not, or shall strike at or attempt to throw anything upon the Queen's person, or produce any fire-arms or other arms, or any explosive or dangerous matter near Her Majesty's person, with intent in any of these cases to injure or alarm her, or commit a breach of the peace, he shall be guilty of a high misdemeanor, and liable to penal servitude for not more than seven nor less than three years; or to be imprisoned for not more than three years, and whipped not more than thrice during that period.

Shooting or wounding, or causing any grievous bodily harm, *with intention to maim, disfigure, or disable, or to do some other grievous bodily harm, or with intent to resist or prevent the lawful apprehension or detaining of any person,* a felony. See 24 & 25 *Vict.* c. 100, s. 18.

Shoplifter, one who privately steals goods out of shops, &c.

Short-cause, a suit in chancery where there is only a simple point for discussion. As to setting it down, see *Smi. Ch. Pr.* 441.

Short-entry. It takes place when a bill or note, not due, has been sent to a bank for collection, and an entry of it is made in the customer's bank-book, stating the amount in an inner column, and carrying it into the accounts between the parties when it has been paid. See ENTERING SHORT.

Short-ford, *q. d. fore-close.* The ancient custom of the city of Exeter is, when the lord of the fee cannot be answered rent due to him out of his tenement, and no distress can be levied for the same, the lord is to come to the tenement and there take a stone, or some other dead thing of the said tenement, and bring it before the mayor and bailiffs; and this he must do seven quarter days successively; and if on the seventh quarter day the lord is not satisfied his rent and arrears, then the tenant shall be adjudged to the lord to hold the same a year and a day; and forthwith proclamation is to be made in the court, that if any man claim any title to the said tenement he must appear within the year and a day next following, and satisfy the lord of the said rent and arrears. But if no appearance be made, and the rent not paid, the lord comes again to the court and prays that, according to the custom, the said tenement be adjudged to him in his demesne as of fee, which is done accordingly, so as the lord has thenceforth the said tenement with the appurtenances to him and his heirs. This custom is called *short-ford.*—*Izaeli's Antiq. Exet.* 48.

A like custom in London by the ancient statute of Gavelet, attributed to 10 Edw. II., is called *forschot* or *forschoke.*

Shroff, Shrof, a banker or money-changer.—*Indian.*

Shroud stealing. If any one, in taking up a dead body, steal the shroud or other apparel, it will be felony; for the property therein remains in the executor, or whoever was at the charge of the funeral.—3 *Inst.* 110; 1 *Hale, P. C.* 535.

Shrievalty, sheriffalty.

Shrieve, a corruption of sheriff.

Si actio, the conclusion of a plea to an action when the defendant demands judgment, if the plaintiff ought to have his action, &c.

Si à jure discedas vagus eris, et erunt omnia omnibus incerta.—*Co. Litt.* 227.—(If you depart from the law you will wander, and all things will be uncertain to every body.)

Si assuetis mederi possis nova non sunt tentanda.—10 *Co.* 142.—(If you can remedy defects by that which is usual, novelties should not be attempted.)

Sica, Sicha, a ditch.

Sich, a little current of water, which is dry in summer; a water furrow or gutter.

Sicius, a sort of money current among the ancient English, of the value of 2*d.*

Sic interpretandum est ut verba accipiantur cum effectu.—3 *Inst.* 80.—(Such an interpretation is to be made that the words may have effect.)

Sicut ad quæstionem facti, non respondent judices, ita ad quæstionem juris, non respondent juratores.—*Co. Litt.* 295.—(Just as the judges do not decide on a question of fact, so the jury do not decide on a question of law.)

Sicut beatius est, ita majus est, dare quam

accipere. — 6 *Co.* 57. — (Just as it is more blessed, so is it more magnanimous, to give than to receive.)

Sicut alias, as at another time, or heretofore.

Sic utere tuo ut alienum non lædas.—9 *Co.* 59.—(Use your own rights so that you do not hurt another.)

Sicut natura nil facit per saltum, ita nec lex. Co. Litt. 238.—(In the same way as nature does nothing by a bound, so neither the law.)

Sicut subditus regi tenetur ad obedientiam, ita rex subdito tenetur ad protectionem, meritò igitur ligeantia dicitur à ligando, quia continet in se duplex ligamen.—7 *Co.* 5.—(Inasmuch as a subject is bound to obey the king, so the king is bound to protect the subject; well, therefore, is allegiance derived from the word *ligando* (to bind), because it contains a double binding.)

Side-bar-rules. See RULES.

Sidelings, meers between or on the sides of ridges of arable land.

Sides-men, Synods-men, or **Quest-men,** persons who were formerly appointed in large parishes to assist the churchwardens in inquiring into the manners of inordinate livers, and in presenting offenders at visitations. See QUEST-MAN.

Siens, scions or descendants.

Si fecerit te securum, a species of original writ, so called from the words of the writ, which directed the sheriff to cause the defendant to appear in court, without any option given him, provided the plaintiff gave the sheriff security effectually to prosecute his claim.

Sigil [fr. *sigillum*, Lat.], seal, signature.

Sigillum est cera impressa, quia cera sine impressione non est sigillum.—3 *Inst.* 169.—(A seal is a piece of wax impressed, because wax without an impression is not a seal.)

Sigla [fr. *segel*, Sax.], a sail.

Signal stations. See 53 *Geo. III.* c. 128.

Signature, a sign or mark impressed upon anything; a stamp, a mark; the name of a person written and subscribed by himself.

Signet, a seal commonly used for the sign-manual of the sovereign. See ROYAL SIGNET.

In Scotland it is the seal by which the Queen's letters or writs, for the purpose of private justice, are now authenticated.

Clerks to the signet, or writers to the signet, in Scotland, are nearly the same as attornies in England.

Significavit, a writ issuing out of the Chancery upon certificate given by the ordinary of a man's standing excommunicate by the space of forty days, for the keeping him in prison till he submit himself to the authority of the church. Obsolete.

Also, another writ, addressed to the justices of the bench, commanding them to stay any suit depending between such and such parties by reason of an excommunication alleged against the plaintiff, &c.—*Reg. Orig.* 7.

Sign-manual, the royal signature. See ROYAL SIGN-MANUAL. Also, the signature of any one's name in his own handwriting.

Signum, a cross prefixed as a sign of assent and approbation to a charter or deed, used by the Saxons.

Silentiarius, one of the privy council; also, an usher, who sees good rule and silence kept in court.

Silentium in senatu est vitium.—12 *Co.* 94.—(Silence in the senate is a fault.)

Silent leges inter arma.—4 *Inst.* 70.—(The laws are silent amidst arms.)

Silva cædua, wood under twenty years' growth.)

Si meliores sunt quos ducit amor, plures sunt quos corrigit timor.—*Co. Litt.* 392.—(If love leads the better, fear restrains the many.)

Similiter [Lat.] (*in like manner*). Formerly when an issue of fact was tendered, the words were as follows: 'and of this the defendant puts himself upon the country;' or thus, 'and this the plaintiff prays may be inquired of by the country;' the issue and form of trial were then both accepted on the other side (unless there appeared grounds for demurrer), by the words following: 'and the plaintiff (or the defendant, as the case may be) doth the like,' which latter words were called the *similiter*. Joinder in issue, pursuant to C. L. P. A. 1852, s. 79, has superseded the *similiter*.

The want of a *similiter* by the prosecutor in criminal cases is cured by 7 & 8 Geo. IV. c. 64, s. 20.

Similitudo legalis est, casuum diversorum inter se collatorum similis ratio; quod in uno similium valet, valebit in altero. Dissimilium, dissimilis est ratio.—*Co. Litt.* 191.—(Legal similarity is a similar reason which governs various cases when compared with each other, for what avails in one of similar cases will avail in the other. Of things dissimilar, the reason is dissimilar.)

Simonia est voluntas sive desiderium emendi vel vendendi spiritualia vel spiritualibus adhærentia. Contractus ex turpi causâ et contra bonos mores.—*Hob.* 167.—(Simony is the will or desire of buying or selling spiritualities, or things pertaining thereto. It is a contract founded on a bad cause, and against morality.)

Simonia est vox ecclesiastica, à 'Simone' illo 'Mago' deducta, qui donum Spiritus Sancti pecunia emi putavit.—3 *Inst.* 153.—(Simony is an ecclesiastical word, derived from that Simon Magus, who thought to buy the gift of the Holy Ghost with money.)

Simony [*venditio rei sacræ*, Lat.], an unlawful contract for presenting a clergyman to a benefice. It works a forfeiture, whereby the right of presentation to a living is forfeited, and vested *pro hâc vice* in the Crown.—31 *Eliz.* c. 6.

Many questions have arisen with regard to what is and what is not simony; and among others these points seem to be clearly settled:—

(1) That the sale of an advowson (whether the living be full or not) is not simoniacal, unless connected with a corrupt contract or design as to the next presentation, though if an advowson be granted during the vacancy of the benefice, the presentation on that vacancy can in no case pass by the grant.

(2) That to purchase a next presentation, the living being actually vacant, is open and notorious simony, this being expressly in contravention of the statute.

(3) That for a clerk to bargain for a next presentation, the incumbent being sick and about to die, was simony even before the Statute of Anne, and now by that statute to purchase, either in his own name or another's the next presentation, and be thereupon presented at any future time to the living, is direct and palpable simony.

(4) But a bargain by any other person for the next presentation (even if the incumbent be *in extremis*), if without the privity and without any view to the nomination of the particular clerk afterwards presented, is not simony.

(5) That if a simoniacal contract be made with the patron, the clerk presented not being privy thereto, the presentation for that turn shall indeed devolve to the Crown, as a punishment of the guilty patron, but the clerk who is innocent does not otherwise incur any disability or forfeiture.

(6) That bonds given to pay money to charitable uses, on receiving a presentation to a living, are not simoniacal, provided the patron or his relations be not benefited thereby, for this is no corrupt consideration moving to the patron.—3 *Step. Com.* 76, and 1 *Selw. N. P.* 590.

Simple contract, a parole promise, which may be either verbal or written, but not under seal.

Simple contract-debt, one where the contract upon which the obligation arises is neither ascertained by matter of record nor yet by deed or special instrument, but by mere oral evidence the most simple of any, or by notes unsealed, which are capable of a more easy proof, and therefore only better than a verbal promise.—2 *Bl. Com.* 466.

Simple deposit, a deposit made, according to the civil law, by one or more persons having a common interest.

Simple destination, the settlement by the proprietor of an estate in Scotland by which he substitutes the persons who are to succeed one another.

Simple larceny, plain theft, without aggravation, as distinguished from compound, mixed, or complicated larceny. See LARCENY.

Simple trust, where property is vested in one person upon trust for another, and the nature of the trust, not being qualified by the settlor, is left to the construction of law. In this case the *cestui que* trust has *jus habendi*, or the right to be put into actual possession of the property, and *jus disponendi*, or the right to call upon the trustee to execute conveyances of the legal estate as the *cestui que* trust directs.—*Lew. on Trusts*, 21.

Simple warrandice, an obligation to warrant or secure from all subsequent and future deeds of the grantor.—*Scotch phrase.*

Simplex, simple, single.

Simplex beneficium, a minor dignity in a cathedral or collegiate church, or any other ecclesiastical benefice, as distinguished from a cure of souls. It may therefore be held with any parochial cure, without coming under the prohibitions against pluralities.

Simplex commendatio non obligat.—(A simple recommendation, as of goods, &c. by a vendor, binds not.)

Simplex justiciarius, a style formerly used for any *puisnè* judge who was not chief in any court.

Simplex obligatio, a single unconditional bond.

Simplicitas est legibus amica: et nimia subtilitas injure reprobatur.—4 *Co.* 8.—(Simplicity is favorable to the laws: and too much subtilty in law is to be reprobated.)

Simpliciter [Lat.] (*in a summary way, or simply*).

Simulated and **Concealed Insanity.** There is no disease, says Zacchias, more easily feigned, or more difficult of detection, than the one under consideration. And hence, many great men of ancient times, in order to elude the danger that impended over them, have pretended it; as David, Ulysses, Solon, and Brutus. On the other hand, Dr. Ray declares that, 'those who have been longest acquainted with the manners of the insane, and whose practical acquaintance with the disease furnishes the most satisfactory guarantee of the correctness of their opinions, assure us that insanity is not easily feigned; and consequently that no attempt at imposition can long escape the efforts of one properly qualified to expose it.' Georget does not believe 'that a person who has not made the insane a subject of study can simulate madness so as to deceive a physician well acquainted with the disease.'—*Des Maladies Mentales*, 60.

Mr. Haslam declares that, 'to sustain the character of a paroxysm of active insanity would require a continuity of exertion beyond the power of a sane person.'—*Med. Jurisp. of Insan.* 322. Dr. Conolly affirms, 'that he can

hardly imagine a case which would be proof against an efficient system of observation.'—*Inquiry concerning Indic. Insan.* 467. Another writer, while admitting that attempts to deceive are sometimes successful, on account of the imperfect knowledge of the operations of the mind in health and disease possessed by medical men in general, observes, however, that when we consider the 'very peculiar complex phenomena which characterize true madness, and reflect on the general ignorance of those who attempt to imitate them, we have no right to expect such a finished picture as could impose on persons well acquainted with the real disease.'—*Cyc. Prac. Med.* art. '*Feigned Diseases.*'

With such authority before us, to urge as an objection against the free admission of insanity, in excuse for crime, the extreme difficulty of detecting attempts to feign it, can no longer be anything more than the plea of ignorance or indolence. The only effect such difficulty should have on the minds of those who are to form their opinions by the evidence they hear, should be to impress them with a stronger sense of the necessity of an intimate practical acquaintance with insanity on the part of the medical witness, and convince them that, without this qualification, the testimony of the physician is but little better than that of anyone else.

As to the tests to detect simulated insanity, consult *Beck's Med. Jurisp.* 447.

Among us, the choice of the means for establishing the existence of insanity, when concealed, is left to individual sagacity. This no doubt is sufficient, where great practical acquaintance with insanity readily suggests the course best adapted to each particular case; but the great majority of medical men will feel the need of some system or order of proceeding that will simplify their inquiries, and render them more efficient. The French arrange their means into three general divisions or classes, which are made use of each in succession, when the preceding class has failed of its object. They are called: (1) the interrogatory, (2) the continued observation, and (3) the inquest.

(1) *The interrogatory* embraces only those means of observation which are applicable on a personal interview with the patient. After learning generally his moral and intellectual character, his education, and habits of living, the duration and nature of his mental delusion (if it can be ascertained from his acquaintances), and the state of his relations to others; and after observing the expression of his countenance, his demeanor, and general appearance, a direct examination of his case may be entered upon.

(2) *The continued observation*, systematically continued for some time, may establish the fact of insanity in doubtful cases, after several personal interviews have completely failed. Opportunities, therefore, should be demanded for visiting the patient freely and frequently; for watching him at times when he supposes himself unobserved; and for exercising a general surveillance over his conduct and conversation. Those about him should be enjoined to watch his movements; and he should often, but cautiously, be led to speak of the motives of those who are anxious to prove his insanity. It often happens too that those who are most successful in concealing every indication of disordered mind in their conversation, will betray themselves the moment they commit their thoughts to paper.

(3) *The inquest.* When the above means fail, our inquiries must take a wider range, and be directed to the previous history of the patient, as may be known by the testimony of friends and relations and those who have been connected with him in business, or had any other good opportunity of becoming acquainted with his mental condition. 'The inquest,' says Georget, 'consists in collecting information respecting the patient's condition before and after the presumed disease, and the causes suspected to have impaired his mind. For this purpose, we consult his writings, and recur to the testimony of those who have been about him and conversed with him; who have been able to observe him closely, and to witness his insane actions, and his irrational discourse. We should be particularly careful, however, to require of witnesses *facts rather than opinions.* We should ascertain whether madness be a disease of the family; whether he have already evinced a degree of singularity in his moral and intellectual character, or exaltation of any kind; whether he have been exposed to the influence of powerful causes, such as chagrins, severe and repeated crosses, reverses of fortune, &c.; whether, without any real motive, he has manifested any change of his habits, tastes, or affections; in short, we should inquire into all those circumstances which so frequently precede the development.'—*Des Maladies Mentales*, 57; *Ray's Med. Jurisp. of Insanity*, c. xvi.

Simulatio latens, a species of feigned disease, in which disease is actually present, but where the symptoms are falsely aggravated, and greater sickness is pretended than really exists.—*Beck's Med. Jurisp.* 3.

Simul cum [Lat.] (*together with*).

Si mulier nobilis nupserit ignobili viro, desinit esse nobilis: nisi nobilitas fuit nativa.—4 *Co.* 118.—(If a noble woman marry a man not noble, she loses her nobility, unless she were noble by birth.)

Sinderesis, a natural power of the soul, set in the highest part thereof, moving and stirring it to good, and abhorring evil. And therefore *sinderesis* never sinneth nor erreth. And this

sinderesis our Lord put in man, to the intent that the order of things should be observed. And therefore *sinderesis* is called by some men the law of reason, for it ministereth the principles of the law of reason, the which be in every man by nature, in that he is a reasonable creature.—*Doctor and Student*, 39.

Sine assensu capitali, an abolished writ where a bishop, dean, prebendary, or master of an hospital, aliened the lands holden in right of his bishopric, deanery, house, &c., without the assent of the chapter or fraternity, in which case his successor should have this writ.—*F. N. B.* 195.

Sinecure [fr. *sine*, Lat., without, and *cura*, care], an office which has revenue without any employment.

Sinecure rector, a rector without cure of souls. Sinecure rectories are now abolished by 3 & 4 Vict. c. 113, s. 48. See 3 *Step. Com.* 26.

Sine die [Lat.] (*without day*, or *indefinitely*).

Single avail of marriage, the value of the tocher or marriage portion of the vassal's wife, which is modified to two years' rent of the vassal's free estate.—*Scotch term.*

Single bond [*simplex obligatio*, Lat.], a deed whereby the obligor obliges himself, his heirs, executors, and administrators to pay a certain sum of money to the obligee at a day named.

Single combat, *Trial by.* See BATTEL.

Single entry, an entry made to charge or to credit an individual or thing, as distinguished from double entry, which is an entry of both the debit and credit accounts of a transaction. See DOUBLE ENTRY.

Single escheat, when all a person's movables fall to the Crown as a casualty, because of his being declared rebel.

Singular, the number of one. By the 13 & 14 Vict. c. 21, s. 4, it is enacted that words in Acts of Parliament importing the singular shall include the plural, and the plural the singular, unless the contrary is expressly provided.

Singular succession. A purchaser is so termed in the Scotch law, in contradistinction to the heir of a landed proprietor, who succeeds to the whole heritage by regular title, of succession or universal representation, whereas the purchaser acquires right solely by the single title acquired by the disposition of the former proprietor.

Sinking Fund, the surplus revenue of the kingdom beyond the actual expenditure, which is directed to be applied towards the reduction of the National Debt; it is regulated by 10 Geo. IV. c. 27, amended by 3 & 4 Wm. IV. c. 24, and 21 & 22 Vict. c. 38.

Si non omnes, *Writ of*, a writ on association of justices, by which, if all in commission cannot meet at the day assigned, it is allowed that two or more of them may finish the business.—*F. N. B.* 185; *Reg. Orig.* 202. And after the writ of association, it is usual to make out a writ of *si non omnes*, addressed to the first justices, and also to those who are associated with them, which, reciting the purport of the two former commissions, commands the justices, that if all of them cannot conveniently be present, such a number of them may proceed, &c.—*F. N. B.* 111.

Sipessocua, a franchise, liberty, or hundred.

Si plures conditiones ascriptæ fuerunt donationi conjunctim, omnibus est parendum; et ad veritatem copulativè requiritur quod utraque pars sit vera: si divisim, cuilibet vel alteri eorum satis est obtemperare; et in disjunctivis, sufficit alteram partem esse veram.—*Co. Litt.* 225.—(If several conditions have been conjunctively written in a gift, the whole of them must be complied with; and with respect to their truth, it is necessary that every part be true taken jointly; if the conditions are separate, it is sufficient to comply with either one or other of them; and being disjunctive, that one or the other be true.)

Siquis (*if any one*, Lat.), an advertisement; a notification.

Si quis custos fraudem pupillo fecerit, à tutelâ removendus est.—*Jenk. Cent.* 39.—(If a guardian do fraud to his ward, he shall be removed from his guardianship.)

Si quis plures filios habuerit, jus proprietatis primò descendit ad primogenitum; eò quod inventus primus est in rerum naturâ.—*Co. Litt.* 14.—(If a man have several sons, the right of property shall, in the first place, descend to the elder of them; inasmuch as by the order of nature he stands in the first place.)

Si quis prægnantem uxorem reliquit, non videtur sine liberis decessisse.—*Reg. Jur. Civ.*—(If a man leave his wife pregnant, he shall not be considered to have died without children.)

Si quis unum percusserit, cum alium percutere vellet, in felonia tenetur.—3 *Inst.* 51.—(If a man kill one, meaning to kill another, he is held guilty of felony.)

Sircar, a government; a man of business.—*Indian.*

Si recognoscat, a writ that, according to the old books, lay for a creditor against his debtor, who had acknowledged before the sheriff in the county court that he owed his creditor such a sum received of him.—*O. N. B.* 68.

Sir John Hobhouse's Act, 1 & 2 Wm. IV. c. 60, passed for regulation of vestries.

Sise, corrupted from assise.

Si suggestio non sit vera, literæ patentes vacuæ sunt.—10 *Co.* 113.—(If the suggestion be not true the letters-patent are void.)

Sites for schools. See 4 & 5 *Vict.* c. 38, 7 & 8 *Vict.* c. 37, 12 & 13 *Vict.* c. 49, 14 & 15 *Vict.* c. 24, 15 & 16 *Vict.* c. 49, and 21 *Vict.* c. 31.

Sithcundman, the high constable of a hundred.

Sittings in London and Westminster. London and Westminster are not comprised within any circuit, but courts of *Nisi Prius* are held there for the same purpose in and after every term, before the chief or other judges of the superior courts, at what are called the London and Westminster sittings. Criminal cases are tried at the Central Criminal Court. As to sittings in Chancery, see *Smi. Ch. Pr.* 9.

Sittings in banc, sittings of the judges on the benches of their respective courts at Westminster, at which they decide matters of law and transact other judicial business, as distinguished from *Nisi Prius* sittings, at which they superintend the trial of matters of fact.—1 *Chit. Arch. Prac. by Pren.* 173.

Situs [Lat.], situation, location.

Six Articles, *Law of*, made by 31 Hen. VIII. c. 14. This famous Act was styled 'An Act for abolishing Diversity of Opinions,' and it enforced conformity to six of the strongest points in the Romish religion, under the severest penalties. The preamble states, that 'the King hoped that a full and perfect resolution of the said articles should make a perfect concord and unity amongst all his subjects.' The ready way to effect this, it was thought, would be to establish them by law, since the convocation of bishops and learned men had agreed upon them as settled orthodox doctrine. It was therefore enacted, first, that if any one by word, writing, printing, ciphering, or any otherwise, did teach, preach, dispute, or hold opinion against the real presence, he should suffer death as a heretic by burning, and forfeit as in case of high treason; second, that if any one preached in any sermon, or collection openly made, or taught in any common school or congregation, or obstinately affirmed or defended that the communion in both kinds was necessary; or thirdly, that priests might marry; or fourthly, that vows of chastity might be broken; or fifthly, that private masses should not be used; or sixthly, that auricular confession was not expedient; it should be adjudged felony. These points were declared to have been 'determined and resolved by the most godly study, pain, and travail of his Majesty; for which his most humble and obedient subjects, the lords spiritual and temporal and the commons, in parliament assembled, did not only render and give unto his highness their most high and hearty thanks.' Provisions were added, that if any priest, or any other who had vowed chastity, did marry, or contract matrimony; or if any priest who was or should be married, did carnally use his wife, or any woman to whom he was contracted, or was openly conversant or familiar with, both the man and the woman should be guilty of felony. This severe enactment against unchaste practices was not relished by the Popish clergy, and is said to have been put in by Cromwell, to make this bloody law cut with two edges. If that was the design; the clergy got relieved from the well-intended stroke the next year; when, by 32 Hen. VIII. c. 10, the latter part of the law was changed from felony to forfeiture and imprisonment. Repealed by 1 Eliz. c. 1.—4 *Reeves*, 278.

Six Clerks in Chancery, officers who received and filed all proceedings, signed office copies, attended court to read the pleadings, &c. They were abolished by 5 & 6 Vict. c. 103.

Sixhindi, servants of the same nature as rod-knights.—*Anc. Inst. Eng.*

Skeleton bill, a blank paper, stamped with a signature at the bottom.—*Mer. Law.*

Skyvinage, or **Skevinage,** the precincts of Calais.—27 *Hen. IV.* c. 2.

Slains, *Letters of*, letters heretofore subscribed by the relations of a person slain, declaring that they had received an assignment or recompense, and containing an application to the Crown for a pardon to the murderer.—*Scotch practice.*

Slander, the malicious defamation of a person in his reputation, profession, or business, by words; as a libel is by writing, &c. It is actionable. See 2 *Selw. N. P.* 1252–1271, and DEFAMATION.

Slaughtering horses. See CRUELTY to ANIMALS.

Slavery, that civil relation in which one man has absolute power over the life, fortune, and liberty of another. It cannot subsist in England.

> Slaves cannot breathe in England; if their lungs
> Receive our air, that moment they are free:
> They touch our country, and their shackles fall.

In *Jeffreys* v. *Boosey*, 3 *C. L. Rep.* 645, Lord Brougham said:—'It is like the property in human beings, to which I have already adverted *alio intuitu*. In Somersett's case (11 *St. Tr.* 340), and the Scotch case of Wedderburn (for both countries have the unfaded honor of having decided this question), it was in vain that the master set up his right to the property in his slave by the law of the country to which he belonged, and called upon our courts to enforce it, as here we are required by this argument to enforce the Austrian common-law copyright. It is sometimes said figuratively that the answer given to the master was: "A slave's fetters fall off the instant he

touches British ground." The more literal and homely legal answer was, that our laws are not cognizant of such property as the property alleged; and can give no aid to the enforcement of rights growing out of it.'

The system of colonial slavery was abolished by 3 & 4 Wm. IV. c. 73; and see 5 *Geo. IV.* c. 113; 7 *Wm. IV.* & 1 *Vict.* c. 91; 6 & 7 *Vict.* c. 98; and 26 & 27 *Vict.* c. 34.

As to Roman slavery, see *Sand. Just.* 95.

Sledge, a hurdle to draw traitors to execution.—1 *Hale P. C.* 82.

Slippa, a stirrup.

There is a tenure of land in Cambridgeshire, by holding the sovereign's stirrup.

Slough silver, a rent paid to the castle of Wigmore in lieu of certain days' work in harvest, heretofore reserved to the lord from his tenants.

Small Debts Courts, the several county courts established by 9 & 10 Vict. c. 95, for the purpose of bringing justice home to every man's door. See COUNTY COURTS.

Small-pox. By 3 & 4 Vict. c. 29, intituled 'An Act to extend the Practice of Vaccination (amended by 4 & 5 Vict. c 32),' the guardians of parishes and unions, or the overseers of parishes where there are no guardians, are directed to contract (subject to the regulation of the Poor-law Board) with the medical officers of the union or parish, or other persons, for the vaccination of all persons there resident; and such medical officers or other practitioners shall report to the overseers or guardians, from time to time, the number of persons successfully vaccinated, with such further particulars as the guardians and overseers, under direction of the Poor-law Commissioners, may require; and any person who may produce, or attempt to produce, by inoculation or otherwise, the disease of small-pox in any person in England, Wales, or Ireland, shall be liable to be proceeded against, and convicted summarily before two or more justices of the peace in petty sessions, and for every such offence be imprisoned for a term not exceeding one month. See the *Compulsory Vaccination Act*, 16 & 17 *Vict.* c. 100; amended by 21 Vict. c. 25, s. 7, and by 24 & 25 Vict. c. 59. As to vaccination in Scotland and Ireland, see 26 & 27 *Vict.* cc. 52 & 108.

Small tithes [otherwise called *privy*], all personal and mixed tithes, and also hops, flax, saffron, potatoes, and sometimes, by custom, wood.

Smoke-farthings, pentecostals, which see.

Smoke-silver, a modus of 6*d.* in lieu of tithe-wood.

Smuggling, the offence of importing prohibited articles, or of defrauding the revenue by the introduction of articles into consumption, without paying the duties chargeable upon them. It may be committed indifferently either upon the excise or customs revenue.

'To pretend,' says Adam Smith (*Wealth of Nations*, B. 5, c. ii., pt. 2, art. 4), 'to have any scruple about buying smuggled goods, though a manifest encouragement to the violation of the revenue laws, and to the perjury which almost always attends it, would, in most countries, be regarded as one of those pedantic pieces of hypocrisy which, instead of gaining credit with anybody, seems only to expose the person who affects to practise them to the suspicion of being a greater knave than most of his neighbors. By this indulgence of the public, the smuggler is often encouraged to continue a trade which he is thus taught to consider as, in some measure, innocent; and when the severity of the revenue laws is ready to fall upon him, he is frequently disposed to defend with violence what he has been accustomed to regard as his just property; and from being at first rather imprudent than criminal, he at last too often becomes one of the most determined violators of the laws of society.'

The 3 & 4 Wm. IV. c. 53, was passed to prevent smuggling. See 9 *Geo. IV.* c. 31, s. 25, and 16 & 17 *Vict.* c. 107.

Snottering silver, a small duty paid by servile tenants in Wylegh to the Abbot of Colchester.

Soap, *Excise on*; repealed by 16 & 17 Vict. c. 39.

Soc, Sok, Soka, jurisdiction; a power or privilege to administer justice and execute laws; also, a shire, circuit, or territory.

Soca, a seignory or lordship, enfranchised by the king, with liberty of holding a court of his *soc-men* or *socagers*, i. e. his tenants.

Socage, or **Soccage,** a tenure by any certain or determinate service.

Socagium idem est quod servitium socæ; et soca, idem est quod caruca.—*Co. Litt.* 86.—(Socage is the same as service of the soc; and soc is the same thing as a plough.)

Soccager, a tenant by soccage.

Socer [Lat.], the father of one's wife; a father-in-law.

Socialism, absolute equality in the distribution of the physical means of life and enjoyment. It is on the continent employed in a larger sense; not necessarily implying communism, or the entire abolition of private property, but applied to any system which requires that the land and the instruments of production should be the property, not of individuals, but of communities, or associations, or of the government.—1 *Mill's Pol. Eco.* 248.

Socida, a contract or hiring, upon condition, that the bailee take upon himself the risk of the loss of the thing hired.—*Civ. Law.*

Societas leonina, that kind of society or

partnership by which the entire profits belong to some of the partners in exclusion of the rest. So called in allusion to the fable of the lion who, having entered into partnership with other animals, for the purpose of hunting, appropriated all the prey to himself. It was void.—*Civ. Law.* For the several *societates*, see *Sand. Just.* 472.

Société anonyme, an association where the liability of all the partners is limited. It had in England until lately no other name than that of 'chartered company,' meaning thereby a joint-stock company whose shareholders, by a charter from the Crown, or a special enactment of the legislature, stood exempted from any liability for the debts of the concern, beyond the amount of their subscriptions. See LIMITED LIABILITY. 2 *Mill's Pol. Eco.* 485.

Société en commandite. See COMMANDITE.

Society, *Benefit Building.* The sanction and assistance of the legislature have been granted to societies established to raise a subscription-fund by advances, from which the members shall be enabled to build or purchase dwelling-houses, or to purchase land: such advances being secured to the society by mortgage of the premises so built or purchased.

By 6 & 7 Wm. IV. c. 32, societies of this description, upon the certificate and deposit of their rules, as required by the Acts relating to friendly societies, are enabled to transfer shares without payment of stamp duty, and to effect reconveyances of the mortgaged property by a mere receipt for the money advanced, without incurring the expense of a formal instrument. See FRIENDLY SOCIETIES.

Socman, a socager.

Socmanry, free tenure by socage.

Socome, a custom of grinding corn at the lord's mill.

Bond-socome is where the tenants are bound to it.—*Blount.*

Socua, a privilege, liberty, or franchise.

Sodomy, the crime against nature.—4 *Step. Com.* 175; *Beck's Med. Jurisp.* 119; *Tayl. Med. Jur.* c. 51 *ad fin.*

Sodomie est crime de Majestie vers le Roy Celeste.—3 *Inst.* 58.—(Sodomy is treason against the King of Heaven.)

Sodor and Man, *Bishopric of*, annexed to the province of York by Henry VIII.—33 *Hen. VIII.* c. 31. See 1 & 2 *Vict.* c. 30, repealing partially 6 & 7 Wm. IV. c. 77. The bishop is not a lord spiritual.

Soit droit fait al partie [Nor.-Fr.] (*let right be done to the party*).

Sokemanries, lands and tenements which were not held by knight-service, nor by grand serjeanty, nor by petit, but by simple services; being, as it were, lands enfranchised by the king or his predecessors from their ancient demesne. Their tenants were *sokemans.*

Sokemans, tenants of socage-lands.—3 *Bl. Com.* 100.

Soke-reeve, the lord's rent gatherer in the soca.

Sold Note. See BOUGHT AND SOLD NOTES.

Soldiers, *at parliamentary elections.* See 10 & 11 *Vict.* c. 21, repealing 8 Geo. II. c. 30, and providing that, with certain exceptions, soldiers within two miles shall remain in barracks or quarters during elections.

Soldiers' wills. See NUNCUPATIVE WILLS.

Sole, not married, single, alone, also separate, and apart.

Sole Corporation, one person and his successors, who are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had; as the sovereign, a bishop, parson, &c.

Solemnitas intervenire debet in mutatione liberi tenementi, ne contingat donationem deficere pro defectu probationis.—*Co. Litt.* 48.—(Solemnity ought to intervene in an exchange of free tenement, lest it happen that the gift fail through want of proof.)

Solemnitates juris sunt observandæ.—*Jenk. Cent.* 13.—(The solemnities of law are to be observed.)

Solent præsides in carcere continendos damnare ut in vinculis contineantur, sed hujus modi interdicta sunt à lege, quia carcer ad continendos, non ad puniendos haberi debet. Cum autem taliter captus, coram justiciarios est producendus, produci non debet ligatis manibus (quamvis interdum gestans compedes propter evasionis periculum), et hoc ideo ne videatur coactus ad aliquam purgationem suscipiendam. 3 *Inst.* 34.—(It has been a practice to condemn persons confined in prisons to be bound in fetters; but commands of this sort are contrary to law, for a prison is meant as a place of confinement, not of punishment; therefore, when a captive is brought before his judges, his hands should not be fettered (although his feet may be, to prevent his escape); lest, by their being so, it should appear that he was already in a state of punishment.)

Sole tenant [*solus tenens*, Lat.], he that holds lands by his own right only, without any other person being joined with him.

Solicitation. It is an indictable offence to solicit and incite another to commit a felony, although no felony be in fact committed.—2 *East*, 5.

Solicitor-General, a law officer of the Crown, appointed by patent, and holding office during the continuance of the ministry of which he is a member, but not of the cabinet. He is usually knighted, and is a member of the House of Commons. He has the care and concern of managing the sovereign's affairs, and has fees for pleading, besides other fees

arising by patents, &c. He ranks after the attorney-general.

To the household of a queen-consort, there belongs an officer with this appellation.

Solicitor to the Suitors' Fund, an officer of the Court of Chancery, who is appointed in certain cases guardian *ad litem*—See *Smi. Ch. Pr.* 101.

Solicitors, officers of the Court of Chancery, who are retained by clients to sue and defend for them. See 6 & 7 *Vict.* c. 73, amended by 23 & 24 *Vict.* c. 127; *Smi. Ch. Pr.* 42, *et seq.* As to the admission to the superior courts of solicitors of colonial courts, see 20 & 21 *Vict.* c. 39.

Solidatum, absolute right or property.

Solidum. To be bound *in solido* is to be bound for the whole debt jointly and severally with others; but where each is bound for his share, they are said to be bound *pro ratâ parte.*

Solidus legalis, a coin equal to 13*s.* 4*d.* of the present standard.

Solinus terræ, a ploughland.

Solitary confinement. By 7 Wm. IV. and 1 Vict. c. 90, s. 5, it is provided, that it shall not be lawful for a court to direct that any offender shall be kept in solitary confinement for any longer period than one month at a time, or than three months in the space of one year.

Solo cedit, quicquid solo plantatur.—Office of Exec. 57.—(What is planted in the soil belongs to the soil.)

Sol sine homine generat herbam.—Ibid. 68.—(The sun makes the grass grow without man's assistance.)

Solum rex hoc non facere potest, quod non potest injustè agere.—11 *Co.* 72.—(This alone the king cannot do, he cannot act unjustly.)

Solus Deus facit hæredem, non homo.—Co. Litt. 5.—(God alone makes the heir, not man.)

Solutio, a discharge; the performance of that to which a person is bound.—*Civ. Law.*

Solutione feodi militis parliamenti, or **Feodi burgensis parliamenti,** old writs whereby knights of the shire and burgesses might have recovered their wages or allowance if it had been refused.—35 *Hen. VIII.* c. 11.

Solutio pretii, emptionis loco habetur.—Jenk. Cent. 56.—(The payment of the price stands in the place of the sale.)

Solvendo esse, to be in a state of solvency, i. e. able to pay.

Solvere pœnas, to pay the penalty.

Solvit ad diem, a plea in an action of debt on bond, &c. that the money was paid at the day appointed.—1 *Selw. N. P.* 598.

Solvit ante diem, a plea that the money was paid before the day appointed.

Solvit post diem, a plea that the money was paid after the day appointed.—1 *Selw. N. P.* 598.

Somnambulism. Whether this condition is really anything more than a co-operation of the voluntary muscles with the thoughts which occupy the mind during sleep, is a point very far from being settled by physiologists. Not only is locomotion enjoyed, as the etymology of the term signifies, but the voluntary muscles are capable of executing motions of the most delicate kind.

There is a form of this affection called *ecstasis*, or cataleptic somnambulism, from its being conjoined with a kind of catalepsy, in which the walking and other active employments are replaced by what appears to be a deep quiet sleep, the patient conversing with fluency and spirit, and exercising the mental faculties with activity and acuteness.

Somnambulism may sometimes incapacitate a person from the proper performance of the duties and engagements of his situation, and then unquestionably it may impair the validity of contracts and other civil acts to which he is a party. By rendering him troublesome, mischievous, and even dangerous, it furnishes good grounds for annulling contracts of service, whether it existed previously and was concealed, or had made its appearance at a later date. Whether it should be considered a sufficient defence of breach of promise of marriage, is a question which does not properly admit of a general answer.

Hoffbauer suggests as a reason for not regarding the criminal actions of the somnambulist with too much indulgence, that they have probably originated, if not in premeditation, at least in the deep and deliberate attention which the mind has given to the subject when awake.

Foderé too, by a somewhat similar kind of logic, comes to the conclusion that the acts of a somnambulist, instead of resulting from mental delusion, are more independent than any others, because they are the free and unconstrained expression of his waking thoughts and designs, and therefore that they are not altogether excusable.

He seems to have forgotten, observes Dr. Ray (*Med. Jurisp. of Insanity*), that by no human laws are men responsible for their secret thoughts, but only for their words and acts.

Son assault demesne, a justification in an action of assault and battery, on the ground that the plaintiff made the first assault, and what the defendant did was in his own defence. It is a plea by confession and avoidance.—1 *Selw. N. P.* 32.

Son-in-law [*gener*, Lat.], the husband of one's daughter.

Sontage, a tax of 40*s.* heretofore laid upon every knight's fee.

Sorcery. No prosecution shall for the future

be carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offences. Persons pretending to use witchcraft, tell fortunes, or discover stolen goods by skill in any occult or crafty science, are punishable by imprisonment (9 Geo. II. c. 5). Persons using any subtle craft, means, or device, by palmistry or otherwise, to deceive the people, are to be deemed rogues and vagabonds, and to be punished with imprisonment and hard labor.—5 *Geo. IV.* c. 83, s. 4.

Sorehon, or **Sorn,** a kind of arbitrary exaction, or servile tenure, which formerly existed in Scotland and Ireland. Whenever a chieftain had a mind to revel, he came down among the tenants with his followers, by way of contempt called *Giliwitfitts*, and lived on free quarters.

Sororicide, the murder of a sister.

Sors, principal, to distinguish it from interest.

Sothsaga, or **Sothsage** [fr. *soth*, true, and *saga*, Sax., testimony], history.—*Cowel.*

Soul-scot, a mortuary.

Sounding in damages, an action for unascertained damages.

Sourcar, a merchant or banker; a money-lender.—*Indian.*

South Sea-fund, the produce of the taxes appropriated to pay the interest of such part of the National Debt as was advanced by the South Sea-Company and its annuitants. The holders of South Sea annuities have been paid off, or have received other stock in lieu thereof.

South Wales, as to the better management and control of the highways in, see 23 & 24 *Vict.* c. 68.

Southwell, *the Collegiate Church of*, in Nottinghamshire. It is a corporation aggregate, constituted without a head, and consisting only of canons.

Sovereign, a chief or supreme person. See QUEEN. Also, a piece of money of the value of twenty shillings.

Sovereign power, or **Sovereignty,** that power in a state to which none other is superior.

Sowlegrove, February, so called in South Wales.

Sowne [fr. *souvenu*, Fr., remembered], such as is leviable.

Sowning and Rowning, the apportioning or placing of cattle on a common, or goods in a house, according to the respective rights of various parties interested.—*Scotch phrase.*

Spadarius, a sword-bearer.—*Blount.*

Spado, an eunuch; an impotent man.—*Civ. Law.*

Sparsim [Lat.], dispersedly.

Spatæ Placitum, a court for the speedy execution of justice upon military delinquents.

Speaker of the House of Commons. This great officer must have been anciently, as at present, the organ or spokesman of the Commons, although in modern times he is more occupied in presiding over the deliberations of the House than in delivering speeches on their behalf. Amongst the duties of the Speaker are the following:—To read to the Sovereign petitions or addresses from the Commons, and to deliver in the royal presence, whether at the palace or in the House of Lords, such speeches as are usually made on behalf of the Commons; to manage, in the name of the House, where counsel, witnesses, or prisoners are at the bar; to reprimand persons who have incurred the displeasure of the House; to issue warrants of commital or release for breaches of privilege; to communicate in writing with any parties, when so instructed by the House; to exercise vigilance in reference to private bills, especially with a view to protect property in general, or the rights of individuals, from undue encroachment or injury; to express the thanks or approbation of the Commons to distinguished personages; to control and regulate the subordinate officers of the House; to entertain the members at dinner, in due succession and at stated periods; to adjourn the House at four o'clock if forty members be not present; to appoint tellers on divisions. The Speaker must abstain from debating, unless in committee of the whole House. As chairman of the House, his duties are the same as those of any other president of a deliberative assembly. When Parliament is about to be prorogued, it is customary for the Speaker to address to the Sovereign, in the House of Lords, a speech recapitulating the proceedings of the session. Should a member persevere in breaches of order, the Speaker may '*name*' him, as it is called, a course uniformly followed by the censure of the House. In extreme cases the Speaker may order members or others into custody until the pleasure of the House be signified. On divisions, when the numbers happen to be equal, he gives the casting vote, but he never otherwise votes. He is chosen by the House of Commons from amongst its own members, subject to the approval of the Crown, and holds his office till the dissolution of the Parliament in which he was elected. His salary is 6,000*l.* a-year, exclusive of a furnished residence. At the end of his official labors he is generally rewarded by a peerage, and a pension of 4,000*l.* for two lives. He is a member of the Privy Council, and entitled to rank after barons.—*Dod's Parl. Comp.* See 17 & 18 *Vict.* c. 84, as to the appointment of a Deputy-Speaker, and the duties he performs during the Speaker's temporary absence.

Speaker of the House of Lords. The Lord Chancellor, by virtue of his office, becomes, on the delivery of the seal to him by the Sovereign, Speaker of the House of Lords. He is usually

but not necessarily a peer. There has always been a Deputy-Speaker, and formerly there were two or more, but since the year 1815 there has been only one. The chairman in committees generally fills this office. In the absence of the Lord Chancellor and of the Deputy-Speaker, it is competent to the House to appoint any noble lord to take the woolsack. The Speaker is the organ or mouthpiece of the House, and it therefore is his duty to represent their lordships in their collective capacity, when holding intercourse with other public bodies or with individuals. He has not a casting vote upon divisions, for should the numbers prove equal, the non-contents prevail. The Deputy-Speaker of the Lords is appointed by the Crown. *Dod's Parl. Comp.*

Speaking demurrer, one in which new facts, which do not appear upon the face of a bill in equity, are introduced to support a demurrer. It will be overruled.

Speaking with prosecutor. It is not uncommon, when a person is convicted of a misdemeanor, more immediately affecting an individual, as a battery, imprisonment, or the like, for the court to permit the defendant to speak with the prosecutor before any judgment is pronounced, and if the prosecutor declare himself satisfied, to inflict but a trivial punishment. This is done in order to reimburse the prosecutor his expenses, and make him some private amends, without the trouble and circuity of a civil action.—4 *Step. Com.* 315; but see 4 *Bl. Com.* 364.

Special administration, a limited one, as of certain specific effects, such as a term of years.

Special agent, one authorized to transact only a particular business for his principal, as distinguished from a general agent.

Special bail, bail above or to the action. See BAIL.

Special bailiff, one chosen by a party himself, to execute process in the sheriff's hands; the appointment of such a bailiff relieves the sheriff of all responsibility.

Special bastard, one born of parents before marriage, the parents afterwards intermarrying. By the civil and Scotch law he would be then legitimated.

Special case. Where a difficulty in point of law arises upon a trial, the jury may, instead of finding a special verdict, find a general verdict for the plaintiff, subject to the opinion of the court above, on a special case stated by the counsel on both sides with regard to the matter of law.

The case ought to be dictated by the judge at the trial, and signed by counsel on both sides before the jury are discharged; and if, in settling it, any difference of opinion arise about a fact, the opinion of the jury may be taken, and the fact stated accordingly. In practice, however, after the trial the case is drawn by the junior counsel for the plaintiff, and settled by the junior counsel for the defendant in the same manner as a special verdict, the judge settling any disputes from his notes. The *postea* is stayed in the hands of the associate until the question is argued and determined, after which a general verdict is entered for the successful party.—1 *Chit. Arch. Prac. by Pren.* 453.

Error may be brought upon a judgment on a special case in the same manner as upon a judgment on a special verdict, unless the parties agree to the contrary; and the proceedings for bringing a special case before the Court of Error shall, as nearly as may be, be the same as in the case of a special verdict; and the Court of Error shall either affirm the judgment or give the same judgment as ought to have been given in the court in which it was originally decided, the said Court of Error being required to draw any inferences of fact from the facts stated in such special case which the court where it was originally decided ought to have drawn.—*C. L. P. A.* 1852, s. 32.

By 3 & 4 Wm. IV. c. 42, s. 25, it shall be lawful for the parties in any action or information after issue joined, by consent, and by order of any of the judges of the superior courts, to state the facts of the case in the form of a special case for the opinion of the court, and to agree that a judgment shall be entered for the plaintiff or defendant by confession, or of *nolle prosequi*, immediately after the decision of the case, or otherwise, as the court may think fit, and judgment shall be entered accordingly.

But the parties may, after writ issued, and before judgment, by consent, and order of a judge, state any question or questions of law in a special case for the opinion of the court, without any pleadings.—*C. L. P. A.* 1852, ss. 46–48; *R. H. T.* 1853, 15.

Where the parties to an action are agreed as to the question or questions of fact to be decided between them, they may, after writ issued, and before judgment, by consent, and order of a judge (which order any judge shall have power to make, upon being satisfied that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried), proceed to the trial of any question or questions of fact without formal pleadings; and such question or questions may be stated for trial in an issue in the form contained in the schedule (A) to the Act annexed, marked No. 6, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action; and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the court, as in other actions.—*C. L. P. A.* 1852, ss. 42–45.

A special case may be stated in an action of ejectment.—*C. L. P. A.* 1852, ss. 179, 208.

As to a special case in a compulsory arbitration and by arbitrators, see *Ibid.* 1854, ss. 4, 5.

Where all parties are agreed upon the facts of a matter, but are interested, or claim to be interested, in any question cognizable in the Court of Chancery as to the doubtful construction of any Act of Parliament, will, deed, or other instrument in writing, or any article, clause, matter, or thing therein contained, or as to the title or evidence of title, to any real or personal estate contracted to be sold or otherwise dealt with, or as to the parties to, or the form of any deed or instrument for carrying any such contract into effect, or as to any other matter falling within the original jurisdiction of the court as a Court of Equity, or made subject to the jurisdiction or authority of the court by any statute not being one of the statutes relating to bankrupts, they may concur in stating such question in the form of a special case for the opinion of the Court of Chancery, and all executors, administrators, and trustees may concur in such case.—13 & 14 *Vict.* c. 35; *Smi. Ch. Pr.* 656.

When at a trial in a court of oyer and terminer, gaol delivery, or quarter sessions, any question of law arises on motion in arrest of judgment (or even independently of such motion), which such court finds too difficult for its determination, it is empowered by 11 & 12 Vict. c. 78, to reserve the question; and to state it in the form of a special case for the consideration of the judges of the superior courts sitting as a court of criminal appeal; and in the meantime to postpone the judgment, or respite the execution of it, as may be thought fit. As to cases stated by justices of the peace, see 20 & 21 *Vict.* c. 43.

Special claim, a claim not enumerated in the orders of 22nd April 1850, which requires the leave of the Court of Chancery to file it.—*Smi. Ch. Pr.* 645. Claims are abolished. See CLAIM IN EQUITY.

Special commission, an extraordinary commission of oyer and terminer and gaol delivery, issued by the Crown to the judges when it is necessary that offences should be immediately tried and punished.

Special constables, persons appointed by the magistrates to execute warrants on particular occasions.—41 *Geo. III.* c. 78; or to assist in keeping the peace, when the ordinary constables are insufficient for that purpose, see 1 & 2 *Wm. IV.* c. 41; 5 & 6 *Wm. IV.* c. 43; and 1 & 2 *Vict.* c. 80.

Special damage, a particular loss occasioned by an act complained of.

Special demurrer, a demurrer for some defect in the form of the opposite party's pleading. Abolished by C. L. P. A. 1852, s. 51.

Special examiner, one appointed to take examinations in the country.—*Smi. Chancery Prac.* 27.

Special finding, of a jury, instead of amendment of variance. See 3 & 4 *Wm. IV.* c. 42, s. 24.

Special indorsement, an indorsement in full on a bill of exchange or promissory note, which, besides the signature of the indorser, expresses in whose favor the indorsement is made. Thus: 'Pay Mr. C. D., or order. A. B.;' the signature of the indorser being subscribed to the direction. Its effect is to make the instrument payable to C. D. or his order only; and accordingly, C. D. cannot transfer it otherwise than by indorsement. The omission of the words, 'or order,' is not material in a special indorsement; for the indorsee takes it with all its incidents, and among the rest with its negotiable quality, if it were originally made payable to order.

Special indorsement on summons. See SUMMONS, WRIT OF.

Special injunctions, those prohibitory writs or interdicts against acts of parties, such as waste, nuisance piracy, &c. See INJUNCTION.

Special jurors' list, a catalogue annually made by a sheriff of persons qualified to act as special jurors.

Special jury, a jury consisting of persons who, in addition to the ordinary qualifications, are of a certain station in society, as esquires, or persons of higher degree, or bankers, or merchants.

The precept issued by the judges of assize shall direct the sheriff to summon a sufficient number of special jurymen, to be mentioned therein, not exceeding forty-eight in all, to try the special jury-causes at the assizes; and the persons summoned in pursuance of such precept shall be the jury for trying the special jury-causes at the assizes, subject to such right of challenge as the parties by law are now entitled to, and a printed panel of the special jurors so summoned shall be made, kept, delivered and annexed to the Nisi-Prius-Record in like time and manner and upon the same terms as is provided with reference to the panel of common jurors; and upon the trial the special jury shall be ballotted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors: provided that the court or a judge, in such case as they or he may think fit, may order that a special jury be struck according to the late practice, and such order shall be a sufficient warrant for striking such special jury, and making a panel thereof for the trial of the particular cause.—*C. L. P. A.* 1852, s. 108.

In any county, except London and Middlesex, the plaintiff in any action, except replevin, shall be entitled to have the cause tried by a

special jury, upon giving notice in writing to the defendant, at such time as would be necessary for a notice of trial, of his intention that the cause shall be so tried; and the defendant or plaintiff in replevin shall be so entitled, on giving the like notice within the time now limited for obtaining a rule for a special jury: provided that the court or a judge may at any time order that a cause shall be tried by a special jury, upon such terms as they or he shall think fit (s. 109).

In London and Middlesex special jurors shall be nominated and reduced by and before the under-sheriff and secondary respectively, in like manner as by the master before this Act, upon the application of either party entitled to a special jury, and his obtaining a rule for such purpose, and the names of the jurors so struck shall be placed upon a panel, which shall be delivered and annexed to the Nisis-Prius-Record, in like manner and upon the same terms as is provided with reference to the panel of common jurors; and upon the trial the special jury shall be balloted for, and called in the order in which they shall be drawn from the box, in the same manner as common jurors (s. 110).

Where the defendant in any case, or plaintiff in replevin, gives notice of his intention to try the cause by a special jury, and the venue is in London or Middlesex, the court or a judge if satisfied that such notice is given for the purpose of delay, may order that the cause be tried by a common jury, or make such other order as to the trial of the cause as such court or judge shall think fit (s. 111).

Where notice has been given to try by special jury, either party may, six days before the first day of the sittings in London or Middlesex, or adjournment-day in London, or commission-day of the assizes, give notice to the sheriff that such cause is to be tried by a special jury; and in case no such notice be given, no special jury need be summoned or attend, and the cause may be tried by a common jury, unless otherwise ordered by the court or a judge (s. 112).

In all cases where notice is not given to the sheriff that the cause is to be tried by a special jury, and by reason thereof a special jury is not summoned or does not attend, the cause may be tried by a common jury, to be taken from the panel of common jurors, in like manner as if no proceedings had been had to try the cause by a special jury (s. 113).

No rule for a special jury shall be granted on behalf of any defendant (or plaintiff in replevin) except on an affidavit, either stating that no notice of trial has been given, or if it has been given, then stating the day for which such notice has been given; and in the latter case no such rule is to be granted unless such application is made for it more than six days before that day; provided that a judge may, on summons, order a rule for a special jury to be drawn up at any time.—*H. T.* 1853, r. 44.

No cause shall be tried by a special jury in Middlesex or London, unless the rule for such special jury be served and the cause marked in the Associate's book as a special jury-cause, on or before the day preceding the day appointed in Middlesex and London respectively for the trial of special jurors (r. 45).

Sheriffs, other than the sheriffs of London and Middlesex, shall, seven days before the commission-day, make and keep at their offices, for inspection, a printed copy of the panel of the special jurymen to try the special jury causes at the assizes, as directed by the C. L. P. Act, 1852; but such special jury need not be summoned, except notice be given as provided for by the 112th section of the said Act (r. 47). As to the summoning of persons to serve on juries, see 'The Juries' Act, 1862,' 25 & 26 *Vict.* c. 107. See JURY.

Special license, one granted by the Archbishop of Canterbury to authorize a marriage at any convenient time or place.

Special motion. See MOTION.

Special occupancy, where an estate is granted to a man and his heirs during the life of *cestui que vie*, and the grantee dies without alienation, and while the life for which he held continues, the heir will succeed and is called a special occupant. See 7 *Wm. IV.* and 1 *Vict.* c. 26, ss. 3, 6.

Special paper, a list kept in court of common law in which demurrers, special cases, &c. to be argued are set down.

Special petition. See PETITION.

Special pleaders, members of an inn of court, not called to the bar, who devote themselves to the drawing of common law pleadings.

Special pleading, the science of pleading. It is a forensic invention, due to the dialectic genius of the middle ages, but nearly destroyed by modern innovation. See *Step. on Plead.*

Special pleas, pleas which are not in the form of what are still called general issues, but which allege affirmative matter, as infancy, coverture, statute of limitations, &c.

Special pleas in bar in criminal matters go to the merits of the indictment, and give a reason why the prisoner ought to be discharged from the prosecution; they are of four kinds, viz. a former acquittal, a former conviction, a former attainder, or a pardon.

Special property, qualified property, which see.

Special sessions. See SESSIONS OF THE PEACE.

Special tail, where an estate-tail is limited to the children of two given parents, as to A. and the heirs of his body by B. his wife.

Special traverse, a form of pleading, abolished by C. L. P. A., 1852, s. 65.

Special trust. Where the machinery of a trustee is introduced for the execution of some purpose particularly pointed out, and the trustee is not a mere passive depositary of the estate, but is called upon to exert himself actively in the execution of the settlor's intention; as where a conveyance is to trustees upon trust to sell for payment of debts.

Special trusts have been divided into (1) ministerial (or instrumental), and (2) discretionary. The former, such as demand no further exercise of reason or understanding than every intelligent agent must necessarily employ; the latter, such as cannot be duly administered without the application of a certain degree of prudence and judgment.

Special trusts may be divided, with reference to the object in view, into (1) lawful, and (2) unlawful. The former, such as are directed to some honest purpose, as a trust to pay debts, &c. which are called by Lord Bacon intents, or confidences, and will be administered by the Court of Chancery. The latter are trusts created for the attainment of some end contravening the policy of the law, and therefore not to be sanctioned, as a trust to defraud creditors or to defeat a statute. Such are designated by Lord Bacon frauds, covins, or collusions.—*Lew. on Trusts*, 21.

Special verdict, a special finding of the facts of the case, leaving to the court the application of the law to the facts thus found. It is dictated by the court, and signed by counsel on both sides, before the jury are discharged.—1 *Chit. Arch. Prac. by Pren.* 430.

Specialty, a contract by deed.

Specialty debts, bonds, mortgages, debts, secured by writing under seal; they rank next to those of record, and above simple contract debts.

Specie, metallic money.

Specification, a particular and detailed account of a thing; also, a description of a patent directed to be enrolled in the High Court of Chancery, within a specified time, its object being to put the public in full possession of the inventor's secret, so that any person may be in a condition to avail himself of it when the period of exclusive privilege has expired.—16 & 17 *Vict.* c. 115, s. 6. See LETTERS PATENT.

As to indexes of specifications for the public use, see 15 & 16 *Vict.* c. 83; and 16 & 17 *Vict.* c. 5, s. 8.

Also, in Scotland, the making of new property from materials belonging to another, as wine from grapes. See *Sand. Just.* 189.

Specific legacy. See LEGACY.

Specific performance of agreements.

Equity, in obedience to the cardinal rule of natural justice, that a person should perform his agreement, enforces, pursuant to a regulated and judicial discretion, the actual accomplishment of a thing stipulated for, on the ground that what is lawfully agreed to be done ought to be done and indeed is, in its contemplation, considered as now done. The common law has not recognised this principle; it has only given damages to a suffering party for the non-performance of an executory agreement; the C. L. P. A. 1854, has, however, imparted to the Common Law writ of *mandamus* a little more efficacy. Consult 1 *Fonblan. Eq.* b. 1; 1 *Madd. Chan.* 466–563; 2 *Atk. Conv.* 561–718; *Batten on Spec. Perf.*; 2 *Sto. Eq. Jur.* c. xviii.; 1 *Chit. Eq. Ind. by Mac.* 80–110; *Dart's Vend. and Pur.* c. xviii.; *Lord St. Leonard's V. and P.* c. v. ss. 3 & 4, p. 168, *et seq.*; and *Fry's Specific Performance of Contracts.*

The several requisites of a contract, which will be directed to be specifically executed, are these:—

(*a*) The contract must be entered into by competent parties, or their lawfully authorized agents. The general rule is, that all parties who can bind themselves at law, are competent to enter into agreements, which equity will enforce.

The instance of supplying a defective execution of a power in favor of meritorious appointees is, however, an exception to this general rule.

The specific performance of a contract will be decreed notwithstanding the infancy of a deceased vendor's heir-at-law, for he is deemed to be a trustee for the purchaser, and the court will grant, in such a case, a vesting order pursuant to 13 & 14 Vict. c. 60, s. 30.

(*b*) The parties must contract willingly, without undue bias, and not under any improper influence.

(*c*) The terms of the contract must be understood by the parties without mistake or misapprehension, and must be certain and defined, importing a concluded agreement.

(*d*) The contract must be entered into for a valuable executory consideration, such as marriage or money; and not for a merely good consideration, how meritorious soever it may be.

(*e*) While a valuable consideration exists on the one side, there must be a promise or sale on the other, together with a mutuality of remedy between the parties. In other words, there must be some inducement passing from one party in order to render binding the promise of the other.

(*f*) The contract, if it relates to land, should be in writing. The Statute of Frauds, 29 Car. II. c. 3, s. 4, enacts that no action shall be brought whereby to charge any person upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought, or some

memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorized. It is not, however, considered requisite that an agreement should at the time be binding on both parties, it is sufficient if an agreement signed by one party be afterwards accepted and acted upon by the other. And it is now clearly settled, that a plaintiff may obtain a decree for specific performance of an agreement signed by the defendant alone, for by the party who has not signed the agreement bringing his suit, the court acquires the jurisdiction to bind him by the agreement, and from that moment there is a mutuality of remedy. No particular form of agreement is necessary, for if the written agreement contain a plain and simple statement of the names of the parties, and the terms of the contract, it is sufficient. Thus a contract may be made out by a correspondence, as where one person offers by letter to sell to another property for a given consideration, and the other writes an answer simply accepting such offer, without the introduction of any new term or condition, there being a fair understanding on the part of each as to what is to be the purchase-money, and how it is to be paid, and also a reasonable description of the subject of the bargain. It is not necessary that the contract or writing itself should contain all the terms of the agreement, if it clearly refer to and identify another document which does contain them, so as to make it part and parcel of the agreement.

There must be a signature of the name of the party to be charged, or his agent, in some way so as to give authenticity to the whole agreement, but his surname or initials will be sufficient.

Equity will entertain suits for the specific performance of contracts, which are not reduced into writing, where there does not appear any danger of fraud or perjury. The following parol contracts will, therefore, be specifically enforced:

(1) A sale ordered by a decree of a Court of Chancery, for the judgment of the court in confirming such a purchase, takes the transaction out of the statute. It is, however, now usual for the purchaser to subscribe a written or printed contract.

(2) Where a parol agreement has been so substantially performed in part, as to render it inequitable not to enforce the whole of it.

An agreement will not be considered as partly performed or executed, unless the acts done are such as could be done with no other design than to complete it. Neither will acts merely introductory, or ancillary to an agreement, be considered as part performances, although attended with expense. Therefore, delivering an abstract, giving directions for a conveyance, going to view the estate, appointing an appraiser to value it, making valuations, &c. will not take a parol agreement out of the statute; neither will payment of the purchase-money, because while the Statute of Frauds provides that part payment shall bind in the case of personalty, its silence as to lands is construed to mean that part payment should not have such an effect. But if possession be delivered to the purchaser in part performance, the agreement will be considered as in part executed, especially if he expend money in building on or in improving the property according to the agreement, for the estate will never be so construed as to protect or be a means of fraud. Of course, the terms of the contract must distinctly appear to the satisfaction of the court.

(3) Where the agreement has not been reduced into writing through the fraud of one of the parties, the agreement will be exempted from the operation of the statute, and allowed to be proved by parol evidence.

(4) Another case in which parol agreements are considered binding is when the land is partnership property. Where a partnership, or an agreement in the nature of one, exists between two persons, and land is acquired by the partnership as a substratum of it, the land is in the nature of stock-in-trade of the partnership, and this being proved as an independent fact, the court, without regarding the statute of frauds, will inquire of what the partnership stock consisted, whether that stock be land or any other kind of property.

(5) Where a suit is brought for the execution of a verbal agreement fully set forth in the plaintiff's claim or bill, and the defendant puts in his answer or defence thereto, and confesses the agreement, the case is thereby taken entirely out of the mischief intended to be prevented by the statute, and there being no danger of perjury, the court will decree a specific performance, and should the defendant die, upon an order of revivor against his heir, the same decree will be made as if the ancestor were living. Should, however, the defendant falsely deny the agreement, although he may be indicted for perjury, yet a conviction will not enable equity to decree a performance of the agreement. And where he admits the parol contract, but insists, by way of defence, upon the protection of the statute, the suit will be barred.

The exclusion of parol evidence offered to explain, add to, or vary a written contract relative to land, stands upon two distinct grounds; such evidence is rejected, not simply as being in direct opposition to the Statute of Frauds, but also, independently of the statute upon the general rule of evidence, that a

written instrument must speak for itself, and can receive no aid from extrinsic evidence of such an unsatisfactory nature.

The statute does not say that a written agreement shall bind, but that an unwritten agreement shall not bind; leaving it, therefore, to the defendant to make the same defence now as he might have done before the statute; and consequently as before the statute he might have resisted the agreement on parol evidence that it was not what he meant to have entered into, so he may now say the agreement was not that which he meant to have signed.—2 *Atk. Conv.* 597.

Seeing that the basis of the specific execution of agreements is the inadequacy of the remedy at law by which damages only can be recovered, equity will refuse this relief when such damages would be commensurate with the injury sustained; therefore, as a broad rule, performance of contracts affecting realty will be decreed; but not of contracts for the sale of stock, goods, or other things of a merely personal nature, because the damages which can be recovered at law for their breach will purchase other stock or goods.

Equity has never yet specifically performed the following contracts, viz. common covenants in a lease, the proper remedy being at law; an agreement or covenant to refer a dispute to arbitration, it being contrary to public policy that private tribunals should adjudicate upon matters which ought to be publicly investigated (but an award respecting lands, and not merely for the payment of money, will be ordered to be specifically executed); an agreement to purchase the business of an attorney, for there are not any means of compelling the clients to retain the purchaser; an agreement for a partnership, unless it be for a given period, since it might be dissolved immediately afterwards, and equity does nothing in vain.

To the rule, however, of not decreeing the specific execution of mere personal contracts there are many exceptions; thus, agreements of a negative character, as not to build or not to carry on a trade, or negative covenants in a farming lease, are frequently enforced by injunction. So equity will sometimes secure the performance of a positive agreement by an injunction in a negative form, as to restrain a defendant from keeping possession of books, contrary to express covenant. Again, upon positive agreements as to personal acts, equity has jurisdiction to direct, by a simple mandatory order, those acts to be done which have been agreed to be done; thus the court decrees performance of a covenant for further assurance, should any subsequent right accrue to the person entering into such covenant; and more than this, if there is no such covenant, the court implies an agreement, that any subsequent right acquired by the vendor of an estate shall be conveyed to the purchaser. It may be stated generally, with respect to agreements to do personal acts, and with respect to other agreements, that if damages at law would be an inadequate remedy, and if the act is certain in its nature and capable of being performed, performance will be decreed.

As to the power of the Court of Chancery to award damages, see 21 & 22 *Vict.* c. 27.

Speedy execution. A plaintiff or defendant having obtained a *verdict* in a cause, is entitled to issue execution in 14 days, unless the judge who tries the cause, or some other judge, or the court, should order execution to issue at an earlier or later period, with or without terms.—*C. L. P. A.* 1852, s. 120, and *H. T.* 1853, r. 57. See 1 *Chit. Arch. Prac. by Pren.* 412.

Speedy Judgment Act, 1 Wm. IV. c. 7.

Sperate, that of which there is a hope of the recovery.

Spes est vigilantis somnium.—4 *Inst.* 203.—(Hope is the dream of one who is awake.)

Spes impunitatis continuum affectum tribuit delinquendi.—3 *Inst.* 236.—(The hope of impunity confirms the disposition to commit crime.)

Spes recuperandi [Lat.] (*the hope of recovery*).

Spigurnel [fr. *spicurran*, Sax., to shut up or inclose], the sealer of the royal writs.

Spinster, an unmarried woman, so called because she was supposed to be occupied in spinning.

In Scotland, the wife's or cognate side of the family is termed the 'spindle-side,' in contradistinction to the agnate or husband's side, which is denominated the 'spear' or 'sword-side.' The armorial bearings of the families of widows and spinsters are painted on this spindle, which is popularly termed a lozenge. Amongst the Romans, the bride at a marriage carried a distaff and spindle with wool, as a type that she was, like a good housewife, to occupy herself in spinning, and in memory of Caia Cæcilia, or Tanaquil, wife of Tarquinius Priscus, a famous spinster. That spinning was eminently the duty of a housewife in the oldest times we learn from the most ancient Greek authors.

Spirits. By 23 & 24 Vict. c. 114, the excise regulations relating to the distilling, rectifying, and dealing in spirits are amended and reduced into one Act, and see 24 & 25 *Vict.* c. 84, s. 2.

As to excise licenses for the sale of spirits, see 6 *Geo. IV.* cc. 80 & 81, s. 26; 7 & 8 *Geo. IV.* c. 53; 4 & 5 *Wm. IV.* c. 51; 4 & 5 *Vict.* c. 20; 18 & 19 *Vict.* c. 38; 23 *Vict.* c. 27; 24 & 25 *Vict.* c. 91.

As to the excise duty on spirits, see 18 &

19 *Vict.* c. 38 (amended by 24 & 25 *Vict.* c. 91); 23 & 24 *Vict.* c. 129; and 24 & 25 *Vict.* cc. 20 & 21.

Spiritual corporations, corporations the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the church.

They are of two sorts:

(1) *Sole,* as bishops, certain deans, parsons, and vicars, or

(2) *Aggregate,* as deans and chapters, prior and convent, abbot and monk.

Spiritual courts, ecclesiastical courts, which see.

Spiritual lords, the archbishops and bishops of the House of Peers.

Spirituality, that which belongs to one as an ecclesiastic.

Spirituality of benefices, the tithes of land, &c.

Spital, or **Spittle,** a charitable foundation; a hospital for diseased people.

Splitting a cause of action, suing for only a part of a claim or demand. Not permitted.

Spoliation, a writ or suit for the fruits of a church or the church itself, to be sued in the spiritual and not in the temporal court. It lies for one incumbent against another where they both claim by one patron, and the right of patronage does not come in question.—3 *Bl. Com.* 90.

Spoliatus debet ante omnia restitui.—2 *Inst.* 714.—(A person who has been despoiled, ought to be restored to his former state before any thing else.)

Sponsalia dicuntur futurarum nuptiarum conventio et repromissio.—*Co. Litt.* 34.—(A betrothing is the agreement and promise of a future marriage.)

Sponsalia inter minores contracta, ante septem annos, nulla sunt.—*Jenk. Cent.* 95.—(Betrothings contracted between parties under seven years of age are void.)

Sponsalia, or **Stipulatio sponsalitia,** espousals; mutual promises to marry.—*Civ. Law.*

Sponsio judicialis, the feigned issue of the Romans.

Sponsions, agreements or engagements made by certain public officers, as generals or admirals in time of war, either without authority, or in excess of the authority under which they purport to be made.—*Inter. Law.*

Sponsor, a surety; one who makes a promise or gives security for another.

Sponte oblatâ, a free gift or present to the Crown.

Sponte virum mulier fugiens et adultera facta, Dote sua careat, nisi sponsi sponte retracta.—*Co. Litt.* 32 *b.*—(Let a woman leaving her husband of her own accord, and committing adultery, lose her dower, unless taken back by her husband of his own accord.)

Sportula, or **Sportella,** a dole or largess either of meat or money given by princes or great men to the poor. It was properly the pannier or basket in which the meat was brought, or with which the poor went to beg it, thence the word was transferred to the meat itself, and thence to money sometimes given in lieu of it.—*Encyc. Lond.*

Spousal, marriage-nuptials.

Spouse-breach, adultery as opposed to simple fornication.

Spreading false news, to make discord between the sovereign and nobility, or concerning any great man of the realm, is a misdemeanor; punishable at common law by fine and imprisonment.

Springing use, contingent use, which see.

Spulzie [fr. *spoliatio,* Lat.], the taking away or meddling with movables in another's possession, without the consent of the owner or authority of law.—*Scotch term.*

Spunging-house, a house to which debtors arrested are taken before commitment to prison, where the bailiffs sponge, i. e. impose upon them.

Spurii [either fr. σποράδην, Gk., at hazard, or fr. *sine patre,* Lat., without a father], children conceived in prostitution.—*Sand. Just.* 119.

Spy, an enemy who comes to reconnoitre; if caught he is shot.

Squibs. The unlicensed making or selling or exposing to sale fireworks, or the throwing, casting, or firing, squibs or other fireworks in or into any thoroughfare or public place, is an offence punishable by fine. See 23 & 24 *Vict.* c. 139 (amended by 24 & 25 *Vict.* c. 130), and 25 & 26 *Vict.* c. 98, and may be prosecuted by indictment, either under the statute or at common law. See 2 & 3 *Vict.* c. 47, s. 52; 9 & 10 *Vict.* c. 25; and also the Squib-case, *Scott* v. *Shepherd,* 2 *Bl.* 892, and 1 *Smi. L. C.* 343–358.

Squire, contraction of esquire, which see.

S.S. Collar of. Collars studded with the letter S, or consisting of many of that letter linked together, either alone or alternately with other figures, have been at times much worn by persons holding great offices in the state, as well as by the gentry of various ranks, from esquires, upwards. They are still worn (with certain distinctions, which it does not come within our plan to particularise) by the Lords Chief Justices, the Lord Chief Baron of the Exchequer, the Lord Mayor of London, the Kings of Arms, and Heralds, and the Serjeants-at-Arms.

The signification of the letter S in connection with the collar has been variously explained. To name the numerous improbable conjectures that have been formed would be useless. To arrive at any certain conclusion (without further

evidence than has as yet been adduced) seems impossible. Perhaps the most likely conjecture is that it stands for *Soverayne*, the favorite motto of Henry IV. There is ample evidence that the collar of S.S. was originally a badge of the house of Lancaster.—*Gent. Mag.* for 1842–43.

Stabbing. See 4 *Step. Com.* 149 & 449.

Stabilia, a writ called by that name, founded on a custom in Normandy that where a man in power claimed lands in the possession of an inferior, he petitioned the prince that it might be put into his hands till the right was decided, whereupon he had this writ.

Stabilitio venationis, the driving deer to a stand.

Stabit præsumptio donec probetur in contrarium.—*Hob.* 297.—(A presumption will stand good till the contrary is proved.)

Stablestand, one of the four evidences or presumptions whereby a man is convicted to intend the stealing of the royal deer in the forest; and this is when a man is found at his standing in the forest, with a cross-bow bent ready to shoot at any deer, or with a long bow, or else standing close by a tree with greyhounds in a leash ready to slip.—*Cowel.*

Stade, Stadium, a furlong.

Staff-herding, the following of cattle within a forest.

Stage-coaches. The provisions relative to these will be found embodied in 2 & 3 Wm. IV. c. 120, amended by 3 & 4 Wm. IV. c. 48; 2 & 3 Vict. c. 66; and 5 & 6 Vict. c. 79; and see 10 & 11 *Vict.* c. 42, s. 2; and 18 & 19 *Vict.* c. 78, ss. 1, 2. As to stage-carriage licenses, see 26 & 27 *Vict.* c. 33.

Stagirius, a resident.

Stagnum, a pool. By this name the land and water pass.—*Co. Litt.* 5 *a.*

Stake, a deposit made to answer an event.

Stakeholder, one with whom a deposit is made by two who lay claim to it.

St. Albans. The borough was disfranchised by 15 Vict. c. 9.

Stale, larceny.—*Ang.-Sax.*

Stale check, an ante-dated check.

Stale demand, a claim for a long time dormant and undemanded.

Stalking, the going gently, step by step under cover of a horse, &c. to take game.

Stallage, the liberty or right of pitching, or erecting stalls in fairs or markets, or the money paid for the same.

Stallarius, a master of the horse; also the owner of a stall in a market.—*Spelm.*

Stamp-duties, a branch of the perpetual revenue. They are a tax imposed upon all parchment and paper whereon many legal proceedings or any private instruments are written; and also upon licenses for retailing wines, letting horses to hire, and for numerous other purposes: and upon all newspapers, cards, dice, &c. The principal Stamp Acts are the 55 Geo. III. c. 184; 13 & 14 Vict. c. 97; 16 & 17 Vict. cc. 59, 63; and 17 & 18 Vict. c. 83. See also the following:—60 *Geo. III.* & 1 *Geo. IV.* c. 9; 3 & 4 *Geo. IV.* c. 117; 5 *Geo. IV.* c. 4; 6 *Geo. IV.* c. 41; 9 *Geo. IV.* cc. 18, 49; 11 *Geo. IV.* & 1 *Wm. IV.* c. 43; 1 & 2 *Wm. IV.* c. 22; 2 & 3 *Wm. IV.* c. 120; 3 & 4 *Wm. IV.* cc. 23, 97; 4 & 5 *Wm. IV.* cc. 57, 60; 5 & 6 *Wm. IV.* cc. 20, 64; 6 & 7 *Wm. IV.* c. 76; 1 & 2 *Vict.* c. 85; 4 & 5 *Vict.* c. 79; 5 & 6 *Vict.* c. 79; 6 & 7 *Vict.* c. 72; 7 & 8 *Vict.* c. 21; 8 & 9 *Vict.* cc. 2, 76; 11 & 12 *Vict.* c. 9; 12 & 13 *Vict.* c. 80; 14 & 15 *Vict.* c. 18; 15 & 16 *Vict.* c. 21; 16 & 17 *Vict.* cc. 51, 59, 63, 71; 18 & 19 *Vict.* cc. 36, 78; 19 & 20 *Vict.* c. 27, ss. 2, 81; 21 & 22 *Vict.* cc. 11, 20, 24; 22 & 23 *Vict.* c. 36; 23 *Vict.* c. 15; 23 & 24 *Vict.* cc. 5 & 111; and 24 & 25 *Vict.* cc. 21 & 92.

Standard, that which is of undoubted authority, and the test of other things of the same kind; a settled rate.

Standing mute. See MUTUS.

Standing orders, general regulations to be observed in passing private acts through Parliament.

Stannary [fr. *stannum*, Lat.; *stéan*, Cornish tin], a tin-mine.

There are stannary courts in Devonshire and Cornwall for the administration of justice among the tinners therein. They are courts of record of the same limited and exclusive nature as those of the counties palatine. They are held before a judge called the vice-warden, in virtue of a privilege granted to the workers in the tin mines there, to sue and be sued only in their own courts, that they may not be drawn from their business, which is highly profitable to the public, by allowing their law suits in other courts. Error does not lie to the superior courts, but by 18 & 19 Vict. c. 32, s. 26, from all decrees and orders of the vice-warden on the equity side of his court, and from all judgments of the vice-warden on the common-law side thereof, there shall be an appeal to the lord-warden (assisted by two or more assessors, members of the judicial committee of the privy council, or judges of the high court of Chancery, or courts of Common Law at Westminster); and from the lord-warden a final appeal to the judicial committee. See 6 & 7 *Wm. IV.* c. 106; 2 & 3 *Vict.* c. 58; 11 & 12 *Vict.* c. 83, and 18 & 19 *Vict.* c. 32.

Staple [fr. *stapel*, Belg. and Sueth.], a settled mart; an established emporium; that which is established in commerce, according to its laws.

Staple, *Statute of the*, 27 Edw. III. st. 2.—2 *Reeves*, 393; *Bl. Com.*

Star [fr. *starrum*, contr. fr. *shetar*, Heb., a

deed or contract], the deeds, obligations, &c. of the Jews; also a schedule or inventory.

Star Chamber [*chambre des estoylles*, Fr.], *camera stellata*, which see.

Stare decisis, to rely upon authorities or cases already adjudicated upon.

Stare in judicio [Lat.], to sue; to litigate in a court.

Starrum, a schedule or inventory.

State-prisoner, one in confinement for a political offence.

State-trial, a trial for a political offence.

Statham. The learning of the law was thrown into a more methodical form than it had ever yet received, by this author, who was a baron of the Exchequer in the time of Edward IV. This was in his *Abridgment of the Laws*, being a kind of digest, containing most titles of the law, arranged in alphabetical order, and comprising under each head adjudged cases, abridged from the year-books in a concise manner. The plan of this work was entirely new, and conceived with some judgment, though the execution was imperfect, and left open to improvement. The cases are strung together with reference to nothing but the time of their adjudication, without any regard to the connection of their matter. With all its incompleteness, this must have been a very valuable work at the time it was compiled, when the helps to the law were few and confined. This abridgment has served as a model to others in latter times; which, without the merit of originality, have surpassed their master's performance in method, precision, and extent. This work had the fate to be of less use than, perhaps, any performance that, in the nature of it, seemed to aim at such general utility. It is very doubtful whether it was printed before Fitzherbert's Abridgment, which came out in A.D. 1514; and whether it was printed a little before or a little after, the need of it was entirely superseded by the latter work.—4 *Reeves*, c. xxv., p. 117.

Statics [fr. στατική, Gk.; *statique*, Fr.], the science which considers the weight of bodies.

Station, a place where ships may ride safely.

Stationarius, *stagiarius*, which see.

Stationers' Hall. The 5 & 6 Vict. c. 45, authorizes, in every case of copyright, the registration of the title of the proprietor at Stationers' Hall, and provides that, without previous registration, no action shall be commenced, though an omission to register is not otherwise to affect the copyright itself. It was founded A.D. 1553.—2 *Hall. Lit. Hist.* pt. 2, c. viii., p. 366.

Statism, policy, the arts of government.

Statist, a statesman, a politician, one skilled in government.

Statistic, or **Statistical**, political.

Statistics, that part of political science which is concerned in collecting and arranging facts illustrative of the condition and resources of a state. The subject is sometimes divided into 1. Historical statistics, or facts which illustrate the former condition of a state. 2. Statistics of population. 3. Of revenue. 4. Of trade, commerce, and navigation. 5. Of the moral, social, and physical condition of the people. See *Knight's Cyclopædia.*

It has been observed that neither the derivation of this word, the meanings of its collaterals (of *statist* especially), nor the wants of our language, which has no word comprehending the whole of political science, warrant this restriction.—*Encyc. Lond.*

Statu liber, a slave made free or enfranchised by testament conditionally.—*Civ. Law.*

Status, the condition of an individual regarded as a person, the constitutive elements of which were liberty, citizenship and membership in a family.—*Civ. Law.*

Status de manerio, the assembly of the tenants in the court of the lord of a manor, in order to do their customary suit.

Statuta pro publico commodo latè interpretantur.—*Jenk. Cent.* 21.—(Statutes made for the public good ought to be liberally construed.)

Statutable, according to statute.

Statutably, in a manner agreeable to law.

Statute, a law, an edict of the legislature, an Act of Parliament. See ACT OF PARLIAMENT.

The civilians have divided statutes into three classes: personal, real, and mixed. By statutes they mean, not the positive legislation, which in England is known as Acts of Parliament, as contra-distinguished from common law; but the whole municipal law of a particular state, from whatever source arising. Sometimes the word is used by them in contradistinction to the imperial Roman law, which they are accustomed to style, by way of eminence, the common law, since it constitutes the general basis of the jurisprudence of all continental Europe, modified and restrained by local customs and usages, and positive legislation.

Statute-merchant, a bond of record under the hand and seal of the debtor, authenticated by the king's seal, which renders it of so high a nature, that, on failure of payment on the day assigned, execution may be awarded, without any mesne process to summon the debtor, or the trouble or charges of bringing in proofs to convict him, and thus, it is presumed, it obtained the name of a '*pocket judgment.*' It has fallen into disuse.—*Coote on Mort.* 74.

Statute-staple, a bond of record acknowledged before the mayor of the staple, in the presence of the constables of the staples, or one of them, and the only seal required for its validity is the seal of the staple, and therefore if the statute be void for any cause, it cannot, as

in the case of a statute-merchant, be proceeded on as a common obligation, and, wanting the sanction of the seal of the king, the sheriff, after the extent, cannot deliver the lands to the conusee, but must seise them into the king's hands; and in order to obtain possession of them, the conusee must sue out a writ of LIBERATE, which is a writ out of Chancery, reciting the former writ, and commanding the sheriff to deliver to the conusee all the lands, tenements, and chattels by him taken into the king's hands, if the conusee will have them, by the extent and appraisement made thereof, until he be satisfied his debt. It has grown obsolete. *Coote on Mort.* 74.

Statuti, advocates, members of the college.—*Civ. Law.*

Statuto mercatorio, an ancient writ for imprisoning him who had forfeited a statute-merchant bond, until the debt was satisfied.—*Reg. Orig.* 146.

Statutory, enacted by statute.

Statutory release, a conveyance which superseded the old compound assurance by lease and release. It was created by the 4 & 5 Vict. c. 21, which abolished the lease for a year.

Statuto stapulæ, the ancient writ that lay to take the body to prison, and seize upon the lands and goods of one who had forfeited the bond called statute-staple.—*Reg. Orig.* 151.

Statutum affirmativum non derogat communi legi.—*Jenk. Cent.* 24.—(An affirmative statute does not take from the common law.)

Statutum Hiberniæ de cohæredibus, 14 Hen. III. The third public Act in the Statute-book. It has been pronounced not to be a statute. In the form of it, it appears to be an instruction given by the king to his justices in Ireland, directing them how to proceed in a certain point where they entertained a doubt. It seems the justices itinerant in that country had a doubt, when land descended to sisters, whether the younger sisters ought to hold of the eldest, and do homage to her for their several portions, or of the chief lord, and do homage to him; and certain knights had been sent over to know what the practice was in England in such a case.—1 *Reeves*, 259.

Statutum de mercatoribus, the statute of Acton-Burnell, which see.

Statutum ex gratiâ regis dicitur, quando rex dignatur cedere de jure suo regio, pro commodo et quiete populi sui.—2 *Inst.* 378.—(A statute is said to be by the grace of the king, when the king deigns to yield some portion of his royal rights for the good and quiet of his people.)

Statutum generaliter est intelligendum quando verba statuti sunt specialia, ratio autem generalis. 10 *Co.* 101.—(When the words of a statute are special, but the reason of it general, it is to be understood generally.)

Statutum sessionum (*the statute-sessions*), a meeting in every hundred of constables and householders, by custom, for the ordering of servants, and debating of differences between masters and servants, rating of wages, &c.—5 *Eliz.* c. 4.

Statutum speciale statuto speciali non derogat. Jenk. Cent. 199.—(One special statute does not take from another special statute.)

Staunforde, the author of the 'Pleas of the Crown,' in the reign of Philip and Mary. This book is written in French; the method of it is perspicuous, and the matter disposed with learning and accuracy. The author is uncommonly full in his quotations, the statutes are generally given at length, and whole pages are frequently transcribed from Bracton. Notwithstanding the alterations which the criminal law underwent since the reign of Henry III., yet Staunforde has ventured perpetually to recur to this ancient writer as an authority, and has taken from him many complete chapters. This is in general done with success and propriety, though sometimes his author has failed him; as, among other instances, may be observed Bracton's definition of larceny, which was not law at the time Staunforde wrote.

In the account which he gives of crimes, his method is to begin by stating what they were in Bracton's time, and then to add the subsequent decisions which had affected the old law. At other times he entirely relies on his favorite author. This is done in a compendious way, without enlarging much on any part of the subject. On the whole, he seems to aim at nothing more than digesting in a clear manner what could be collected from others.

As Staunforde has the praise of being our earliest writer on pleas of the Crown, so has his merit been acknowledged by those who have followed him in the same walk; they having, in general, adhered to the arrangement and divisions of his work. He treats of his subject under three heads: first, of crimes; next, of the method of bringing delinquents to justice; and lastly, of trials and punishment. The several titles into which these are subdivided have furnished the heads of nearly every book which has been written since his time on the same subject.

Bracton seems to have been a great authority with Staunforde; for it appears from the reports, that he ventured to cite and argue from him upon the bench, at a time when it was the fashion to consider Bracton and Glanville, not as authors in our law, but to be quoted, if at all, only for ornament in discourse; and for consonancy and order, when they agreed with better authorities.—4 *Reeves*, 569.

Stealing. See LARCENY.

Stealing children. See KIDNAPPING.

Stealing heiresses. Where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate; or shall be presumptive-heiress or co-heiress, or presumptive next of kin, or one of the presumptive next of kin to any one having such interest, whosoever shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or carnally know her, or to cause her to be married or carnally known by any other person, and whosoever shall fraudulently allure, take away, or detain such woman, being under the age of twenty-one years, out of the possession of her father or mother or of any other person having the lawful care or charge of her, with intent to marry or carnally know her, or to cause to be married, shall be guilty of felony, and being convicted thereof, shall be liable to penal servitude for any term not exceeding fourteen years nor less than three years, or to be imprisoned with or without hard labor for any term not exceeding two years, and whosoever shall be convicted of any offence against this section shall be incapable of taking any estate or interest legal or equitable in any real or personal estate of such woman, &c., and if any such marriage, as aforesaid, shall have taken place, such property shall be settled in such manner as the Court of Chancery in England or Ireland shall upon any information at the suit of the Attorney-General appoint.—24 & 25 *Vict.* c. 100, s. 53. If the woman first consent to be taken away, and afterwards refuse to continue with the offender, and he forcibly detain her; or if she be forcibly taken away, and she afterwards consent to her marriage or defilement; or if she be taken away and married with her own consent, obtained by fraud or imposition, it is equally an offence within this statute.

The female, though married, is a competent witness for or against the offender; for though his wife *de facto*, she is not *de jure*.

Steam-engines. As to the negligent use of these, see 1 & 2 *Geo. IV.* c. 41; and as to damaging them when used for working, &c. mines, see 24 & 25 *Vict.* c. 97, s. 29.

Steel-bow goods, corn, cattle, straw, and implements of husbandry, let or delivered by a landlord to a tenant, by which the tenant is enabled to stock and work a farm; in consideration of which he becomes bound to return articles, equal in quantity and quality, at the expiration of the lease.—*Scotch phrase*; 2 *Smi. Wealth of Nat.* b. 3, c. ii.

Stellionate [*stellionatus*], a kind of crime which is committed by a deceitful selling of a thing; as if a man should sell as his own estate that which is another's.

In the Roman law, the making a second mortgage without giving notice of the first; but the crime was not committed if the land were equal in value to all the charges upon it.—*Dig.* 13. See the *Clandestine Mortgage Act*, 4 & 5 *W. & M.* c. 16.

Step-daughter [*privigna*, Lat.] *step*, i. e. *vice, loco*, in the place or stead of, e. g. the daughter of one's wife or husband.

Step-father [*vitricus*, Lat.], the husband of one's mother, who is not one's father.

Step-mother [*noverca*, Lat.], the wife of one's father, who is not one's mother.

Step-son [*privignus*, Lat.], the son of one's wife or husband by a former marriage.

Sterbreche, Strebrich, the breaking, obstructing, or straitening of a way.—*Termes de la Ley.*

Sterling, genuine; having passed the test; money; standard-rate. See EASTERLING.

Stet processus, an order of the court to stay proceedings. Strictly, it can only be made with the consent of the parties; but where the ends of justice will be better answered by this course, it is authoritatively recommended by the court. Each party pays his own costs. As to staying further proceedings in an action, see 2 *Chit. Arch. Prac. by Pren.* 1363.

Stethe, or **Stede,** betokeneth properly a bank of a river, and many times a place.—*Co. Litt.* 4 *b.*

Steuart, the Queen's sheriff within the proper lands of the Crown.—*Scotch term.*

Stevedore [fr. *estivar*, Sp., to stow], a person employed to stow a cargo on board a ship.

Steward [*seneschallus*, Lat.], an officer of chief account within his jurisdiction. See HIGH STEWARD.

Steward of the household. See MARSHALSEA.

Steward of a manor, the lord's deputy, who transacts all the legal and other business connected with the estate, and takes care of the court-rolls. In the royal-manors, the steward is appointed by patent. See 10 *Geo. IV.* c. 40, s. 14. He may make voluntary grants, which will be valid, notwithstanding any subsequent disability of the person who appointed him.

Should there be joint-stewards, one may act without the other (1 *Scriv.* 130). In other manors the chief steward is usually appointed by deed, though he may be appointed by parol; but corporations must always appoint by deed under their corporate seal.

The appointment of a steward is generally during the lord's pleasure; it may, however, be for years or for life, forfeitable by abuser, misuser, nonuser, or refuser. The steward's remedy for a disturbance of his office is an action on the case for consequential damages. The Court of Queen's Bench will, upon a proper case made out, grant a writ of *mandamus* to restore a steward to his office. A steward may depute or authorize another to hold a

court; and the acts done in a court so holden will be as legal as if the court had been holden by the chief steward in person. So an under-steward or deputy may authorize another as sub-deputy, *pro hâc vice*, to hold a court for him, such limited authority not being inconsistent with the rule '*delegatus non potest delegare.*'

This deputy, or under-steward, may be appointed either in writing, or by parol, although the appointment of the chief steward do not contain an express authority for that purpose.

Stews, certain brothels anciently permitted in England, suppressed by Henry VIII.

Stickler, an inferior officer who cuts wood within the royal parks of Clarendon; an arbitrator; an obstinate contender about anything.

Stillicidium, the water that falls from the roof of a house in scattered drops.—*Civ. Law.*

Stint, *common without*; common *sans nombre*, i. e. without number. See COMMON.

Stipend, a salary, settled pay; a provision made for the support of the clergy.

As to the payment of curates, see 1 & 2 *Vict.* c. 106.

Stipendiary estates, i. e. feuds, estates granted in return for services, generally of a military kind.

Stipendiary magistrates, paid magistrates. As to these, see 2 & 3 *Vict.* c. 71, s. 9; 11 & 12 *Vict.* c. 42, s. 29; 17 & 18 *Vict.* c. 20; 18 & 19 *Vict.* c. 126, ss. 16, 19; 21 & 22 *Vict.* c. 78; and 26 & 27 *Vict.* c. 97.

Stipendium [fr. *stips*, a piece of money, and *pendo*, to weigh, Lat.], wages; pay. Before silver was coined at Rome, the copper money in use was paid by weight, and not by scale.

Stipulated damage, liquidated damage, which see.

Stipulation, bargain; also, a recognizance of certain fidejussors in the nature of bail, taken in the Admiralty courts.

It is the highest and most authentic contract known to the civil law, entered into before the magistrate or public officer, through the medium of interrogatories and answers calculated to explain the nature and extent of the undertaking, to put the parties entering into it on their guard, and to show it to be their mature and deliberate act. It could not be impeached except for fraud or deceit, and could not be released or discharged, except by an equally solemn proceeding, conducted by question and answer before the public functionary, called an acceptilation.—*Vinnius*, 677; *Sand. Just.* 431.

Stiremannus, a pilot or steersman.—*Domesday.*

Stirpes. See PER STIRPES.

Stock, a race, lineage, or family; also, money, capital, or credit; also, the funds, considered merely as perpetual annuities, redeemable at the pleasure of the Government. See FUNDS.

Stockbroker, one who buys and sells stock as the agent of others. The 7 Geo. II. c. 8 (known as Sir John Barnard's Act) requires a stockbroker to keep a book called the broker's book, in which he is to enter all contracts for stock made by him on the same day, with the names of the parties and the day, which book he is to produce when lawfully required. See BROKER.

Stock Certificate Act, 1863, 26 Vict. c. 28. The object of this Act is to give further facilities to the holders of public stocks in respect of the transfer thereof, and the receipt of dividends thereon. It enacts that, with the exception and subject to the conditions therein mentioned, every person inscribed in the books of the Bank of England or of the Bank of Ireland, as proprietor of a share in the public stocks, may obtain a certificate or certificates of title to the said share, or to any part thereof, having annexed coupons entitling the bearer to the dividends payable in respect thereof (s. 3). No trustee of any such share is entitled to such certificate unless authorized by the terms of his trust (s. 4). No certificate shall be granted in respect of any sum of stock not being 50*l.* or a multiple of 50*l.*, or in respect of any larger amount than 1,000*l.* The Treasury may by warrant declare that any one or more of the public stocks specified in the warrant shall be subject to the provisions of this Act; but, until that declaration is made, stock certificates shall be issued only in respect of the 3*l.* per Cent. Consolidated Annuities, Reduced 3*l.* per Cent. Annuities, and the New 3*l.* per Cent. Annuities. The coupons shall contain the dividends payable in respect of the stock described in the certificate for not less than five years from the date of the certificate. At the expiration of that period fresh coupons shall be issued for a further period of five years, and so for successive periods of five years; or in lieu of fresh coupons the Bank may give in exchange a fresh certificate with coupons attached. The coupons are payable at the chief establishment of the Bank at the expiration of three clear days from the day of presentation, and at any branch establishment more than ten miles from the chief establishment, at the expiration of five clear days from the day of presentation. The payment to the bearer of any coupon shall be a full discharge to the Bank. The Bank may grant a new certificate or coupon for one lost or destroyed on receiving an indemnity (s. 5). A stock certificate, unless a name is inscribed therein, shall entitle the bearer to the stock therein described, and shall be transferable by delivery. The bearer of a stock certificate may convert the same into a nominal certificate by inserting therein the name, address, and quality of some person. A stock certificate, when it becomes nominal,

shall not be transferable, and the nominee, or some person deriving title from him by devolution in law as in the Act mentioned, shall alone be recognised by the Bank as entitled to the stock described in the certificate. Upon the death of the nominee in a nominal certificate, his personal representative; upon his bankruptcy, his assignees; and upon the marriage of a female nominee, her husband; shall alone be recognised by the Bank as entitled to the stock, &c. (s. 6).

The nominee in a nominal stock certificate shall not be entitled to have the same renewed as nominal, but he shall, on delivery up to the Bank of his certificate, and of all unpaid coupons belonging thereto, and in compliance with any regulation made in pursuance of this Act, be entitled to receive a certificate to bearer. The nominee in a nominal stock certificate, and the bearer of a stock certificate to bearer, may, on the like delivery, &c., require to be registered in the books of the Bank as a holder of the stock described in the certificates under which they derive title, and thereupon the stock shall be re-entered in the books of the Bank, and become transferable, and the dividends payable as if no certificate had been issued (s. 7).

Income tax is to be deducted from coupons (s. 11). Sums due and not demanded on coupons are to be dealt with as unclaimed dividends (s. 12). When a certificate is outstanding, the stock represented thereby shall cease to be transferable in the books of the Bank. The stock described in a certificate shall be deemed to be charged on the same securities, and be subject to the same powers of redemption, &c., as if it had continued registered in the books of the Bank. Stock described in a certificate in respect of which no coupons have been presented for payment for ten years, may be dealt with as if it were stock upon which no dividends had been demanded for ten years (s. 13). The Act provides for the payment of fees, for the making of regulations, and for the punishment of forgery, &c.

Stock Exchange, a society of stockbrokers and stockjobbers. In the transaction of business they are governed by certain usages, and by rules framed by the committee of the Stock Exchange. Also, the place where they meet to transact business.

Stock-in-trade exempted from rating to the relief of the poor by 3 & 4 Vict c. 89, continued by 22 & 23 Vict. c. 44, until October 1, 1862, and thence until the end of the next session. It was not renewed in that session, and has therefore expired.

Stockjobber, a dealer in stock; one who buys and sells stock on his own account.

Stockjobbing Act, 7 Geo. II. c. 8 (made perpetual by 10 Geo. II. c. 8), which was passed to prevent gambling in the funds, enacted, in substance, that all contracts in the nature of wagers relating to the present or future price of stock, or other public securities, should be void, and that the premiums paid on any such contracts should be recoverable back, and as to some of such contracts, rendered persons entering into them liable to a penalty. This Act was repealed by 23 & 24 Vict. c. 28, which in effect put gambling contracts in the funds upon the same footing as other gaming contracts.—8 & 9 *Vict.* c. 100, s. 18.

Stocks, prison for the legs.

Stop order, if any person entitled, in expectancy or otherwise, to any share or portion of any stocks or funds, standing in the name of the Accountant-General of the Court to the general credit of any cause, or to the account of any class or classes of persons, assign his interest in such stock or funds, the assignee (although not a party to the cause in which the fund is standing) may present a petition for a stop order to prevent the transfer or payment of such stock or funds, or any part thereof, without notice to him. And a person having a lien on a fund in court may obtain a stop order.

The petition must show generally the title of the assignor to the fund, and his assignment of it to the petitioner, which should be established by affidavit. The assignment, however, is generally proved by the assignor either joining in the petition, or appearing and admitting it. To obviate the cost of proving the deed, it is usual to give to the assignee power to use the name of the assignor, as a co-petitioner.

In all cases, where any stocks or funds are or shall be standing in the name of the Accountant-General to the general credit of any cause, or to the account of any class or classes of persons, and an order is made to prevent the transfer or payment of such stocks or funds, or any part thereof, without notice to the assignee of any person or persons entitled, in expectancy or otherwise, to any share or portion of such stocks or funds, the person or persons by whom any such order shall be obtained, or the shares of such stocks or funds affected by such order, shall, at the discretion of the court, be liable to pay any costs, charges, and expenses, which by reason of any such order having been obtained, shall be occasioned to any party to the cause, or any person interested in any such stocks or funds; and henceforward, any person presenting a petition for any such order, shall not be required to serve such petition upon the parties to the cause, or upon the persons interested in parts of the stocks or funds not sought to be affected by any such order. See *Consol. Ord.* 1860, xxvi. The assignor, however, must be served with a copy of the petition when it is necessary to prove the assignment.

The order being passed and entered, is delivered at the Accountant-General's office, upon which the payment of the fund is stayed, until the order is discharged, or another order is made directing its payment, notwithstanding the stop order. The person putting on the stop order may appear at the hearing, or upon a petition being presented for the payment of the fund to a party in the cause, who claims it. The stop order will then be either discharged, or payment to the person who has obtained it will be ordered.

When the assignor and assignee concur, the stop order is obtainable at chambers.—*Smi. Ch. Pr.* 505.

As to the unclaimed stock in the Bank of England, see 56 *Geo. III.* c. 60, s. 5; and 8 & 9 *Vict.* c. 62.

Stoppage, compensation or set-off.—*Civ. Law.*

Stoppage in transitu, an unpaid vendor may, in case of the vendee's insolvency, stop the goods sold, *in transitu*; but this right may be defeated by negotiating the bill of lading with a *bonâ fide* indorsee. The right of a vendor to stop *in transitu* is bestowed upon him in order to prevent the injustice which would take place, if, in consequence of the vendee's insolvency, while the price of the goods was yet unpaid, they were to be applied in satisfaction of his liabilities, and so the property of one man were to be disposed of in payment of the debts of another. This stoppage must be considered not as a rescission of the contract, but as merely replacing the vendor in the same position as if he had not parted with the possession; from which it follows that the vendor's right of lien on the part stopped is re-vested and no more. Stoppage *in transitu*, as its name imports, can only take place while the goods are on their way; if they once arrive at the termination of their journey, and come into the actual or constructive possession of the consignee, there is an end of the vendor's right over them. And, therefore, in most of the cases the dispute has been whether the goods had or had not arrived at the termination of their journey. The rule to be collected from all the cases is, that they are *in transitu* so long as they are in the hands of the carrier as such, whether he was or was not appointed by the consignee; and, also, so long as they remain in any place of deposit connected with their transmission. But, that, if after their arrival at their place of destination, they be warehoused with the carrier, whose store the vendee uses as his own, or even if they be warehoused with the vendor himself, and rent be paid to him for them, that puts an end to the right to stop *in transitu*. See *Lickbarrow* v. *Mason*, 6 *East.* 21; 1 *Smi. L. C.* 595–659; and 2 *Selwn. N. P.* 1272–1294.

Stores, the supplies of different articles provided for the subsistence and accommodation of a ship's crew and passengers.

It is laid down, in general, that the surplus stores of every ship arriving from parts beyond seas are to be subject to the same duties and regulations as those which affect similar commodities when imported as merchandise; but if it shall appear to the collector and comptroller that the quantity of such stores is not excessive, nor unsuitable, under all the circumstances of the voyage, they may be entered for the private use of the master, purser, or owner of such ship, on payment of the proper duties, or be warehoused for the future use of such ship, although the same could not be legally imported by way of merchandise.—3 & 4 *Wm. IV.* c. 52, s. 35.

Stouthrieff, forcible depredation within or near a dwelling-house.—*Scotch Law.*

Stowage, money paid for a room where goods are laid; housage.

Stowe [Sax.], properly by a bank of a river; a place.—*Co. Litt.* 4 *b.* See STETHE.

Stranding, the running of a ship on shore or on a beach.

It is the invariable practice to subjoin the following memorandum to policies of insurance executed by private individuals in this country: 'N.B. Corn, fish, salt, fruit, flour, and seed, are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides, and skins, are warranted free from average under 5*l.* per cent. and all other goods, also the ship and freight, are warranted free from average under 3*l.* per cent. unless general, or the ship be stranded.'

It is, therefore, of the greatest importance accurately to define what shall be deemed a stranding. But this is no easy matter; and much diversity of opinion has been entertained with respect to it. It would, however, appear that merely striking against a rock, bank, or shore, is not a stranding, and that to constitute it, the ship must be upon the rock, &c. for some time. Mr. Justice Park has the following observations on this subject:—'It is not every touching or striking upon a fixed body in the sea or river that will constitute a stranding. Thus, Lord Ellenborough held that, in order to establish a stranding, the ship must be *stationary*; for that merely striking on a rock and remaining there a short time (as in the case then at the bar, about a minute and a half), and then passing on, though the vessel may have received some injury, is not a stranding. Lord Ellenborough's language is important. *Ex vi termini*, stranding means lying on the shore, or something analogous to that. To use a vulgar phrase, which has been applied to this subject, if it be *touch and go* with the ship, there is no stranding. It cannot be

enough that the ship lie for a few minutes on her beam-ends. Every striking must necessarily produce a retardation of the ship's motion. If by the force of the elements she is run aground, and becomes stationary, it is immaterial whether this be upon piles, or the muddy bank of a river, or on rocks, or the sea-shore; but a mere striking will not do, wherever that may happen. I cannot look to the consequences without considering the *causa causans*. There has been a curiosity in the cases about stranding not creditable to the law. A little common sense may dispose of them more satisfactorily.'—*McCull. Comm. Dict.*; 2 *Selw. N. P.* 955.

Stratocracy [fr. στρατός, Gk., an army, and κράτος, power], a military government.

Strator, or **Stretward,** a surveyor of the highways.

Strict settlement. This limits an estate to the use of the husband for life, remainder to trustees to support contingent remainders, remainder to the wife for life, remainder to other trustees for raising portions for younger children, remainder to the first and other sons in tail-male, remainder to the daughters, as tenants-in-common, with cross-remainders between them, remainder to the husband in fee. The usual course with conveyancers, where property of the wife is settled, is to confer on the wife a power of appointment, in the event of there being no issue, so as to give her the option of defeating the limitations over of her estate. The object of a strict settlement is to put it out of the power of parents to deal with the corpus of an estate to the prejudice of their issue.

Strictissimi juris [Lat.] (*of the most strict law*).

Strictum jus [Lat.] (*mere law in contradiction to equity*).

Striking off the roll. Applications are frequently made to strike off the rolls solicitors and attorneys for misconduct. Sometimes, however, they are struck off at their own request.—1 *Chit. Arch. Prac. by Pren.* 144 & 152; and *Smi. Ch. Pr.* 96.

Strumpet [*meretrix*, Lat.], a whore, harlot, or courtezan. This word was anciently used for an addition; it occurs to the name of a woman in a return made by a jury in the sixth year of King Henry V.

St. Simonism, an elaborate form of non-communistic socialism. It is a scheme which does not contemplate an equal, but an unequal division of the produce; it does not propose that all should be occupied alike, but differently, according to their vocation or capacity; the function of each being assigned, like grades in a regiment, by the choice of the directing authority, and the remuneration being by salary, proportioned to the importance, in the eyes of that authority, of the function itself, and the merits of the person who fulfils it.—1 *Mill's Pol. Eco.* 258.

Stupration [fr. *stupro*, Lat.], rape, violation.

Stuprum, every union of the sexes forbidden by morality.—*Civ. Law.*

Sturgeon, a royal fish, which, when either thrown ashore or caught near the coast, is the property of the sovereign.

Sturges Bourne's Act, the Select Vestry Act, 59 Geo. III. c. 12, by which the inhabitants of any parish in vestry assembled, were enabled to commit the management of its poor to a committee of the parishioners appointed for that purpose, and called a select vestry, to whose orders the overseers were bound to conform.

Style, to call, name, or entitle one; also, the title or appellation of a person. See CALENDAR.

Style of Court, the practice observed by a court in its way of proceeding.

Suability, liability to be sued.

Suable, that may be sued.

Sub-agent, an agent of an agent.

Subah, a province such as Bengal. A grand division of a country, which is again divided into *circars*, *chucklas*, *pergunnahs*, and *villages*. *Indian.*

Subahdar, the holder of the subah, the governor or viceroy.—*Ibid.*

Subahdary, the officer or jurisdiction of a subahdar.—*Ibid.*

Subinfeudation, where the inferior lords, in imitation of their superiors, began to carve out and grant to others minuter estates than their own, to be held of themselves, and were so proceeding downwards *in infinitum* till stopped by legislative provisions. See TENURE.

Subjects, the members of a commonwealth under a sovereign.

Sublatâ causâ tollitur effectus.—*Co. Litt.* 303.—(Remove the cause, the effect ceases.)

Sublatâ veneratione magistratuum, respublica ruit.—*Jenk. Cent.* 48.—(The commonwealth perishes, if the respect for the magistrates be taken away.)

Sublato fundamento cadit opus.—*Jenk. Cent.* 106.—(Remove the foundation, the superstructure falls.)

Sublato principali tollitur adjunctum.—*Co. Litt.*—(If the principal is taken away, its adjunct is also taken away.)

Sub-lease, an under-lease.

Sublegerius [fr. *sybleger*, Sax.], one who is guilty of incestuous whoredom.

Submarshal, an under-marshal.

Submission to arbitration. See ARBITRATION.

Sub modo (*under measure* or *condition*).

Subnervare, to ham-string by cutting the sinews of the legs and thighs.

It was an old custom *meretrices et impudicas mulieres subnervare.*

Sub nomine mulieres continetur quælibet fœmina. Propriè sub nomine mulieris, continetur virgo ; appellatione mulieris in legibus Angliæ continetur uxor, et sic filius natus vel filia nata ex justâ uxore appellatur in legibus Angliæ, filius mulieratus, seu filia mulierata.—Co. Litt. 243.—(Under the word *mulieres* every woman is included. Properly speaking, under the name of *mulier* an unmarried woman is included, but in the laws of England, by the title of *mulier* a wife is included, and so a son or daughter, born of a lawful wife, is called, in the laws of England, *filius mulieratus* (a son born of a married woman) or *filia mulierata* (a daughter born of a married woman).)

Subnotation, a rescript, which see.

Subornare est quasi subtus in aure ipsum male ornare, unde subornatio dicitur de falsi expressione, aut de veri suppressione.—3 Inst. 167.—(To suborn is as it were in an underhand manner to adorn oneself by stealth in the ear of another ; whence to express what is false, or suppress what is true, is called subornation.)

Subornation, the crime of procuring another to do a bad action. See PERJURY.

Subpœna [fr. *sub*, Lat, under, and *pœna*, penalty], a writ commanding attendance in a court under a penalty. It bears a close analogy to the citation, or *vocatio in jus* of the civil and canon laws. There are several kinds of subpœna.

At common law there are two to compel the attendance of witnesses :—

(1) *Subpœna ad testificandum*, the common *subpœna*, which is personally served upon a witness, in order to compel him to attend the trial or inquiry, to give evidence.

(2) *Subpœna duces tecum*, this is personally served upon a person, who has in his possession any written instrument, &c. which would be evidence.

These subpœnas are also used in *criminal* proceedings ; four witnesses can be included in one subpœna, whether in civil or criminal cases.

There are several *subpœnas* used in the course of a *Chancery* suit, but only three names can be included in one writ, husband and wife counting as one. They are the following :—

(1) *Subpœna ad testificandum.*
(2) *Subpœna duces tecum.*
(3) *Subpœna* to hear judgment.
(4) *Subpœna* for costs.
(5) *Subpœna* served upon an infant on attaining majority, to give him an opportunity to show cause against a decree.
(6) *Subpœna* to name a solicitor where the solicitor of a party has died, and such party refuses to appoint another.

The *subpœna* to rejoin is abolished (see *Consol. Ord.* 1860, xvii. r. 2), and the 15 & 16 Vict. c. 86, s. 2, abolished the *subpœna* to appear to and answer a bill.

Subpœna office *in Chancery* abolished, and its duties transferred to Clerks of Records and Writs.—15 & 16 *Vict.* c. 87, s. 28.

Sub pede sigilli [Lat.] (*under the foot of the seal*).

Subreption, the obtaining a gift from the Crown by concealing what is true.

Subrogation, substitution.

Subsequens matrimonium tollit peccatum præcedens.—Reg. Jur. Civ.—(A subsequent marriage removes a previous criminality.)

Subsequent condition. See CONDITION SUBSEQUENT.

Subsidy, an aid, tax, or tribute granted to the Crown for the urgent occasions of the kingdom, to be levied on every subject of ability, according to the value of his lands or goods.

Substituted Executor, one appointed to act in the place of another executor upon the happening of a certain event, e. g. if the latter should refuse the office.

Substitution, the placing of one under another to transact some business, &c.

In the civil law a conditional appointment of a *hæres.* For its three kinds, see *Cum. C. L.* 143 ; *Sand. Just.* 291.

In the Scotch law, the enumeration or designation of the heirs in a settlement of property ; substitutes in an entail are those heirs who are appointed in succession on failure of others.

Sub-tenant, an under-tenant.

Subtraction, neglecting or refusing to perform any suit, service, custom or duty, or to pay rents, service, tolls, &c.

Suburbani, husbandmen.

Succession, the power or right of coming to the inheritance of ancestors. See CANONS OF INHERITANCE, DISTRIBUTION.

Succession Duties Act. 16 & 17 Vict. c. 51, which came into operation on the 19th May, 1853.

Successor, one that follows in the place of another.

Succurritur minori ; facilis est lapsus juventutis.—Jenk. Cent. 47.—(A minor is to be assisted : a mistake of youth is easy.)

Sucken, the whole lands astricted to a mill, the tenants of which are bound to grind there.

Sudbury borough disfranchised by 7 & 8 Vict. c. 53.

Sudder, the best ; the fore-court of a house ; the chief seat of government contradistinguished from *mofussil*, or interior of the country ; the presidency.—*Indian.*

Sudder Dewanny Adawlut, the chief civil court of justice held at the presidency.—*Ibid.*

Sudder Miaamut Adawlut, the chief criminal court of justice.—*Indian.*

Sue, to prosecute by law, to claim a civil right by means of legal procedure.

Sufferance, *Tenancy at.* This is the least and lowest estate which can subsist in realty. It is in strictness not an estate, but a mere possession only. It arises when a person after his right to the occupation, under a lawful title, is at an end, continues (having no title at all) in possession of the land, without the agreement or disagreement of the person in whom the right of possession resides. Thus, if A. is a tenant for years, and his term expires, or is tenant at will, and his lessor dies, and he continues in possession, without the disagreement of the person who is entitled to the same, in the one and the other of these cases he is said to have the possession by sufferance—that is, merely by permission or indulgence, without any right; the law esteeming it just and reasonable, and for the interest of the tenant, and also of the person entitled to the possession, to deem the occupation to be continued by the permission of the person who has the right, till it is proved that the tenant withholds the possession wrongfully, which the law will not presume. As the party came to the possession by right, the law will esteem that right to continue either in point of estate, or by the permission of the owner of the land, till it is proved that the possession is held in opposition to the will of that person.

An under-tenant, who is in possession at the determination of the original lease, and is permitted by the reversioner to hold over, is a *quasi* tenant at sufferance.

Lord Coke tells us (in 2 *Inst.* 134) this diversity is to be observed, that where a man cometh to a particular estate *by the act of the party*, there if he hold over, he is a tenant at sufferance; but where he cómeth to the particular estate *by act of law*, as a guardian, for instance, there, if he hold over, he is no tenant at sufferance, but an abator. The same doctrine is laid down in 1 *Inst.* 271.

This tenancy is created only by construction of law, and cannot originate in the agreement of the parties. For the agreement of the parties would pass either an estate at will, or from year to year, according to the interest of the parties. There exists no privity between the tenant at sufferance (who has but a mere possession, without privity) and the person entitled to the possession; yet such occupancy is not adverse to the title of the person who possesses the right of entry, unless he choose to consider it so; but an adverse possession will take place on an entry and perception of the profits of the land by a person, without the reversioner's consent, after the death of a tenant at sufferance. This estate cannot be the subject of conveyance or transfer.

Since *laches* or neglect can never be imputed to the sovereign, a lessee of crown-lands, holding them over after the determination of his interest in them, is never considered a tenant by sufferance, but he is deemed a bailiff of his own wrong and so accountable to the Crown, but after office found, he becomes an absolute intruder.

This estate is put an end to whenever the true owner actually enters upon the lands, by which he declares the continuance of the tenant tortious and wrongful, or demands possession, or brings his action of ejectment to recover possession, which he may do without any previous demand. Prior to entry, an action of trespass cannot be maintained against the tenant, for his sufferance must be previously determined by entry, before this possessory action will lie.

Sufferance wharves are wharves appointed by the commissioners for the purposes of the customs.—16 & 17 *Vict.* c. 107, s. 13.

Sufferentia pacis, a grant or sufferance of peace or truce.

Suffragan. Bishops are styled *suffragan*, a word signifying deputy in respect of their relation to the archbishop of their province. But formerly each archbishop and bishop had also his suffragan to assist him in conferring orders, and in other spiritual parts of his office within his diocese. These are called suffragan bishops, and resemble the *chorepiscopi*, or bishops of the country in the early times of the Christian church. How this inferior order of bishops may be elected and consecrated is regulated by 26 Hen. VIII. c. 14.; but notwithstanding this statute, it is not usual to appoint them. They should not be confounded with the *coadjutors* of a bishop, the latter being appointed, in case of a bishop's infirmity, to superintend his jurisdiction and temporalities, neither of which was within the interference of the former.—*Co. Litt. by Harg.* 94 (*a*), note (3).

Suffrage [fr. *suffragium*, the etymology is uncertain, for the opinions of those who connect it with φράξεσθαι, or *fragor*, do not deserve notice. Wunder thinks that it may possibly be allied with *suffrago*, and signified originally an ankle-bone or knuckle-bone], vote; voice given in a controverted point; aid, assistance.

Sugar Duties. See 8 & 9 *Vict.* c. 13; 13 & 14 *Vict.* c. 67; 18 & 19 *Vict.* c. 22; 20 & 21 *Vict.* c. 61; 25 & 26 *Vict.* c. 84; and 26 *Vict.* c. 22.

Suggestio falsi [Lat., *a representation of untruth*], one of the branches of fraud.

Suggestion, a surmise or representing of a thing; an entry of a fact on the record.

Suicide, self-slaughter.

Suicides may be divided into two classes, founded upon the different causes or circumstances by which they are induced. The first includes those who have deliberately committed the act from the force of moral motives alone; the second, those who have been affected with some pathological condition of the brain, excited or not by moral motives.

That suicide is often committed under the impulse of mental derangement, even when mental derangement would not otherwise have been suspected, is a doctrine that was long since taught by some mental writers, and has been confirmed beyond the shadow of a doubt by the researches of mental inquirers.

The suicidal propensity is generally attributed to pathological causes; but there is a large class of cases in which no insanity of mind or body has been observed or suspected, though we have good reason to suspect its existence. Within a few years past, the attention of the medical profession has been directed to this subject; and their researches have abundantly established the fact, that the efficient cause is some pathological change, or physical peculiarity, not in every ease easily defined or understood, but none the less certain on that account.

Among the features which ally the propensity to suicide to ordinary mania, is that of its hereditary disposition. Dr. Gall knew several families in which the suicidal propensity prevailed through several generations. Fabret, whose researches have thrown much light on this affection, believes that it is more disposed to be hereditary than any other kind of insanity.

Another trait which the suicidal propensity possesses in common with some nervous diseases, though not insanity, is its disposition to prevail epidemically, as it were, in consequence of that law of our constitution, not well understood, called sympathy. It is a matter of common observation, that the occurrence of one case of suicide is followed, oftener than not, by one or more in the same community. It is related that thirteen hundred people destroyed themselves in Versailles in 1793; and that in one year, 1506, sixty perished by their own hands in Rouen.—*Burrow's Comm. on Insanity*, 438.

By the common law, a *felo de se* forfeits his property, his will becomes void as to personal property, and Christian burial is denied him. 4 *Geo. IV.* c 52, s. 1. Such severity has been generally avoided, by the almost universal practice of coroners' juries returning an inquest of insanity. In the Court of Probate the suicide of the deceased at or near the time of the execution of the will in dispute is evidence, although by no means conclusive evidence, of insanity.

In *Burrows* v. *Burrows*, 1 *Hagg. E. R.* 109, it was held by Sir *John Nicholl*, that where there was no evidence of insanity at the time of giving instructions for a will, the commission of suicide three days afterwards did not invalidate the will by raising an inference of previous derangement. In *Brookes* v. *Barret*, 7 *Pick.* 91, C.-J. *Parker* held that suicide, committed fifteen days after the date of the person's will, was not sufficient, in the absence of other evidence, to prove him insane, and thus invalidate the will, on account of the difficulty of ascertaining with precision the very inception of derangement, which weakens its force in relation to any antecedent act.—*Ray's Med. Jurisp. of Insanity*, 335; *Beck's Med. Jurisp.* 561.

Sui juris [Lat.] (*of his own right*).

Suit, a following. It is used in divers senses:

(1) An action-at-law, or proceeding by bill in Chancery; a prosecution; a petition to a court, &c.

(2) *Suit of court*, an attendance which a tenant owes to his lord's court.

(3) *Suit-covenant*, when one has covenanted to do suit and service in his lord's court.

(4) *Suit-custom*, where service is owed time out of mind.

(5) *Suithold*, a tenure in consideration of certain services to the superior lord.

(6) The following one in chase, as fresh suit.

Suiter, or **Suitor**, one that sues; a petitioner; a suppliant; a wooer.

Suitors' fee fund, a fund in the Court of Chancery into which the fees of suitors in that court are paid, and out of which are defrayed the salaries of various officers of that court. See 15 & 16 *Vict.* c. 87.

Suitress, a female supplicant.

Suit-silver, a small rent or sum of money paid in some manors to excuse the freeholders' appearance at the courts of their lord.

Sulh Ælmyssan, plough-arms.—*Anc. Inst. Eng.*

Sullery, a plough-land.—1 *Inst.* 5.

Sumage, toll for carriage on horseback.

Summa charitas est facere justitiam singulis et omni tempore quando necesse fuerit.—11 *Co.* 70.—(The greatest charity is to do justice to every person, and whenever it may be necessary.)

Summa ratio [*lex*] *est, quæ pro religione facit.*—5 *Co.* 14.—(The highest law is that which supports religion.)

Summary, an abridgement, brief, compendium; also a short application to a court or judge, without the formality of a full proceeding. See PLENARY.

Summer-hus silver, a payment to the lords of the wood on the Wealds of Kent, who used to visit those places in summer, when

their under-tenants were bound to prepare little summer-houses for their reception, or else pay a composition in money.—*Custom de Sittingburn, M.S.*

Summing up evidence. Upon the trial of any cause the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, to address the jury a second time at the close of such case, for the purpose of summing-up the evidence; and the party on the other side, or his counsel, shall be allowed to open the case, and also to sum up the evidence (if any); and the right to reply shall be the same as at present.—*C. L. P. A.* 1854, s. 18.

Summing-up, a judge's charge to a jury.

Summist, one who forms an abridgement.

Summoneas, a writ-judicial of great diversity, according to the divers cases wherein it was used. Obsolete.

Summoners, petty officers who cite and warn persons to appear in any court.—*Fleta,* l. ix.

Summonitiones aut citationes nullæ liceant fieri intra palatium regis.—3 *Inst.* 141.—(No summonses or citations are permitted to be served within the king's palace.)

Summonitores Scaccarii, officers who assisted in collecting the revenues by citing the defaulters therein into the Court of Exchequer.

Summons [fr. the writ called *summoneas. Pegge's Anecd. of the Engl. Lang.* 2nd edit. 173], a call of authority, admonition to appear in court, a citation.

A personal action is commenced by a writ of summons. There are five kinds:—

(1) Where the defendant resides, or is supposed to reside, in this country.

This writ need not set forth any form or cause of action, but it must contain the names of all the defendants, bear date on the day it is issued, and be indorsed with the name and place of abode of the attorney or agent, or plaintiff in person, taking it out. The attorney whose name is endorsed, must, upon a written demand, declare forthwith whether the writ has been issued with his privity, and if so, then he must declare in writing, within a time named in a judge's order, the plaintiff's calling and residence. The proceedings are stayed, if the writ have been issued without such privity.

An endorsement of the debt (if the action be for a debt) and costs on the writ and copy must be made, with a notice that further proceedings will be stayed upon payment within four days. The writ is in force for six calendar months, during which period a concurrent writ, or duplicate original, may be issued, dated on the same day as the original writ, and only to be in force for the same period. A copy of the writ may be served in any county, and the time of service must be endorsed upon the original writ within three days after the service, otherwise the plaintiff cannot proceed in case of non-appearance. The service is personal, but if, upon affidavit, a judge think that reasonable efforts have been made to effect service, and that the defendant knows the writ is issued against him, or that he wilfully evades the service, and has not appeared thereto, then he may order the plaintiff to proceed without personal service upon any terms he pleases.

The *distringas* to compel an appearance, or to proceed to outlawry on mesne process, is abolished, but the subsequent procedure in outlawry on final process remains the same.

A special endorsement of the particulars of debts or liquidated demands may be made on the writ, which will dispense with any further particulars, unless otherwise ordered; and a *mandamus* or injunction may also be claimed by indorsement.

(2) In case of an action against British subjects residing abroad, except in Scotland or Ireland, a writ of summons is framed to meet the circumstance, regulating the time for appearance according to the distance of their domicile from England. If service cannot be effected, or the defendant will not appear, a judge at chambers may, upon an affidavit of the facts, permit the plaintiff to proceed to judgment upon terms.

(3) In case of an action against a foreigner residing abroad, another form of a writ of summons should be adopted, and a notice of it served abroad, instead of a copy of the writ, and then the like proceedings may be had as in the instance of a British subject residing abroad.

(4) The Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67), extended to Ireland by 25 Vict. c. 24, provides a form of a writ of summons for an action on a bill of exchange or promissory note commenced within six months after the same shall have become due and payable. The plaintiff upon an affidavit of personal service of such writ, or an order for leave to proceed, can at once sign final judgment, unless the defendant have obtained leave of a judge to appear to such writ within twelve days from such service and defend the action, upon paying into court the sum indorsed on such writ, or upon an affidavit showing a defence upon the merits. The costs are fixed by a General Order, Michaelmas Term, 1855.

(5) A writ of summons against a trader having privilege of Parliament, whereupon proceedings in bankruptcy may be founded, in pursuance of 12 & 13 Vict. c. 106, s. 77,

on filing an affidavit of a sufficient petitioning creditor's debt. If the defendant do not pay or compound such debt, and enter an appearance within one calendar month after the service of the writ, he is deemed to have committed an act of bankruptcy from such service. See ACT OF BANKRUPTCY. As to writs of summons at common law, see 1 *Chit. Arch. Prac. by Pren.* 181, *et seq.*

The writ of summons upon a claim in Chancery is abolished by 15 & 16 Vict. c. 86, s. 2. As to the summary practice in Chancery on summonses, see *Smi. Ch. Pr.* 501, *et seq.* As to summonses and orders at common law in Judges' chambers, see 2 *Chit. Arch. Prac. by Pren.* 1586, *et seq.* As to a trader-debtor-summons in bankruptcy, see 12 & 13 *Vict.* c. 106, s. 78. As to summonses and orders in the Court of Probate, see *Contentious Rules of* 1862; and as to those in the court for divorce and matrimonial causes, see *Rules and Orders of* 1858; *Further Rules and Regulations of* 1858.

Summum jus, summa injuria. Summa lex, summa crux.—Hob. 125.—(Extreme law is extreme injury. Strict law is strict punishment.)

Sumner, one who cites or summonses.

Sumptuary laws, those in restraint of luxury, excess in apparel, &c.; they are all repealed by 1 Jac. I. c. 25.—3 *Hall, M. A.* c. ix., pt. 2, p. 343.

Sunday [fr. *sunnan daeg*, Sax., the day of the sun], the first day of the week, the Sabbath, the Lord's day, set apart for the service of God, to be kept religiously, and not to be profaned. *Wheat. Com. Pr.* 185. It is a *dies non juridicus*, but an arrest for crime can be effected on this day; and bail can arrest their principal, and a serjeant-at-arms can apprehend; but no other law proceedings can be taken. By 29 Car. II. c. 7, it is enacted that 'no tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings upon the Lord's Day, or any part thereof (works of necessity and charity only excepted).' A contract of hiring and service for a year, between a farmer and a laborer, on a Sunday, is not within the prohibition. A Bill of Exchange drawn on a Sunday is not void. The owner of a stage-coach is not within the statute, nor are railways. See SABBATH.

Sunnud, a prop or support, a patent, charter, or written authority, for holding either land or office.—*Indian.*

Super altum mare [Lat.] (*upon the high sea*).

Superannuation Acts, for pensioning the civil servants of the Crown; 4 & 5 Wm. IV. c. 24; 20 & 21 Vict. c. 37; 22 Vict. c. 26; 23 & 24 Vict. c. 89; and 25 & 26 Vict. c. 73.

Supercargo, an officer in a ship, whose business is to manage the trade. A person employed by commercial companies or private merchants, to take charge of the cargoes exported, to sell them abroad to the best advantage, and to purchase proper commodities to relade the ship homewards. He goes out and returns home with the ship, thus differing from factors, who have a fixed residence.

Superficiarius, a builder upon another's land under a contract.—*Civ. Law.*

Superficias, the alienation by the owner of the surface of the soil of all rights necessary for building on the surface, a yearly rent being generally reserved; also a building or erection.—*Sand. Just.* 226.

Super fidem chartarum, mortuis testibus, erit ad patriam de necessitate recurrendum.—Co. Litt. 6.—(The truth of charters is necessarily to be referred to a jury, when the witnesses are dead.)

Superfœtation, the conception of a second embryo during the gestation of one already conceived, so that the two children may be born at the same or at different times. Its bearing in legal medicine is on the question of legitimacy.

Should the doctrine of superfœtation ever be pleaded in medico-legal cases, the laws of legitimacy must be the guide, both as to premature and protracted births. The latest born should fall within the legal term, or be excluded from the privileges attendant on it; and this is more particularly necessary from the obscurity that invests the subject.

This phenomenon is generally thought by the faculty to be impossible. It has been suggested that one conception may follow another within a short period, and that twins may be the result of two distinct conceptions; and this has been denominated *super-conception*; but it is hardly probable, say the opponents of this doctrine, that a second conception should take place when a prior conception has already arrived at the second month. It is not uncommon in the case of twins that one should be born prematurely, and the other go on to its full period. See further on this subject, *Beck's Med. Jurisp.* 158; *Taylor's Med. Jurisp.* c. 50; and *Guy's Forensic Med.* 87.

Superflua non nocent.—Jenk. Cent. 184.—(Superfluities hurt not.)

Super-institution, the institution of one in an office to which another has been previously instituted; as where A. is admitted and instituted to a benefice upon one title, and B. is admitted and instituted on the title or presentment of another.—2 *Cro.* 463.

A church being full by institution, if a second institution is granted to the same church, this is a super-institution; concerning which two things have been resolved:—(1) that the super-institution, as such, is pro-

perly triable in the spiritual court; (2) that it is not triable there, in case induction has been given upon the first institution.

The advantage of a super-institution is, that it enables the party who obtains it to try his title by ejectment, without putting him to his *quare impedit*; but many inconveniences thence following (e. g. the uncertainty to whom tithes shall be paid, and the like), this method has been discouraged.—*Mire. on Ad.* 189.

Superintendent Registrar, an officer who superintends the registrars of births, deaths, and marriages. There is a superintendent registrar in every poor law union in England and Wales. The office is filled as of right by the clerk to the guardians of the union, if he is duly qualified, and accepts it. These superintending registrars are under the authority of the Registrar-General. See 6 & 7 *Wm. IV.* c. 86; and 15 & 16 *Vict.* c. 25.—3 *Step. Com.* 344.

Superintendents of the China trade. By 3 & 4 Wm. IV. c. 93, the Crown had authority to appoint three officers called *superintendents*, to whom was to be committed the regulation of British trade and commerce to and from this country; and to create a court of justice, with criminal and Admiralty jurisdiction for the trial of offences committed by the subjects of the realm in China. Since this Act we have acquired the island of Hong Kong, and established a legislative council there; and appointed as governor of the island the officer invested with the office of chief superintendent; and it was enacted by 6 & 7 Vict. c. 80, that it should be lawful for Her Majesty by commission to authorize such superintendent, so long as he should be governor of Hong Kong, to enact, with the advice of the said legislative council, all such laws as might be necessary for the good government of British subjects in China, or within any ship not more than 100 miles from China; and to enforce the execution of such laws by pains and penalties. The same power is also given to Her Majesty in Council. See also 22 & 23 *Vict.* c. 9.

Superintending Constables, those who have the charge of lock-up houses, &c.—13 & 14 *Vict.* c. 20, s. 6.

Superior, the grantor of a feudal right to be held of himself.

Superior Courts, the Courts of Chancery, Queen's Bench, Common Pleas, and Exchequer, at Westminster. See these courts treated of under the proper titles.

Super-jurare, a term anciently used when a criminal endeavoured to excuse himself by his own oath, or the oath of one or two witnesses, and the crime objected against him was so plain and notorious that he was convicted on the oaths of many more witnesses.

Supernumerarii, advocates not members of the college.—*Civ. Law.*

Superoneratione pasturæ, a judicial writ that lay against him who was impleaded in the county-court for the surcharge of a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the superior courts. Obsolete.

Super prærogativâ regis, a writ which formerly lay against the king's tenant's widow for marrying without the royal license.—*F. N. B.* 174.

Supersedeas, a writ that lies in a great many cases; and signifies in general a command, on good cause shown, to stay some ordinary proceedings which ought otherwise to proceed.—*F. N. B.* 236.

Supersedere, a private agreement among creditors to supersede proceedings against the person of a bankrupt or other debtor.—*Scotch term.*

Super statuto, 1 Edw. III. c. 12, a writ that lay against the king's tenant holding in chief, who aliened the king's land without his license.

Super statuto de articulis cleri, a writ which lay against a sheriff or other officer who distrained in the king's highway, or on lands anciently belonging to the church.

Super statuto facto pour seneschal et marshal de roy, &c., a writ which lay against a steward or marshal for holding plea in his court, or for trespass or contracts not made or arising within the king's household.

Super statuto versus servantes et laboratores, a writ which lay against him who kept any servants who had left the service of another contrary to law.

Superstitious uses. See CHARITIES.

Supervisor, a surveyor or overseer.

Super visum corporis [Lat.] (*upon view of the corpse*).

Supplemental answer, one filed in Chancery for the purpose of correcting, adding to, and explaining an answer already filed.—*Smi. Ch. Pr.* 334.

Supplemental bill, an addition to an original bill in equity, in order to supply some defect in its original frame and structure. Facts occurring subsequently to the filing of an original bill may be added by amendment or supplemental statement.—15 & 16 *Vict.* c. 86, s. 53; *Consol Ord.* 1860, xxxii., r. 2; *Smi. Ch. Pr.* 737.

Supplemental bill, *bill in the nature of a.* This bill and the above-named bill are usually confounded together; but a prominent distinction between them seems to be that a supplemental bill is properly applicable to such cases only where the same parties and the same interests remain before the court; whereas an original bill, in the nature of a supple-

mental bill, is properly applicable, when new parties with new interests, arising from events which have happened since the institution of the suit, are brought before the court.—*Story's Eq. Plead.* 265.

Supplemental claim, a further claim which is filed when further relief is sought after the bringing of a claim.—*Smi. Ch. Pr.* 655.

Supplement, *Letters of*, where a person is sued before an inferior court, and does not reside within its jurisdiction, these letters are obtained on a warrant from the Court of Session, and in these he may be cited to appear before the inferior judge.—*Scotch law.*

Suppletory oath, the oath of a litigant party in the spiritual and civil-law courts.

Supplicavit, a writ issuing out of Chancery for taking surety of the peace, upon articles filed on oath, when one is in danger of being hurt in his body by another; it is addressed to the justices of the peace and sheriff of the county, and is grounded upon the 1 Edw. III. st. 2, c. 16, which ordains that certain persons shall be appointed by the chancellor to take care of the peace, &c.—*F. N. B.* 80.

This writ is seldom used, for when application is made to the superior courts, they usually take the recognizances there, under the 21 Jac. I. c. 8.

Supplicium, any corporal punishment; it included death.—*Civ. Law.*

Supplies, aids, subsidies, taxes.

Supply, *Commissioners of*, persons appointed to levy the land-tax in Scotland.

Supply, *Committee of.* All bills which relate to the public income or expenditure must originate with the House of Commons, and all bills authorizing expenditure of the public money are based upon resolutions moved in a Committee of Supply, which is always a committee of the whole House. The practise with regard to these bills is as follows:—In the course of the session estimates are submitted to a Committee of Supply, and resolutions moved therein granting to the Crown the sums requisite for defraying the expenses attendant on the various branches of the public service. Those resolutions having been considered and disposed of, such amongst them as may be affirmed are reported to the House, reconsidered, and adopted, or rejected. Under authority of those to which the House agree, the Lords of the Treasury issue the requisite funds for carrying on the service of the country. At the end of the session the supply resolutions are consolidated in the Appropriation Bill, which is sent up to the Lords, and after being there considered and agreed to, receives the royal assent and becomes law. The Lords may reject this or any other money-bill, but it would be considered an invasion of the privileges of the Commons if their Lordships were substantially to modify measures of this class; the Commons, however, do not object to consider any verbal emendations which may be made by the other House.—*Dod's Parl. Comp.*

Suppressio veri [Lat.] (*a suppression of truth*), one of the classes of fraud.

Supra protest (*subsequently to protest*). See ACCEPTANCE.

Supremacy, sovereign dominion, authority, and pre-eminence.

Supremacy, *Act of*, 1 Eliz. c. 1.

Supremacy, *Oath of*, taken by all public officers, &c. whereby they swear to uphold the supreme power of the kingdom in the person of the reigning sovereign. See 21 & 22 *Vict.* c. 48, and 22 *Vict.* c. 10.

Suprema potestas seipsam dissolvere potest.—*Bacon.* — (Supreme power can dissolve itself.)

Supreme power, the highest authority in a state, all other powers in it being inferior thereto. See 2 *Ruth. Nat. Laws*, b. 2, c. iv., p. 67.

Surcharge, an overcharge of what is just and right; exceeding one's powers or privileges; also a second or further mortgage.

Surcharge and falsify, a mode of taking accounts in Chancery.

A surcharge is applied to the balance of the whole account, and supposes credits to be omitted which ought to be allowed. A falsification applies to a wrong charge in the debits, and supposes that the item is wholly, or in some part, false or erroneous.—2 *Ves.* 265.

Sur cui in vitâ. See CUI IN VITÂ.

Sur disclaimer, *Writ of right of*, abolished by 3 & 4 Wm. IV. c. 27.

Surety, hostage bondsman, one that gives security for another, one that is bound for another. A surety who discharges the liability of the principal debtor is entitled to an assignment of all the securities held by the creditor.—19 & 20 *Vict.* c. 97, s. 5. See SECURITY.

Surgeon [corrupted fr. *chirurgeon*], one who practises the healing art. See MEDICAL ACT.

The Royal College of Surgeons in England was incorporated by 7 Vict. 14th Sept.

Surgeon of the Queen's Prison, appointed by the Home Secretary during pleasure.—5 & 6 *Vict.* c. 22.

Surname [fr. *surnom*, Fr. It is a great dispute whether we should write *surname* or *sirname*; on the one hand there are a thousand instances in court rolls and other ancient muniments, where the description of the person is written *over* the Christian name, this only being inserted in the line; and the French always write *surnom*. There is, however, no impropriety to say *sirname*, since these additions are

so apparently taken from our *sires* or fathers], the family name; the name over and above the Christian name.—*Encyc. Lond.*

Surplice fees, fees payable on ministerial offices of the Church, such as baptisms, funerals, marriages, &c.

Surplusagium non nocet.—9 *H.* 626.—(Surplusage hurts not.)

Surplus, Surplusage, a supernumerary part, an overplus, what remains when everything is satisfied.

Surrebutter, a plaintiff's answer to a defendant's rebutter.

Surrejoinder, an answer to a rejoinder.

Surrender [fr. *sursum redditio*], an assurance restoring or yielding up an estate, the operative verbs being 'surrender and yield up.' It is either implied in law, which sometimes construes as a surrender an act done with another intent, *ex. gra.* the creation of an estate incompatible with an existing estate; or expressed by deed. A surrender in writing of any realty, not being copyhold, and not being an instrument which might have been legally created without writing, is now void at law, unless made by deed.—8 & 9 *Vict.* c. 106, s. 3.

The effect of a surrender is to pass and merge the estate of the surrenderor to, and into that of, the surrenderee.

The incidents of a good deed of surrender are:—(1) An able surrenderor, a capable surrenderee, and an actual vested estate in the surrenderor. (2) That it be made to an immediate expectant, solely seised without any intervenient estate. (3) A privity of estate between the parties; and (4) That the surrenderee's estate be capable of sustaining a merger.—*Touch.* c. xvii., p. 300.

Surrender of copyholds. Copyholds are not, as a general rule, alienable by any of the common law assurances. A surrender (which is *vocabulum artis*) is the yielding up of a legal tenancy in a copyhold estate, either by express words or operation of law, by the tenant after admittance, or by his lawfully appointed attorney, either in or out of court, to the lord of the manor in person, his chief steward or under-steward; or, by special custom to the bailiff, beadle, or reeve, or to certain tenants of the manor, either as a relinquishment or resignation of such estate, or as the medium of conveying or transferring it to another. Surrenders are made in various forms; in some manors by a rod, in others by a straw, in others by a glove, or some other symbol, which is delivered by the surrenderor to the steward, or other person taking the surrender in the name of seisin. When a copyholder surrenders for a valuable consideration, the land is bound both at law and in equity, and he is prevented from surrendering to any other person, but the whole legal estate remains in him, and he has a right to retain the possession, subject to his accounting for the mesne profits, should the surrenderee be afterwards admitted, and if the surrenderor die, the estate devolves upon his customary heir, but he is a trustee for the surrenderee. A surrender is not affected by the death of any of the parties to it, and the transfer may notwithstanding be completed.

Surrenders of copyholds are governed by the same rules as common law conveyances.

An equitable interest in copyholds is not the subject of surrender, except in the instance of a surrender for the purpose of barring an entail, but it is assignable. The assignee of an equitable estate, on taking a surrender from the person in whom the legal copyhold interest is vested, may compel an admission upon the payment of a single fine.

Surrender of fugitives. Penal laws of foreign countries are strictly local, and affect nothing more than they can reach, and can be seized by virtue of their authority. A fugitive who passes hither comes with all his transitory rights. He may recover money held for his use, and stock, obligations, and the like; and cannot be affected in this country by proceedings against him in that which he has left, beyond the limits of which such proceedings do not extend. Per Lord Loughborough, *Folliott* v. *Ogden*, 1 *H. Bl.* 135.' Mr. Justice Buller, in the same case (3 *T. R.* 733), on a writ of error, said:—'It is a general principle that the penal laws of one country cannot be taken notice of in another.' The same doctrine was affirmed by Lord Ellenborough in a subsequent case, *Wolff* v. *Oxholm*, 6 *M. & Selw.* 99. And it has been promulgated by Lord Brougham, in very clear and authoritative terms:—'The *lex loci* must needs govern all criminal jurisdiction, from the nature of the thing and the purpose of the jurisdiction.'—*Warrender* v. *Warrender*, 9 *Bligh*, 119.

The same doctrine as to Scotland is stated by Lord Kaimes:—'There is not,' says he, 'the same necessity for an extraordinary jurisdiction to punish foreign delinquencies. The proper place for punishment is where the crime is committed. And no society takes concern in any crime but what is hurtful to itself.'—*Kaimes on Equity*, b. 3, c. viii.

Pardessus has affirmed a similar principle:—'In all the states of Christendom,' says he, 'by a sort of general consent and uniformity of practice, the prosecution and punishment of penal offences are left to the tribunals of the country where they are committed. The principle of the French legislation, that the laws of police and bail are obligatory upon all who are within the territory, is a principle of common right in all nations.'—*Droit Com.* 5 art. 1467.

There is another point which has been a

good deal discussed of late; and that is, whether a nation is bound to surrender up fugitives from justice who escape into its territories and seek there an asylum from punishment. The practice has, beyond question, prevailed as a matter of comity, and sometimes of treaty, between some neighboring states, and sometimes also between distant states having much intercourse with each other. Paul Voet remarks that, under the Roman Empire, this right of having a criminal remitted for trial to the proper *forum criminis* was unquestionable. But he remarks that, according to the custom of almost all Christendom (except Saxony), the remitter of criminals, except in cases of humanity, is not admitted; and when done, it is to be upon letters rogatory, so that there may be no prejudice to the local jurisdiction. As quoted by *Story, Confl. of Laws*, 878.

It has, however, been treated by other distinguished jurists as a strict right, and as constituting a part of the law and usage of nations, that offenders charged with a high crime, who have fled from the country in which the crime has been committed, should be delivered up and sent back for trial by the sovereign of the country where they are found. Vattel manifestly contemplates the subject in this latter view, contending that it is the duty of the government where the criminal is, to deliver him up, or to punish him; and if it refuse so to do, then it becomes responsible as, in some measure, an accomplice in the crime. This opinion is also maintained with great vigour by Grotius, by Heineccius, by Burlemaqui, and by Rutherforth. There is no inconsiderable weight of common law authority on the same side; and Mr. Chancellor Kent has adopted the doctrine in a case which called directly for its decision.

On the other hand, Puffendorf explicitly denies it as a matter of right; Martens is manifestly of the same opinion, contending that with respect to crimes committed out of his territories, no sovereign is obliged to punish the criminal who seeks shelter in his dominions, or to execute a sentence pronounced against his person or his property. Lord Coke especially maintains, that the sovereign is not bound to surrender up fugitive criminals from other countries who have sought a shelter in his dominions. Consult *Story's Confl. of Laws*, 874. See EXTRADITION.

Surrenderee, a person to whom a surrender is made.

Surrenderor, a person who surrenders.

Surreptitious, in a fraudulent, stealthy manner.

Surrogate, one that is substituted or appointed in the room of another, as by a bishop, chancellor, judge, &c.

Sursise, to forbear or neglect.—*Bract.* l. 5.

Sursumredditio [Lat.], a surrender, a redition.

Surveyor, one who has the overseeing or care of another person's lands or works. See HIGHWAYS. As to county surveyors in Ireland, see 25 & 26 *Vict.* c. 106.

A court of surveyors was erected by 33 Hen. VIII. c. 39, for the benefit of the Crown.

Survivorship, the living of one of two or more persons after the death of the other or others. See PRESUMPTION OF SURVIVORSHIP.

Suspense, Suspension, a temporal stop or hanging up as it were of a right for a time; also a censure on ecclesiastical persons, during which they are forbidden to exercise their offices, or take the profits of their benefices.

Suspension, *Pleas in*, those which show some matter of temporary incapacity to proceed with the action or suit.

Sus. per coll. On the trial of criminals, the usage is for the judge to sign the calendar or list of all the prisoners' names, with their separate judgments in the margin, which is left with the sheriff. In the case of a capital felony, it is written opposite to the prisoner's name, 'Hanged by the neck;' formerly in the days of Latin and abbreviation, *sus. per coll.* for *suspendatur per collum.*—4 *Bl. Com.* c. xxxii.

Suthdure, the south-door of a church, where canonical purgation was performed, and plaints, &c. were heard and determined.

Swarf-money, warth-money or guard-money, paid in lieu of the service of castle-ward.

Swearing, the act of declaring upon oath. Profane swearing and cursing is an offence against God and religion, punishable summarily by fine.—19 *Geo. II.* c. 21.

Swearing the peace, showing to a judge that one has just cause to be afraid of another in consequence of his menaces or attempts, in order to get him bound to keep the peace.

Sweinmote, *Court of*, one of the forest-courts, which is to be holden before the verderors as judges, by the steward, thrice in every year, the sweins or feeholders within the forest composing the jury. The principal jurisdiction of this court is first to inquire into the oppressions and grievances committed by the officers of the forest; and secondly, to receive and try presentments certified from the court of attachments, against offenders in vert and venison. And this court may not only inquire but convict also, which conviction shall be certified to the court of justice-seat under the seals of the jury; for this court cannot proceed to judgment.—4 *Inst.* 289.

Swindler, a cheat; one who lives by cheating.

Swoling of land, so much land as one's plough can till in a year; a hide of land.

Sworn brothers [*fratres jurati*, Lat.], per-

sons who, by mutual oaths, covenant to share in each other's fortunes.

Sworn clerks in Chancery. These offices are abolished by 5 & 6 Vict. c. 103.

Syb and Som, peace and security.

Sycophants, malicious informers.

Sylva cædua [*subbois*, Fr.] wood under twenty years' growth.

Symbolic delivery. See LIVERY OF SEISIN.

Symbolæography, the art or cunning rightly to form and make written instruments. It is either judicial or extra-judicial; the latter being wholly occupied with such instruments as concern matters not yet judicially in controversy, such as instruments of agreement or contracts, and testaments or last wills.

Symbolum animæ [Lat.], a mortuary, of soul-scot.

Synallagmatical, that which involves mutual and reciprocal obligations and duties.

Syncopare, to cut short, or pronounce things so as not to be understood.—*Cowel.*

Syndic, an advocate or patron; a burgess or recorder; an agent or attorney who acts for a corporation or university; an actor or procurator, an assignee.—*Civ. Law.* See in the goods of Eliz. Darke (deceased), 29 *L. J.* (*Prob. M. & A.*) 71 (1860).

Syngraph, a deed, bond, or writing, under the hands and seals of all the parties.—*Civ. Law.*

Synod, a meeting or assembly of ecclesiastical persons concerning religion; being the same thing, in Greek, as convocation in Latin.

There are four kinds:—

(1) A general or universal synod or council, where bishops of all nations meet.

(2) A national synod of the clergy of one nation only.

(3) A provincial synod, where ecclesiastical persons of a province only assemble, being now what is called the convocation.

(4) A diocesan synod, of those of one diocese.

A synod in Scotland is composed of three or more presbyteries.

Synodal, a tribute or payment in money paid to the bishop or archdeacon by the inferior clergy, at Easter visitation.

Synodales testes, synods-men, corrupted into sidesmen, were the urban and rural deans, now the churchwardens. See SIDESMEN.

T.

T, every person who was convicted of felony, short of murder, and admitted to the benefit of clergy, was marked with this letter upon the brawn of the thumb. The practice is abolished. 7 & 8 *Geo. IV.* c. 27.

Tabard [fr. *tabar*, Wel.; *tabardum*, low Lat.], a short gown; a herald's coat; a surcoat.

Tabarder, one who wears a tabard or short gown; the name is still used as the title of certain bachelors of arts on the old foundation of Queen's College, Oxford.—*Encyc. Lond.*

Tabellio, a Roman officer who reduced contracts and wills into proper form, and attested their execution.

Table rents, payments to bishops, &c., reserved and appropriated to their table or housekeeping.

Tabula in naufragio [Lat.] (*a plank in a wreck*). See TACKING and ATTENDANT TERM.

Tabulæ nuptiales, a written record of a marriage; or the agreement as to the *dos*.—*Civ. Law.*

Tabularius, a notary.—*Civ. Law.*

Tac free, exempt from rent, payments, &c. *Tacita quædam habentur pro expressis.*—8 *Co.* 40.—(Things unexpressed are sometimes considered as expressed.)

Tacite relocation, a silent or understood re-letting of premises after the expiration of a lease, upon the same terms, &c. as those of such lease.—*Scotch phrase.*

Tack, a lease or contract of location; also an addition, supplement.

Tack duty, rent reserved upon a lease.

Tacking, the doctrine known by the name of tacking, i. e. consolidating and priorizing two or more claims, applies in two cases; one, as against a mortgagor, the other, as between several incumbrancers.

It being deemed right that a mortgagee should not be deprived of his pledge without payment of all sums of money due to him from his mortgagor, which form a general or specific lien on the property mortgaged, if the mortgagee advance further sums of money to the mortgagor, expressly by way of surchage, or on judgment, or recognizance, neither the mortgagor nor, generally speaking, any one claiming under him, is allowed to redeem without satisfying the whole amount.

A prior mortgagee may tack a subsequent judgment to his mortgage; and a prior judgment creditor, on getting in a subsequent mortgage, may tack to it his judgment, provided he have lent money on the security of such judgment, and it has been duly registered; but probably tacking would not be allowed where the judgment has been obtained for an antecedent debt.—2 *Sp. Eq. Juris.* 723. A bond debt cannot, although a simple contract debt can, be tacked to a mortgage in fee as against the mortgagor; but it appears that a bond debt can be tacked to a mortgage of leaseholds or personal chattels. See *Coote on Mort.* 391, *et seq.* As regards, however, the heir or devisee of the mortgagor, where there is a bond debt or simple contract debt, neither the heir

nor the devisee is permitted to redeem without paying both the mortgage and such debt, and that whether the debt precede or follow the mortgage, in order to avoid circuity of action. A mortgagee is entitled, under the 3 & 4 Wm. IV. c. 104, which makes copyhold estates equitable assets for the payment of simple contract debts, to tack his simple contract debt to his mortgage, as against the customary heir, devisee, or executor coming to redeem; but not as against specialty creditors.—*Rolfe* v. *Chester*, 20 *Bea.* 610 (1856); and see *Thomas* v. *Thomas*, 22 *Bea.* 341.

It is a general rule that where there are several encumbrancers on an estate they rank according to their dates, which constitute the order in which they are entitled to be satisfied. It is, however, a maxim in deciding upon equitable claims connected with a legal title, that where the equity of two antagonist parties is equal, he who has the legal title shall prevail; i. e. the equity of a person who has only a title in equity will be postponed to one who has an equal title in equity, and also a title at law. Pursuant to this doctrine, a subsequent mortgagee, without notice of a mesne mortgage when he advanced his money, by purchasing the legal estate from the first legal mortgagee, can protect his estate against any person having a mortgage subsequent to such first incumbrance, and squeeze him out, though he bought it after he had notice of the subsequent mortgage, or even *pendente lite*, provided he redeems the first mortgage before a decree to settle priorities. This is what Lord Hale called the creditor's *tabula in naufragio!*—*Marsh* v. *Lee*, 2 *Vent.* 337 (22 *Car. II.*), and 1 *White and Tudor's Lead Cas.* 406–414. And notice of his advance, given by the second to the first mortgagee, will not prevent the third mortgagee, who lends his money without notice of it, from tacking his mortgage to the first.

If, however, a prior mortgagee take an assignment of a third mortgage, as a trustee only for another person, or a mortgage of the equity of redemption come to him as executor, he will not be allowed to tack the two mortgages together to the prejudice of intervening incumbrancers; since, if this were permitted, a mere stranger purchasing the third mortgage, by declaring he bought it in trust only for the first mortgagee, might tack both together, and defeat all the other incumbrancers.

If a first mortgagee lend a further sum to the mortgagor upon a statute or judgment, he may retain against a mesne mortgagee (provided he had no notice of such mesne mortgage) till both the mortgage and statute or judgment be paid. See 2 *Sp. Eq.* 720–752, and the cases there collected and criticised.

Tail [fr. *tailler*, Fr., to prune]. An estate-tail is a freehold of inheritance, limited to a person and the heirs of his body general or special, male or female, and is the creature of the Statute *de Donis*. The estate, provided the entail be not barred, reverts to the donor or reversioner, if the donee die without leaving descendants answering to the condition annexed to the estate upon its creation, unless there be a limitation over to a third person on default of such descendants, when it vests in such third person or remainder-man.

In order to create an estate tail by deed, the word 'heir' or 'heirs' must be used.—*White* v. *Collins*, *Com. Rep.* 289, 301; 2 *Prest. Est.* 475. In addition to this term, the deed must contain, either in direct terms or by reference, *words of procreation*, to describe the body from whom the heirs are to proceed, or the person by whom they are to be begotten.

In a will technical words of limitation are not necessary: thus a devise

To A. and his issue; or

To A. and his seed; or children; or sons; or

To A. and his heirs male; or

To. A. and his heirs lawfully begotten; or

To A. and if he die before issue, or not having issue, or not having a son, then to another, will give estates-tail. So numerous are the cases on this voluminous subject that they cannot possibly be explained fully in this place. In wills, however, great indulgence is exercised, and if the courts can collect from the language used by a testator, that it was his intention to entail his estate, they will rule accordingly. The plain sense of words is followed by the courts in their exposition of obscurely expressed wills; wresting and torturing language out of its natural signification will not be permitted, for thus to defeat a testator's intention is directly counteracting the injunctions of the law, and 'racking a man upon his deathbed,' remarked Lord C. J. Wilmot, 'to make him say what he never meant or thought of.'

Mr. Hayes observes (2 *Conv.* 7):—'It is quite unnecessary to add 'lawfully begotten,' or 'lawfully issuing,' or any other expressions of the like import, in order to create an estate-tail even in a deed. It is enough if the word *heirs* be used, and the person from whom the issue is to proceed be ascertained. In framing limitations to *children* as purchasers, it is abundantly sufficient to say, 'the children of A.' or 'the children of A. by B.,' or 'the children of the intended marriage.' The vulgar form, 'the children of the body of A., on the body of B., his (A.'s) intended wife, lawfully to be begotten,' seems to be the product of a confused notion of the legal rules relative to the creation of an estate-tail.'

If a tenant-in-tail grant the fee-simple in the property to another person and his heirs, only a qualified or base fee will pass, commensurate

with the estate-tail, capable however of being rendered absolute, by barring the entail, but until then defeasible by the entry not only of the reversioner, or remainder-man, when he becomes entitled to enter into possession of the estate, but also of the issue in tail upon the death of the tenant-in-tail. It should be observed that an estate-tail cannot as such be conveyed to another.

This estate possesses the following incidents and privileges:—

(1) It is, like a fee-simple, subject to curtesy and dower (if not barred).

(2) The owner may commit all kinds of waste upon it without being impeachable for it, and so it is said may his grantee.—3 *Leon.* 121.

(3) It is liable to every kind of debt.

(4) It may be lost by escheat; by forfeiture for treason, or felony; or by extinguishment.

(5) The owner, having an inheritable freehold, has a right to the title-deeds, which equity will secure to him.

(6) Although a tenant-in-tail must generally keep down the interest, yet, having only a particular interest, he is not bound to pay off any charge or incumbrance affecting the estate; if, however, he do so, the presumption is that he meant to exonerate the estate (for he might, if he pleased, have acquired the fee-simple), unless he evince the contrary intention by taking an assignment of the incumbrance to a trustee in trust for himself, or by some other express act.

(7) The donee may grant leases for 21 years out of it, under the 19 & 20 Vict. c. 120, ss. 32 & 33.

(8) This estate cannot be merged, surrendered, or extinguished by the accession of the fee-simple to the tenant-in-tail.

(9) The issue-in-tail is not bound to complete, either at law or in equity, any contract made by his ancestor as tenant-in-tail, since he claims from the original grantor, and not from his immediate ancestor. If, however, he do any act towards completing such a contract, equity will then compel its performance.

(10) Neither is such issue bound to pay off his ancestor's incumbrances, nor to keep down the interest thereon; but he is liable to crown-debts under 33 Hen. VIII. c. 39, s. 75.

(11) A tenant-in-tail may cut timber and dispose of it, without barring the entail; but if he sell the growing trees, the buyer must sever them during his life, otherwise the issue in tail will be entitled to them as part of the inheritance; and the buyer, though obliged to pay the purchase-money, will not then be allowed to sever them.

(12) If a tenant-in-tail grant estovers, or the vesture of his woods, to another, the grant determines with his death; for, being a charge upon the inheritance, it necessarily ceases when his power is determined.

(13) It may be barred by the tenant-in-tail, though not by the issue-in-tail, under the 3 & 4 Wm. IV. c. 74; but the entail of offices or dignities cannot be barred.

Before the Statute *de Donis Conditionalibus*, the donee could, after issue born, have alienated the land, whereby the issue would have been disinherited, and the donor deprived of his right of reversion. This being the case, the statute declared that the will of the donor should be observed; and that an estate granted to a man and the heirs of his body should descend to the issue (he not having power to alienate the estate), and that in default of issue, the land should revert to the donor or his heirs. Estates-tail were thus made inalienable, and neither the issue nor the remainder-man could be barred. The legislature, by fettering the land with an indestructible entail, which prevented money being raised upon it, cramped the energies of commercial pursuits, and withered the efforts of honorable exertion. And many other inconvenient consequences were produced, which quickened the ingenuity of the judicature, until it produced, at length (in its efforts to recover the liberty of alienation), the complicated machinery of fines and recoveries. See FINE and RECOVERY.

The modes, then, of barring an estate-tail were two, viz. a fine, according to the statute-law (which was a compromise of a fictitious action), giving a base fee commensurate with the existence of the issue upon whom the estate-tail would (if unbarred) have devolved, and a recovery at the common law (which was a real action carried on to judgment), giving the fee-simple absolute. These were abolished by 3 & 4 Wm. IV. c. 74, an analysis of which is here attempted, in consequence of its importance.

The 3 & 4 Wm. IV. c. 74, is entitled 'An Act for the Abolition of Fines and Recoveries, and for the substitution of more simple modes of Assurance,' and it received the royal assent Aug. 28th, 1833. The first section contains the following glossary of the terms used in it: The word 'lands' is to extend to 'manors, advowsons, rectories, messuages, lands, tenements, tithes, rents, and hereditaments of any tenure (except copy of court-roll), and whether corporeal or incorporeal, and any undivided share thereof; but when accompanied by some expression, including or denoting the tenure by copy of court-roll, it shall extend to manors, messuages, lands, tenements, and hereditaments of that tenure, and any undivided share thereof.'

'Estate' is to extend to 'an estate in equity as well as at law, and to any interest, charge, lien, or incumbrance in, upon, or affecting lands,

either at law or in equity, and to any interest, charge, lien, or incumbrance in, upon, or affecting money subject to be invested in the purchase of lands.'

'Base-fee' is to mean 'exclusively that estate in fee-simple into which an estate-tail is converted, where the issue-in-tail are barred; but persons claiming estates, by way of remainder or otherwise, are not barred.'

'Estate-tail,' in addition to its usual meaning, is to mean 'a base-fee into which an estate-tail shall have been converted.'

'Actual tenant-in-tail,' is to mean 'exclusively the tenant of an estate-tail which shall not have been barred, and such tenant is to be deemed an actual tenant-in-tail, although an estate-tail may have been divested or turned to a right.'

'Tenant-in-tail' is to mean 'not only an actual tenant-in-tail, but also a person who, where an estate-tail shall have been barred and converted into a base-fee, would have been tenant of such estate-tail if the same had not been barred.'

'Tenant-in-tail entitled to a base-fee' is to mean 'a person entitled to a base-fee, or to the ultimate beneficial interest in a base-fee, and who, if the base-fee had not been created, would have been actual tenant-in-tail.'

'Money subject to be invested in the purchase of land' is to include 'money whether raised or to be raised, and whether the amount thereof be or be not ascertained, and to extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce, is to extend to lands held by copy of court-roll, and also to lands of any tenure, in Ireland, or elsewhere out of England, where such lands, or any of them, are within the scope or meaning of the trust or power directing or authorizing the purchase.'

The word 'person' is to include 'a body politic, corporate or collegiate, as well as an individual.'

'Every word importing the singular number only is to extend and be applied to several persons or things, as well as to one person or thing; and every word importing the plural number is to extend and be applied to one person or thing, as well as several persons or things; and every word importing the masculine gender only is to extend and be applied to a female as well as to a male.'

'Every assurance already made or hereafter to be made, whether by deed, will, private Act of Parliament, or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, is to be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power, arising out of the power contained in any settlement, is to be considered as part of such settlement, and the estate created by such appointment is to be considered as having been created by such settlement.'

This section of definitions concludes with a provision 'that those words and expressions occurring in this clause, to which more than one meaning is to be attached, are not to have the different meanings given to them by this clause, *in those cases in which there is anything in the subject or context repugnant to such construction.*'

The enactments following (which extend from section 2 to section 14, both inclusive) may be thus briefly stated:—

No fine or recovery is to be levied or suffered, after December 31st, 1833, except a writ of *dedimus*, or other writ, in the regular course of a fine or recovery, have been sued out before this date; but there is no time named for completing such fine or recovery (s. 2).

Persons under covenants (before the Act came into operation) to levy fines, or suffer recoveries, are to effect such purposes by the means pointed out in this Act; but if such purposes cannot be so effected, then by a special deed, which shall have the same operation as a fine or recovery (s. 3).

Fines and recoveries of lands in ancient demesne, when levied or suffered in a superior court, may be reversed, as to the lord, by writs of deceit, but they shall be as valid against the parties thereto, and persons claiming under them, as if not reversed as to the lord (s. 4). Fines and recoveries of lands in ancient demesne, levied or suffered in the manor court, after other fines and recoveries in a superior court, shall be valid, as if the tenure had not been changed, nor shall they be invalid in other cases, though levied or suffered in courts whose jurisdictions may not extend to the lands therein comprised (s. 5). The tenure of ancient demesne, where suspended or destroyed by fine or recovery in a superior court, shall be restored, where the rights of the lord have been recognised within twenty years immediately preceding January 1st, 1834 (s. 6).

Fines are made valid without amendment of any errors in form (s. 7), and so are recoveries (s. 8).

Provision is made for saving jurisdiction in cases unprovided for by the Act (s. 9). Recoveries are made valid where the bargain and sale, to make the tenant to the *præcipe*, has not been duly enrolled (s. 10), within six lunar months, in Chancery, under the provisions of the 27th Hen. VIII. c. 16. (This clause enlarges indefinitely the time for enrol-

ment.) Also, where the owner of the *legal* freehold (the trustee) has not concurred in making a good tenant to the *præcipe*, provided the beneficial owner of the freehold in possession (the *cestui que* trust) shall, within the time limited for making the tenant, have conveyed to the tenant (s. 11). It is to be observed, that a recovery, void for want of an effectual legal conveyance, by a person seised at law for his *own* benefit, is not aided by this Act.

The following are the cases in which fines and recoveries are not made valid by the Act:—Where they have been wholly reversed before its passing; or partly, so far as the part reversed; where any person whom the fine or recovery, if valid, would have barred shall, before the Act, have had dealings with the lands, on the faith of the invalidity of the fine or recovery; where any person shall, at the passing of this Act, have been in possession in respect of an estate which the fine or recovery, if valid, would have barred; where any court of competent jurisdiction shall have refused to amend them; where proceedings were pending at the passing of this Act; and if such proceedings abate by the death of any of the parties thereto, any person having a right of action or suit by reason of the invalidity of such fine or recovery, shall retain it, if he commence proceedings within six calendar months after such party's death (s. 12).

The 13th section relates to the custody of the records of fines and recoveries. The 5 & 6 Wm. IV. c. 82, abolished the offices connected with fines and recoveries in the Court of Common Pleas, and transferred their records and duties to the officer of the same court, appointed under the 3 & 4 Wm. IV. c. 74, for registering the certificates of acknowledgment of married women, subject to the order of such court.

Estates-tail, and estates expectant thereon, are no longer barrable by warranty, since December 31st, 1833 (s. 14).

Thus, then, all the fictions, together with their cumbrous technicality, which had been invented by legal artifice and judicial contrivance in contravention of the unrepealed Statute *de Donis*, were abolished; and what the legislature could not do, in the reign of our second Edward, by reason of the mighty power of the barons—the great proprietors of the soil—it effected in the reign of our late sovereign, viz. the virtual repeal of the Statute of Westminster 2, and the recognition of the right of barring estates-tail, prescribing and simplifying the mode of disposition.

The general enabling clause (s. 15) enacts, that 'after December 31st, 1833, every *actual tenant-in-tail* (consult the glossary clause), whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of, for an estate in fee-simple-absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate-tail which shall be vested in, or might be claimed by, or which, but for some previous act, would have been vested in, or might have been claimed by the person making the disposition, at the time of his making the same, and also as against all persons, including the king's most excellent majesty, his heirs and successors, whose estates are to take effect *after* the determination, or in defeasance of any such estate-tail; saving always the rights of all persons in respect of estates prior to the estate-tail in respect of which such disposition shall be made, and the rights of all other persons except those against whom such disposition is by this act authorized to be made.' The 11 Hen. VII. c. 20, is repealed, *except* as to lands comprised in any settlement made before this Act, in which case if any woman be tenant-in-tail within the provisions of such Act, the power of disposition must be regulated thereby (ss. 16, 17). The power of disposition is not to extend to tenants of estates-tail, who, by the 34 & 35 Hen. VIII. c. 20, are tenants-in-tail of any lands *given by the Crown*, the reversion or remainder being in the king, or who are by any other act restrained from barring their estates-tail, or to tenants-in-tail after possibility of issue extinct (s. 18). Power is then given to enlarge base-fees, created by barring estates-tail into fees-simple-absolute, with the same saving as is set forth in the fifteenth section, and with the protector's consent (s. 36); but the issue inheritable to any estate-tail cannot bar any expectancies (ss. 19, 20).

This clause puts an end to the power of an heir expectant in tail, whose fine with proclamations, levied in the father's lifetime, would have barred the estate-tail in the event of its devolving upon him or upon his issue-in-tail, but it is to be observed that this section does not apply to a gift under which the heirs are *purchasers*, as where the *legal* freehold is limited to A. with an *equitable* remainder to the heirs of his body, or the converse; or where there is a limitation to the heirs of the body of A. who takes no estate, or an estate less than freehold, for then the heirs take by original acquisition, and not in the language of this clause, 'as issue inheritable to any estate-tail.'

If a tenant-in-tail of lands dispose thereof by way of mortgage, or for any other limited purpose, 'such disposition shall, to the extent of the estate created, be an absolute bar, in equity as well as at law, to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary may be expressed or implied in the

deed by which the disposition may be effected; provided always, that if the estate thus created, shall be only an estate *pour autre vie*, or for years absolute or determinable, or an interest, charge, lien, or incumbrance be created without a term of years absolute or determinable, or any greater estate for securing or raising the same, then such disposition shall in equity be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose, or to such interest, lien, charge, or incumbrance, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected (s. 22).

The meaning of this clause is simply this:—If a tenant-in-tail make a mortgage-in-fee with the usual proviso for redemption, he will be entitled to the equity of redemption discharged from the entail: but if he create an estate *pour autre vie*, or for years only, or an interest, charge, or incumbrance, without a term of years, by way of mortgage, the entail will be affected only to the extent of the charge, although there be an express declaration of intention that the deed shall operate as a complete bar of the entail. The object is to prevent a mere declaration that the entail shall or shall not be barred from having any operation, but not to affect express limitations.

In order to provide a check to the barring of estates-tail, so as to prevent a son, tenant-in-tail, upon attaining his majority, defeating a strict family settlement, against the wish of his father, the tenant for life, the legislature has introduced a reasonable but unaccountable agent, denominated '*the protector of the settlement*,' who is, in many respects, but not in all (as will presently be seen) analogous to the abolished '*tenant to the præcipe*,' who was a mere technical creature, and whose protection was both arbitrary and defective, besides being productive of numerous difficulties. The office of this novel conservative power (as it has been called) is to grant or withhold his consent, which is required to enable a tenant-in-tail *in remainder*, *expectant* on an estate of freehold, to bar as well his own issue as also those in remainder, to the same extent as might have been effected by a recovery. It is to be observed, that an expectant tenant-in-tail may bar his own issue *only*, under this Act, without the consent of the protector. See PROTECTOR OF THE SETTLEMENT.

We will now consider the clauses substituting more simple modes of assurance.

Every disposition of lands by a tenant-in-tail is to be effected by some one of the assurances evidenced by deed (*not* being a will or a contract either expressed or implied) used for the conveyance of fee-simple estates. If the tenant-in-tail be a *feme covert*, her husband's concurrence is necessary and her deed must be duly acknowledged (s. 40).

The tenant-in-tail, then, for the purposes of this Act, is treated as having a *legal* estate of fee-simple in the land (no matter what his estate-tail may be), and he must, therefore, convey by one of those modes of assurance which the law has appropriated to the transfer of freehold interests. These modes of assurance are feoffment (at the common law), bargain and sale, covenant to stand seised, a release (under the Statute of Uses), or grant, which is the best mode of assurance, and which must be adopted, if the estate be incorporeal.

As to the protector's consent, it may either be given by the same assurance by which the disposition is effected, or by a deed distinct from the assurance, executed either on, or at any time before the day on which the assurance is made, otherwise the consent will be void; if the protector consent by a distinct deed, such consent will be deemed absolute and unqualified unless he refer to the particular assurance, and confine his consent to the disposition thereby made. His consent once given cannot be revoked. A married woman, being a protector, gives her consent in the same manner as if she were a *feme sole* (ss. 42, 43, 44, 45).

The 47th section carefully excludes courts of equity from giving any effect to dispositions by tenants-in-tail, or to consents of protectors, which would not be effectual in courts of law.

In the case of a protector being lunatic, idiotic, or of unsound mind, the Lord Chancellor, or the Lords Justices of Appeal, upon the motion or petition of the tenant-in-tail, in a summary way, has or have full power to consent to a disposition by a tenant-in-tail, and to make such orders in the matter as shall be deemed necessary: and if any other person be a joint protector, he must give his consent in the ordinary manner. The order of the Lord Chancellor, or the Lords Justices, is to be evidence of consent, without any document or instrument (ss. 48, 49).

From the Lord Chancellor's and Lords Justices' decisions on applications in cases of lunatic protectors, it may be collected that the power will be exercised in support of the settlement, and not in opposition to its apparent designs. Lord Brougham, when Chancellor, made an order for enabling a *quasi* tenant-in-tail in remainder of stock, the produce of lands sold, under the order of the court, and subject to the same uses as the lands had been, and of which the tenant for life was a lunatic, to dispose of the fund, the case falling within the provisions of the 33rd and 48th sections of this Act. When the party has not been found a lunatic by inquisition, it will probably be referred to a Master in Lunacy to ascertain such

fact. The Lord Chancellor is not, nor are the Lords Justices, authorized, when the *tenant-in-tail* in possession is in a state of hopeless lunacy, to consent to the first tenant-in-tail in remainder barring the subsequent limitations, even for the purpose of preventing the settled estate from going over to collateral relations. It will be observed that the 22nd, 33rd, and 48th sections provide only for the case of a lunatic who is *tenant for life* of the settled estate. Lord Cottenham, *in re Newman* (2 My. & C. 112), gave judgment as follows:—'This petition came before me as protector of the settlement under the Fines and Recoveries' Act, to induce me to consent to a deed of disposition on the part of the lunatic, who is tenant for life; to act, in fact, for the tenant for life, in order to give effect to a recovery (*evidently meaning a deed of disposition under this Act*). As protector of the settlement, the *only duty* of the court is, to see what, in reference to the interest of the family, it would be proper for the tenant for life to do; and the purpose must be rather to protect the objects of the settlement than to give any benefit to one member of the family, to the exclusion of the others. Now, if nothing is done, one-sixth will go to this daughter (the wife of the petitioner) and her children, if she have any, and if not, to the eldest son of the testator, as his right heir; and I am asked to consent to that which will take it away from the eldest son, and take it away from the family, by giving it to the husband of the daughter. That would be anything but protecting the settlement; it would be destroying it; giving the estate to a person not a member of the family, namely, the husband of the daughter. I should not consider that it would be a proper act for the tenant for life to concur in a deed of disposition to that effect.'

The Court of Chancery is not the protector where the tenant for life is a *feme covert* whose husband has been convicted of felony, and the life estate is not settled to her separate use.

Although it is clear that an estate-tail and remainders may be effectually destroyed by an assurance altogether silent as to its object, yet it will be advisable always to declare the intention, which may be inserted immediately before the operative parts, or at the close of the *habendum*. Some conveyancers refer to the act itself, but seeing that it is a public and well-known statute, such a reference appears to be quite unnecessary. They argue, however, that it removes all doubt as to the intention; for before the statute, a release, grant, or bargain and sale of the tenant-in-tail, although enrolled, passed only a base fee, determinable by the issue-in-tail; and, therefore, if this Act be not referred to, nor the intention to bar stated, a question may arise whether the assurance will take effect at common law, or operate under this Act. The reference is made *ex abundanti cautelâ*, and in the opinion of the best lawyers is altogether superfluous.

Every assurance by a tenant-in-tail (*except* a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or from any time not exceeding twelve calendar months from the date of such lease, where a rent shall be thereby reserved, which, at the time of granting such lease, shall be a rack-rent or not less than five-sixth parts of a rack-rent) is inoperative, under this Act, unless enrolled in Chancery *within six calendar months after its execution* (s. 41). The enrolment of a bargain and sale or of a conveyance to charitable uses, according to this provision, will satisfy the requisition of the statutes 27 Hen. VIII. c. 16, and 9 Geo. II. c. 36, the enrolment being in the same court and within the same period. If the protector's consent be given by a distinct deed, it will be void unless enrolled either at or before the time when the assurance is enrolled (s. 46).

This enrolment, requisite to give effect to a disentailing assurance, does not excuse a non-compliance with the requisition of any other law (except under the Acts 27 Hen. VIII. c. 16, and 9 Geo. II. c. 36, just mentioned) in regard to enrolment or registration. If lands, therefore, lie within the registry districts, viz. Middlesex, Yorkshire, the Bedford Levels, and Kingston-upon-Hull, the deed must also be registered in the registry office of the district; or if it be the grant of an annuity, it must be registered according to 18 Vict. c. 15, s. 12. See ANNUITY.

Thus much as to the disentailment of *freeholds*. Let us next examine the sections relating to the barring of *copyholds*.

The previous clauses, except so far as they are varied by the clauses following, apply to copyholds; the disposition, however, of *legal* estates of copyhold must be by surrender, and of *equitable* estates either by surrender or by deed. If the protector consent by deed, it must be produced at or before the surrender, to the lord of the manor, his steward, or deputy, otherwise it will be void, and he will endorse on it the acknowledgment of production, and enter such deed and endorsement upon the manor rolls; the endorsement will be *primâ facie* evidence of the production; a memorandum of entry on the manor rolls must also be endorsed on the deed. But if the consent be not by deed it must be given to the person taking the surrender, and if the surrender be out of court, the consent must be stated in the memorandum of surrender signed by the protector and entered on the manor rolls, which shall be good evidence of the consent and surrender; but if the surrender be in court, the lord, steward, or deputy, enters the surrender on the manor rolls, with a

statement that such consent was given, and such entries or copies shall be evidence, as other entries or copies. An *equitable* tenant-in-tail has power of disposition by deed entered on the manor rolls. If the protector consent by distinct deed, it will be void unless executed on or before the day of the execution of the disposing deed, and entered on the manor rolls. Such entries are imperative on the lord, steward, or deputy, who must enter such deed on the manor rolls, and endorse upon it a memorandum thereof. The deed of disposition (unless entered on the rolls) will be void against purchasers, whose assurance is duly entered on the manor rolls. Enrolment in Chancery is not requisite as to copyholds, entry on the manor rolls being a substitute for it (ss. 50, 51, 52, 53, 54).

Copyholds are not entailable except by special custom, and in the absence of such a custom the party who would have been tenant-in-tail will take a fee-simple conditional at common law.

The estates-tail of bankrupts are provided for by the following clauses: The 55th section repeals the Bankrupt Act, 6 Geo. IV. c. 16, s. 65, *so far as relates* to estates-tail, but *not to extend* to the lands of a person made a bankrupt on or before the 31st December, 1833, nor to revive former acts; and the 56th section substitutes provisions enabling any commissioner, acting under a petition (under which there is an adjudication of a bankrupt, who at the time of filing such petition, or at any time afterwards, *before he shall have obtained his certificate*, shall be an actual tenant-in-tail in lands of any tenure), to dispose by deed to a purchaser for valuable consideration, for as large an estate as the bankrupt tenant-in-tail, of lands of any tenure could, at the time of such disposition, have effected, provided that if there be a non-consenting protector, the effect of the disposition will be equivalent only to that of a disentailing assurance made by the bankrupt without the protector's consent. If the bankrupt be entitled to a base fee, and there is no protector, the commissioner's deed enlarges it to the extent to which it might have been enlarged by the bankrupt. And the commissioner, with protector's consent (to be given in the same manner as we have before seen), confers a title to the fee, whether the estate-tail be subsisting or be already converted into a base fee. The deeds are to be enrolled according to whether the lands are freehold or copyhold, precisely as it has been before stated. In the case of the bankrupt being tenant-in-tail, and the protector not consenting so that only a base-fee is passed, such fee, on there ceasing during its continuance to be a protector, is enlarged for the purchaser's benefit. And if the bankrupt were entitled to a base-fee, arising from an estate-tail, to which, if the base-fee had not been created, he would have been entitled, and there should be a protector, such fee on there ceasing during its continuance to be a protector, would be enlarged for the benefit of the purchaser. The commissioner's disposition confirms voidable dispositions for valuable consideration made by the bankrupt whether tenant-in-tail or entitled to a base-fee, to their full extent, *except* where the bankrupt being tenant-in-tail, there is a non-consenting protector, and then to the extent only of the bankrupt's capacity, till there ceases, during the continuance of the base-fee, to be a protector, when the confirmation is completed without more, but subject to a saving of purchaser's rights from the commissioner, without express notice of the voidable estate.

All dispositions by the bankrupt, which if he had been owner in fee, would have been void as against the assignees, are avoided as against the commissioner's disposition, but, *except* as against the commissioner and the assignees, and persons claiming under them, the powers of disposition given by the Act are preserved to the bankrupt. The bankrupt's death *before* the commissioner's power is executed, is provided for by enacting that the commissioner's dispositions shall have the same effect, in the cases about to be enumerated, as if the bankrupt tenant-in-tail or entitled to a base-fee, arising as already mentioned, were living:—1st, in case there shall be no protector at the bankrupt's death, in which case the commissioner's disposition passes the fee-simple; 2ndly, in case the bankrupt tenant-in-tail has left issue in tail, existing at the time of the disposition, and there is either no protector or a protector consenting or non-consenting, in which cases the commissioner's disposition, there being a consenting protector, will pass the fee-simple, or, there being a non-consenting protector, will pass a base-fee; 3rdly, in case the bankrupt, entitled to a base-fee arising as already mentioned, has left issue existing at the time of the disposition, which issue would have been inheritable, and there is either no protector or a consenting protector, in which case the commissioner's disposition passes the fee-simple. The commissioner's disposition of the copyhold lands, not merely equitable, gives the effect of a surrender to the use of the disponee for the estate acquired by the disposition, and the disponee is entitled to admittance on paying the fines and fees. The mesne rents and profits of the lands over which the commissioner's power extends, until a disposition is made, or is ascertained to be necessary, are given to the assignees, who are armed with remedies for recovering arrears, enforcing covenants and conditions, and ejecting tenants. The bankrupt clauses extend to Ireland, but deeds of disposition, and of consent, relating to such lands, must be enrolled

in the Court of Chancery in Ireland, within six calendar months after execution (ss. 57–69, both inclusive). See 12 & 13 *Vict.* c. 106, s. 208.

The next set of enactments relate to money directed to be laid out in entailed lands.

It is a great equitable principle that money directed to be applied to the purchase of land is considered real estate, and is impressed with all the characteristics of realty; it is no longer, in the contemplation of equity, personalty; and upon the death of the person entitled to it it will descend to the heir-at-law, and cannot be distributed among the next of kin. Under the old law, the tenant-in-tail of this *quasi* land, having also the immediate remainder or reversion in fee vested in himself, could obtain payment of the entailed money by the decree of the Court of Chancery. But if the remainder or reversion were to another person, he could not have effected anything, either upon the *land*, because, it could not be the subject of a recovery until ascertained, or upon the *money*, which never could form the subject of a recovery. At length, by the 39 & 40 Geo. III. c. 56, re-enacted with alterations by 7 Geo. IV. c. 45, it was provided that in all cases where money under the control of Chancery, or of which trustees were possessed, should be subject to be invested in the purchase of freehold or copyhold lands, to be settled in such manner that it should be competent for the persons who would be the tenants-in-tail thereof, either alone or with the owners of any particular preceding estates therein, to bar such estates-tail and remainders, that it should not be necessary to have such money actually invested in land, but a court of equity, on the petition of the person who would be tenant-in-tail of the land, and the party having any antecedent estates (being adults, or *femes covert*, separately examined), might order such money to be paid to them, or applied as they should appoint. But the costly agency of the Court of Chancery, which always referred the petition to a master, to inquire whether the petitioner were entitled to be tenant-in-tail, and whether he had encumbered the fund or not, not to say anything of the slowness of the process (for a vacation order was ineffectual, if the tenant-in-tail did not live till the second day of the ensuing term, nor would an order be made in term unless there were time to suffer a recovery during it), rendered this practice a grievance; accordingly the 70th section of this Act abolished these statutes, and provided that as well lands of every tenure, of which the produce by sale is applicable to the purchase of lands to be entailed, as money so applicable, shall, for the purposes of this Act, be treated as the purchased lands, and be dealt with according to the disentailing provisions already stated. The fund, when constituted of land made saleable, not being copyhold, is to be dealt with as freehold, or being copyhold as copyhold; and when constituted of *money* is to be dealt with as *freehold* land. But leaseholds for years and money are to be treated, as to the person in whose favor the disentailing provision is made, as personal estate, and to be assigned by deed, enrolled as aforesaid, except in the case of bankruptcy, when the disposition is made by the commissioner, and completed by enrolment, as before provided in regard to lands not being copyhold (s. 71). With regard to bankrupts, the preceding provision is applied for benefit of the creditors, to a fund consisting of lands in Ireland, or money under the control of any Irish equity court, or held by any individuals as trustees in Ireland, where the bankrupt would be tenant-in-tail of the purchased land; but the deed of any commissioner or protector is to be enrolled in the Irish Court of Chancery within six calendar months after the execution, where the fund is land; otherwise in the English Court of Chancery (s. 72).

It is to be observed, that the practice of requiring deeds to be acknowledged *before* enrolment, is not applicable to deeds enrolled under this Act (s. 73). Every deed requiring enrolment, by which lands or money subject to be invested in the purchase of lands shall be disposed of under this Act, shall take effect as if enrolment had not been required, and shall have preference except against a purchaser for valuable consideration, claiming under a subsequent deed previously enrolled (s. 74). It is, therefore, necessary for purchasers and mortgagees to enrol the deed under which they claim, without delay, and they should ascertain, by a proper search, that no conveyance, *prior* to their own, made by the tenant-in-tail, has been enrolled.

The Court of Chancery may regulate the fees to be paid for the enrolment of deeds, and for searches and office copies (s. 75). No order has been made; the charge for enrolling deeds is one shilling per folio. The Court of Common Pleas may regulate the fees to be paid for entries on court-rolls, and for endorsements on deeds, and for taking consents and surrenders in cases of dispositions by tenants-in-tail of copyholds (s. 76).

The fees are fixed by the Common Pleas rules of Hilary Term, 1834, and are as follow:

	s.	*d.*
For the endorsement on the deed of the memorandum of production, and memorandum of entry on court rolls to be signed by the lord's steward or deputy steward, each indorsement of memorandum, five shillings, together	10	0

	s.	d.
For the entries on the court-rolls of deeds and indorsements thereon, at per folio of seventy-two words .	0	6
For taking the consent of each protector of settlement of lands .	13	4
For taking the surrender of each tenant-in-tail of lands . . .	13	4
For entries of such surrenders, or the memoranda thereof, in the court-rolls, at per folio of seventy-two words	0	6

See ACKNOWLEDGMENT OF A WIFE'S ASSURANCE for the remaining sections of this Act.

Tail after possibility of issue extinct, *Tenant in.* This estate arises out of a special entail as to the parentage of the issue, when the express condition has become impossible by reason of death. Thus, if an estate be granted to husband and wife, and their issue male or female, if either of them die without issue, the survivor is tenant-in-tail after possibility of issue extinct; and even if there have been issue, yet if the issue die without issue, then the surviving parent is also such a tenant; and also if an estate be entailed upon a man and his issue from a particular wife, if she die without issue, the interest of the husband becomes reduced to a tenancy-in-tail after possibility of issue extinct. Only a donee-in-tail special can become such a tenant, for if the entail be general, such a tenancy can never arise; for whilst he lives he may have issue, the law not admitting the impossibility of having children at any age. As an estate-tail is originally carved out of a fee-simple, so this estate is carved out of a special entail.

There may be tenant-in-tail after possibility &c. of a remainder as well as of a possession. And thus, if a lease for life be made, remainder to husband and wife in special tail, and the husband die without issue, now is the wife tenant-in-tail after possibility &c. of this remainder; and if the tenant for life surrender to her, as he may (an estate for one's own life being greater than an estate for the life of another), now is she tenant-in-tail after possibility &c. in possession.—*Lewis Bowles's case*, 11 *Co.* 81 *a.*

This estate must be created by the act of God—death; it cannot arise out of any arrangement of parties, but *ex dispositione legis*, and not *ex provisione hominis*; if, therefore, an estate be given to husband and wife, and the heirs of their bodies, should they afterwards be divorced *causâ præcontractûs vel consanguinitatis vel affinitatis*, their estate is converted into a joint estate for life, and not into a tenancy-in-tail after possibility of issue extinct, because their estate has been altered by their own act, and not by the act of God. Such a tenancy can endure only for the life of the surviving donee-in-tail, who has no power under the 3 & 4 Wm. IV. c. 74, s. 18, to bar the remainders or reversion over, and if he convey his interest to another, such other will be only a tenant *pur autre vie*, and would be punishable for waste.

The attributes of this estate are these:—

(1) The tenant is dispunishable for waste; he may, therefore, not only commit it, but also convert to his own use the property wasted. Equity, however, will restrain him from committing wilful waste.

(2) The estate is liable to forfeiture.

(3) It will merge in a fee-simple or fee-tail, immediately expectant thereon.

(4) The reversioner or remainder-man shall be received upon the tenant's default.

(5) An exchange with a tenant for life is good, the interest being deemed equal, and only differing in quality.

(6) It is deemed a life estate only for the purposes of the 19 & 20 Vict. c. 120, s. 1.

Tailage [fr. *tailler*, Fr.], a piece cut out of the whole; a share of one's substance paid by way of tribute; a toll or tax.—*Cowel.*

Taille, the fee which is opposed to fee-simple, because it is so minced or pared that it is not in the owner's free power to dispose of it, but is, by the first giver, cut or divided from all other, and tied to the issue of the donee. In short, an estate-tail. See TAIL.

Tailzie, or **Entail,** an arbitrary line of succession laid down by a proprietor, in substitution of a legal line of succession which has failed.—*Scotch term.* A deed of tailzie creates a Scotch entail by which, until 11 & 12 Vict. c. 36, and 16 & 17 Vict. c. 94, an estate might be tied up for ever.

Taking up dead bodies for the purpose of dissection or otherwise, is a misdemeanor at common law, and punishable by fine and imprisonment. See ANATOMY ACT.

Tale, Chinese money; also, a count in a declaration.

Tales de circumstantibus. If a sufficient number of jurors do not appear upon a trial, or if by means of challenges or exemptions a sufficient number of unexceptionable ones do not remain, either party may pray a *tales*; which is a supply of such men as are summoned upon the panel, in order to make up a deficiency. See 6 *Geo. IV.* c. 50, s. 37; 1 *Chit. Arch. Prac. by Pren.* 383, 378.

Talesman, a person summoned to act as a juror from amongst the by-standers in the court.

Talion, law of retaliation. See LEX TALIONIS.

Talis interpretatio semper fienda est, ut evitetur absurdum, et inconveniens, et ne judicium sit illusorium.—1 *Co.* 52.—(Interpretation is always to be made in such a manner, that what is absurd and inconvenient is to be avoided, lest the judgment be illusory.)

Talis non est eadem; nam nullum simile est

idem.—4 *Co.* 18.—(What is like is not the same ; for nothing similar is the same.)

Talis res, vel tale rectum, quæ vel quod non est in homine adtunc superstite sed tantummodo est et consistit in consideratione et intelligentiâ legis, et quod alii dixerunt talem rem vel tale rectum fore in nubibus.—Co. Litt. 342.—(Such a thing or such a right as is not vested in a person then living, but merely exists in the consideration and contemplation of law [is said to be in abeyance], and others have said that such a thing or such a right is in the clouds.)

Tallagers, tax or toll-gatherers.

Tallagium facere, to give up accounts in the Exchequer, where the method of accounting was by talleys.

Talley, or **Tally,** a stick cut into two parts, on each whereof is marked, with notches or otherwise, what is due between debtor and creditor. It was the ancient mode of keeping accounts; one part was held by the creditor, and the other by the debtor. The use of tallies in the Exchequer was abolished by 23 Geo. III. c. 82, and the old tallies were ordered to be destroyed by 4 & 5 Wm. IV. c. 15.

Tallia, commons in meat and drink.

Talliage. See TAILLAGE.

Tally trade, a system of dealing by which shopkeepers furnish certain articles on credit, upon an agreement for the payment of the stipulated price by certain weekly or monthly instalments.—*McCull. Comm. Dict.* A tally was a common security for money in the days of Edward I.—2 *Reeves* c. xi., p. 253 n (*b.*)

Talookdar, a holder of a *talook*, which is a small portion of land; a petty land agent.—*Indian.*

Tam quam, *writ of error from inferior courts*, when the error is supposed to be as well in giving the judgment as in awarding execution upon it. (*Tam in redditione judicii, quam in adjudicatione executionis.*)

Tangible property, corporeal property.

Tanistry, or **Tanistria,** an ancient municipal law or tenure, which allotted the inheritance of lands, castles, &c. to the oldest and most worthy and capable person of the deceased's name and blood, without any regard to proximity. This, in reality, was giving it to the strongest, and naturally occasioned bloody wars in families; for which reason it was abolished in the reign of James I.—*Encyc. Lond.*; 3 *Hall. Const. Inst.* c. xviii., p. 377.

Tannahdar, a petty police-officer.—*Indian.*

Tantum bona valent, quantum vendi possunt. 3 *Inst.* 305.—(Things are worth what they will sell for.)

Tarde venit [Lat.] (*it came too late*).

Tare and Tret, the first is an allowance in merchandise, made to a buyer for the weight of the box, bag, or cask, wherein goods are packed; and the last is a deduction from the weight, for waste in emptying and reselling the goods, by dust, dirt, breaking, &c.

Tare is distinguished into—

(1) *Real* tare, i. e. the actual weight of the package.

(2) *Customary* tare, its supposed weight, according to the practice among merchants.

(3) *Computed* tare, an estimated allowance agreed upon at the time.

(4) *Average* tare, the medium deduced from weighing a few packages, and taking it as a standard for the whole. See ALLOWANCE.

(5) *Super* tare, an additional allowance where the commodity or package exceeds a certain weight.

Tariff [*Span.*], a cartel of commerce, a book of rates, a table or catalogue, drawn usually in alphabetical order, containing the names of several kinds of merchandise, with the duties or customs to be paid for the same, as settled by authority, or agreed on between the several princes and states that hold commerce together. *Encyc. Lond.*

Tasmania, formerly called Van Diemen's Land. See 5 & 6 *Vict.* c. 13; 8 & 9 *Vict.* c. 95; 10 & 11 *Vict.* c. 57; 18 & 19 *Vict.* c. 56; 24 & 25 *Vict.* c. 52.

Tath. In the counties of Norfolk and Suffolk, the lords of manors claimed the privilege of having their tenants' flocks or sheep brought at night upon their own demense lands, there to be folded for the improvement of the ground, which liberty was called by the name of the tath.—*Spelm.*

Tau, a cross.

Tauri liberi libertas, a common bull, because he is free to all the tenants within such a manor, liberty, &c.

Tax [fr. *tâsg*, Wel.; *taxe*, Fr. and Dut.], an impost; a tribute imposed on the subject; an excise; tallage. A tax may now be defined to be a certain aid, subsidy, or supply, granted by the Commons in parliament assembled, and confirmed by Act of Parliament, constituting the sovereign's extraordinary revenue, and paid yearly towards the expenses of government. 1 *Bl. Com.* c. viii.

The general principles of taxation are these:

(1) The subjects of every state ought to contribute to the support of the government, as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation.

(2) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear

and plain to the contributor, and to every other person.

(3) Every tax ought to be levied at the time, or in the manner, in which it is most likely to be convenient for the contributor to pay it.

(4) Every tax ought to be so contrived, as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state.

Taxes are either direct or indirect. A direct tax is one that is demanded from the very persons who are intended or desired to pay it. Indirect taxes are those which are demanded from one person, in the expectation and intention that he shall indemnify himself at the expense of another: such as the excise or customs. Taxes may be laid on any one of the three sources of income (rent, profits, or wages); or a uniform tax on all of them.—3 *Smi. Wealth of Nat.* b. 5, c. ii., and 2 *Mill's Pol. Eco.* b. 5, cc. ii., iii.

Taxatio Ecclesiastica, the valuation of ecclesiastical benefices made through every diocese in England, on occasion of Pope Innocent IV. granting to King Henry III. the tenth of all spirituals for three years. This taxation was first made by Walter, Bishop of Norwich, delegated by the Pope to this office in 38 Hen. III. and hence called *taxatio norwicensis.* It is also called Pope Innocent's Valor.

Taxers, two officers yearly chosen in Cambridge to see the true gauge of all the weights and measures.

Taxing-masters, officers of the courts, who examine and allow or disallow items in bills of costs. See 1 *Chit. Arch. Prac. by Pren.* 506; and *Smi. Ch. Pr.* 12, 62, 829.

Taxt-ward, an annual payment heretofore made to a superior in Scotland, instead of the duties due to him under the tenure of ward-holding. Abolished.

Team, or **Theame** [fr. *tyman*, Sax., to teem or bring forth], a royalty or privilege granted, by royal charter, to a lord of a manor, for the having, restraining, and judging of bondmen and villeins, with their children, goods, and chattels, &c.—*Glan.* l. 5, c. ii.

Teamster, a waggoner who carries goods for hire.

Technical, belonging to art.

Teding-penny, tething-penny, tithing-penny, a small duty or payment to the sheriff, from each tithing, towards the charge of keeping courts, &c. from which some of the religious were exempted by royal charter.

Teep, a note of hand, a promissory note given by a native banker or money-lender to *zemindars* and others, to enable them to furnish government with security for the payment of their rents.—*Indian.*

Tehsildar, one who has charge of the collections; a native collector of a district acting under a European or zemindar.—*Indian.*

Teind-masters, those entitled to tithes.

Teinds, tithes.

Teinland, thaneland, which see.

Telegraphiæ, written evidence of things past.—*Blount.* See ELECTRIC TELEGRAPH.

Teller, one who numbers; a numberer; four officers in the Exchequer, whose offices were abolished by 4 & 5 Wm. IV. c. 15.

Telligraphum [fr. *tellus*, Lat., land; and γράφω, Gk., to write], an Anglo-Saxon charter of land.—1 *Reeves' Hist. Eng. Law.* c. i., p. 10.

Tellwore, that labor which a tenant was bound to do for his lord, for a certain number of days.

Tementale, or **Tenementale,** a tax of two shillings upon every ploughland; a decennary.

Templar, a student of the law, or barrister, being a member of the Middle or Inner Temple.

Temples, the two inns of court, thus called, because anciently the dwelling-house of the Knights-Templars. On the suppression of that order, they were purchased by some professors of the common law, and converted into *hospitia* or inns of court. They are called the *Inner* and *Middle* Temple, in relation to Essex House, which was also a part of the house of the Templars, and called the *Outer* Temple, because situated without Temple-bar.—*Encyc. Lond.*

Temporal lords, the peers of the realm; the bishops are not in strictness held to be peers, but merely lords of parliament.

Temporality, or **Temporals,** secular possessions, as distinguished from ecclesiastical rights; such revenues, lands, and tenements as archbishops and bishops have had annexed to their sees by the kings and others, from time to time, as they are barons and lords of parliament.—*Cowel.*

Temporalty, the laity; secular people.

Temptatio, or **Tentatio,** a trial or proof.

Tempus pacis est quando cancellaria et aliæ curiæ regiæ sunt apertæ, quibus lex fiebat cuicunque prout fieri consuevit. Utrum terra sit guerrina, necne, naturaliter debet judicari per recorda regis et eorum qui curias regis per legem terræ custodiunt et gubernant, sed non alio modo. Co. Litt. 249 *b.*—(Time of peace is when the Chancery and the king's other courts are open, in which justice may be rendered to every one as far as it has been accustomed to be done. Whether the land is in a state of war or not ought naturally to be determined by the records of the king, and of those who guard and administer the courts of the king, according to the law of the land, and in no other way.)

Tempus pessonis, mast-time in the forest, which is about Michaelmas to St. Martin's Day, November 11.

Tempus semestre, half a year, and not six lunar months.—*West. II.* c. 5.

Tena, a coif worn by ecclesiastics.

Tenancy [fr. *tenentia*, law Lat.], the condition of a tenant; also the temporary possession of what belongs to another.

Tenancy in common. This estate is created when several persons have several distinct estates, either of the same or of a different quantity, in any subject of property, in equal or unequal shares, and either by the same act or by several acts, and by several titles, and not a joint title.

A tenancy-in-common differs from a joint-tenancy in this respect; joint-tenants have one estate in the whole, and no estate in any particular part; they have the power of alienation over their respective aliquot parts, and, by exercising that power, may give a separate and distinct right to their particular parts. Tenants-in-common have several and distinct estates in their respective parts; hence the difference in the several modes of assurance by them. Each tenant-in-common has, in contemplation of law, a distinct tenement and a distinct freehold.

The best way to create a tenancy-in-common is either to limit one moiety of the premises expressly to one, and the other moiety to the other, or to use the words 'to hold as tenants-in-common;' as the law may otherwise construe it a joint estate. In a will, the words 'equally to be divided'—'equally between or to them'—'equally' alone—'respectively'—'rateably' 'share and share alike,' and words of a similar distributive import, create a tenancy-in-common, as well in respect of real as personal estate.

It may also be created whenever an estate in joint-tenancy or coparcenary is dissolved by the severance of the title or interest, so that there be no partition made, but the unity of possession continues.

A tenancy-in-common may be by prescription; as the tenants prescribing for themselves and their ancestors that the estate had been left in common for a time, which will make a good prescriptive title.—*Litt.* s. 310.

Tenants-in-common hold by unity of possession, because neither of them knows his own severalty, and therefore they all occupy promiscuously. This is the only unity belonging to the estate; for since the tenants may hold different kinds of interests so there exists no necessary unity of interest, and there is no unity of title, for one may claim by descent, and another by purchase; also the estate may vest in each tenant at different times. There being no entirety of interest among tenants-in-common, each is seised of a distinct though undivided share; they hold *per my et non per tout*, and consequently the *jus accrescendi* does not apply to them. They may maintain actions of account against each other under 4 & 5 Anne, c. 16. s. 27.

This estate is subject to curtesy and dower. It is dissolvable.

(1) By a voluntary deed of partition.

(2) By the union of all the titles and interests in one tenant by grant, devise, surrender, or otherwise, which reduces the whole estate to a severalty.

(3) By compulsive partition, under a decree in Chancery, or under an enclosure act.

Tenant, one that holds of another; one that, on certain conditions, has temporary possession and use of that which is in reality the property of another; correlative to *landlord*.—*Encyc. Lond.*

Tenantable repair, such a repair as will render a house fit for present habitation.

Tenant-right, a custom either ensuring a permanence of tenure in the same occupant without liability to any other increase of rent than may be sanctioned by the general sentiments of the community; or entitling a tenant of a farm to receive purchase-money, amounting to so many years' rent, on its being transferred to another tenant. It prevails in Ulster. 1 *Mill's Pol. Eco.* 385.

Tenantry, a body of tenants on an estate.

Tende, to tender or offer.

Tender, offer; proposal for acceptance.

A tender of satisfaction is allowed to be made in most actions for money demands. It need not be made by the debtor personally to the creditor personally; it may be made through an authorized agent, and a tender to one of several joint creditors is sufficient. A tender must be absolute and unconditional, and the money must be actually produced at the time of the tender, unless that be dispensed with by the creditor. No copper coin can be tendered when the debt is sixpence or upwards. No tender of silver coin above forty shillings is legal, and Bank of England notes are a legal tender for debts above 5*l.*—56 *Geo. III.* c. 68; 3 & 4 *Wm. IV.* c. 98, s. 6. A plea of tender admits the contract and facts stated in the declaration. See PAYMENT OF MONEY INTO COURT.

Tenement [fr. *teneo*, Lat., to hold], in its vulgar acceptation, is only applied to houses and other buildings, but in its original, proper, and legal sense it signifies everything that may be *holden*, provided it be of a permanent nature, whether it be of a substantial and sensible or of an unsubstantial, ideal kind. Thus *liberum tenementum*, frank tenement or freehold, is applicable not only to lands and other solid objects, but also to offices, rents, commons, advowsons, franchises, peerages, &c. 2 *Bl. Com.* 16.

Tenementary land, the outland of manors,

granted to tenants by the Saxon thanes, under arbitrary rents and services.—*Spelm.*

Tenementis legatis, an ancient writ, lying to the city of London, or any other corporation (where the old custom was, that men might devise by will lands and tenements, as well as goods and chattels), for the hearing and determining any controversy touching the same. *Reg. Orig.* 244.

Tenendas, that clause of a charter by which the particular tenure is expressed.

Tenendum, that clause in a deed wherein the tenure of the land is limited and created. Its office is to limit and appoint the tenure of the land which is held, and how and of whom it is to be held. See DEED.

Tenens nil facere potest, propter obligationem homagii, quod vertatur domino ad exhæredationem, vel aliam atrocem injuriam; nec dominus tenenti è converso. Quod si fecerint, dissolvitur et extinguitur homagium omnino, et homagii connexio et obligatio; et erit inde justum judicium cum venerit contra homagium et fidelitatis sacramentum, quod in eo in quo delinquunt puniantur; scilicet, in personâ domini quod amittat dominium, et in personâ tenentis quod amittat tenementum.—*Co. Litt.* 65.—(The tenant, by force of the obligation of homage, can do no action which may operate to the disinheriting his lord, or doing him any atrocious injury; and so conversely, cannot the lord, as against the tenant. For if they act in such a manner, they dissolve and extinguish altogether the homage and the connexion and obligation of homage; and when anything is done contrary to the homage and the oath of fidelity, it is just that the parties be punished through that very thing with regard to which they are guilty; that is to say, that the lord lose his lordship; and the tenant his tenement [according as one or the other is guilty].

Tenentibus in assisâ non onerandis, a writ that formerly lay for him to whom a disseisor had alienated the land whereof he disseised another, that he should not be molested in assise for damages, if the disseisor had wherewith to satisfy them.—*Reg. Orig.* 214.

Tenet [Lat.] (*he holds*).

Tenheded, or **Tienheofed** [Sax.], a dean.

Tenmentalè, or **Tenmantale,** the number of ten men, which number, in the time of the Saxons, was called a decennary; and ten decennaries made what we call a hundred. Also, a duty or tribute paid to the Crown, consisting of two shillings for each ploughland.—*Encyc. Lond.*

Tennè, *tawny, orange* or *brusk*; orange color.

In engravings it should be represented by lines in bend sinister crossed by others barways. Heralds who blazon by the names of the heavenly bodies, call it *dragon's-head,* and those who employ jewels, *hyacinth.* It is one of the colors called stainand.—*Heraldic term.*

Tennis, *Game of,* legalized by 8 & 9 Vict. c. 109.

Tenor, sense contained; general course or drift. *Tenor* implies that a correct copy is set out, but the word *effect* alone implies that the substance only is set out.

Tenor investituræ est inspiciendus.—*Wright's Ten.* 21.—(The tenor of an investiture is to be searched into.)

Tenore indictamenti mittendo, a writ whereby the record of an indictment, and the process thereupon, is called out of another court into the Queen's Bench. See CERTIORARI.

Tenore præsentium (*by the tenor of these presents*), the matter contained therein, or rather the intent and meaning thereof.

Tenseriæ, a sort of ancient tax or military contribution.

Tentates panis, the essay or assay of bread. *Blount.*

Tenths [*decimæ*, Lat.], tithes; also the tenth part of the annual value of every spiritual benefice, according to the valuation in the king's books, being that yearly portion or tribute which all ecclesiastical livings formerly paid to the Crown.

Tenuit [Lat.] (*which he held*).

Tenure est pactio contra communen feudi naturam ac rationem, in contractu interposita. Wright's Ten. 21.—(Tenure is a compact contrary to the common nature and reason of the fee, put into a contract.)

Tenure, the mode of holding property, and is the direct result of feudalism, which separated the *dominium directum* (the dominion of the soil), and placed it mediately, or immediately, in the Crown, from the *dominium utile* (the possessory title), the right to the use and profits in the soil, designated by the term seisin, which is the highest interest a subject can acquire.

Without tracing the origin of tenure into remote and unsatisfactory antiquity, it is clearly ascertained that there were originally two modes of holding land, viz.:—(1) *Allodial* (from *los*, signifying *lot*), over which the owner had entire and irresponsible dominion, which he could dispose of at his own pleasure, or transmit as an inheritance to his children. The land was also attachable to answer the owner's debts, and could also be made available for commercial enterprise. Such tenure was acquired upon the distribution of lands by *lot*, among the Franks. (2) *Feudal* (from *od*, possession, or estate, and *feo*, wages, pay), over which the owner had but a conditional dominion acknowledging a superior lord, upon whose pleasure the tenure precariously depended, and without whose consent nothing could be done. And this is the groundwork of *the*

feudal system, which displaced the laws imposed upon this country by the Saxons and the Danes, who, migrating from the forests of Germany, had established themselves and their laws in this kingdom.

Amidst the conflicting opinions relative to the sources of our ancient laws, the better opinion appears to be that they were derived from the primeval customs and codes of the German tribes, the *capitularia* of the Frank and Merovingian line of French kings, and particularly from the feudality of the province of Normandy. And although the notion of the feudal system may be traced among the Saxon institutions, its complete development did not take place until the twentieth year of the reign of William the Conqueror, just after the compilation of Domesday Book (from the Saxon *dom*, a judgment), which was a survey of all the lands in England, referring to the time of Edward the Confessor, as the Domesday Book of Alfred referred to the time of Ethelred. Thus the imperfect liberties of the Anglo-Saxons were infringed, and the people reduced to a state of vassalage under the king or barons, and the lower orders to positive slavery.

The logomachy (for it is nothing more than a dispute about words), as to whether the Norman *acquired* or *conquered* this country, and the attempt to give to the word *conquest* the meaning of *acquisition* in a feudal sense, are mere idle ingenuities. The historical facts are these:—In the fifth century some bands of Saxon pirates landed in this country, and, after committing atrocious cruelties, established themselves in it. The state of society amongst the Saxons was extremely rude; violence, and not justice, prevailed; liberty was pretended, but the rich and powerful carried on their depredations unrestrained by law. At length, in the 11th century, the Normans, equally predatory in their habits, but much more polished and chivalrous in their manners, headed by William, Duke of Normandy, invaded our island. After defeat of the Saxons, at the battle of Hastings, William, thence called 'the Conqueror,' ascended our throne as king.

The historians of this period agree that the Norman's administration was upheld by arms; that his laws made distinctions between the English and his own troops, in favor of the latter; that he totally disregarded both the interests and affections of the natives, and, as Hume remarks, in the fourth chapter of his history, 'if there were an interval when he assumed the appearance of a legal sovereign, the period was very short, and was nothing but a temporary sacrifice, which he, as has been the case with most conquerors, was obliged to make of his inclinations to present policy. Scarce any of those revolutions which, both in history and common language, have always been denominated conquests, appear equally violent, or were attended with so sudden an alteration both of power or property.' After showing the difference between the Romans and the Normans in their treatment of their subjugated possessions, the historian says: '*Except* the former conquest of England by the Saxons themselves, who were induced by peculiar circumstances to proceed even to the extermination of the natives, it would be difficult to find in all history a revolution more destructive, or attended with a more complete subjection of the ancient inhabitants. Contumely seems even to have been wantonly added to oppression, and the natives were universally reduced to such a state of meanness and poverty, that the English name became a term of reproach, and several generations elapsed before one family of Saxon pedigree was raised to any considerable honors, or could so much as attain the rank of baron of the realm.' Upon reading this part of our history, it is difficult to come to any conclusion other than that the term '*conquest*,' as applied to the Norman establishment in this country, means, and literally was, warlike subjugation, by superior military force.

The principles of the feudal-system were based then upon conquest, the hordes from Celtic Europe became soldiers of fortune, and, after subduing a country, they instituted a regular plan of military confederation, the provisions of which had for their object the preservation of the spoils of war, and the permanence of victory. Thus, large districts of land were given to the superior officers by the conquering general, and these districts were again granted in smaller allotments to the inferior officers and most deserving soldiers. The wisdom which the northern invaders evinced in these institutions, as well as the valour they displayed in the defence of their acquisitions, alarmed the princes of Europe, who, in order to preserve their dominions, adopted a similar policy. Their subjects also fell in with these changes, because, by such arrangements, they acquired the protection of some powerful lord, without which, in those times of anarchy and confusion, it was scarcely possible for an isolated individual to preserve either his liberty or his property. As allodial land was on the whole much more desirable than feudal, such a conversion would appear very surprising, unless it could be explained by the reason just mentioned, to which it may be added that the composition or fine for the commission of a crime against the feudatory was much greater than that for a person who held his land by an allodial tenure. Thus nearly all allodial property was destroyed, and feudalism became the law of the western nations. Small

tracts of allodial lands, however, are to be found in Germany, France, Holland, and even in Normandy, and some in Scotland. It should be remarked, that where allodial tenure was converted into feudal, such lands were from the beginning hereditary, which was not the case where the feudal law was established by the iron right of conquest.

Out of feudalism arose the fictitious maxim, that all lands in this kingdom were originally granted by our kings, and held mediately or immediately of the king, as lord paramount, in consideration of certain services to be rendered by the holder. There is then no allodial land in England. Those who held immediately from the king were called tenants *in capite* (in chief), which was the most honourable tenure. This was of two kinds, either *ut de honore*, where the land was held of the king as proprietor of some honor, castle, or manor, or *ut de coronâ*, where it was held of him in right of the Crown itself. When these tenants granted portions of their lands to inferior persons they were called *mesne* (middle) lords or barons, with regard to such inferior holders, who were styled tenants *paravail*, the lowest tenant, because they were supposed to make avail or profit of the land. The lands were called feuds (*feoda*), either proper, which were purely military, given *militiæ gratiâ*, without price, to persons duly qualified for military service; or improper, which did not, in point of acquisition, services, and the like, strictly conform to the nature of a mere military feud, such as those that were sold or bartered for any equivalent, or granted free from all circumstances, or in consideration of any certain services.

In modern phraseology, the thing holden is called a *tenement*, the holder of it a *tenant*, and the manner of holding it a *tenure*. Lay tenements were divided into two great classes, viz., frank-tenement or freehold, and villenage.

Frank-tenements were subdivided into *knight-service* and *free socage*.

Knight-service proper, or *tenure in chivalry*, was the original and most honorable species of tenure, created by a determinate quantity of land called a knight's fee. Its extent was twelve plough-lands, that is, as much land as could be reasonably ploughed in one year by twelve ploughs, or, according to other authorities, 800 acres of land, and others say 680, and its value in those times was twenty pounds *per annum*. This tenure was granted by words of pure donation, *dedi et concessi* (I have given and granted); transferred by investiture, i. e. by a solemn and public delivery of the very land itself by the lord to a vassal, in the presence of his other vassals, and perfected by homage and fealty; *homage* being the acknowledgment of tenure, and *fealty* the solemn oath made by the vassal of fidelity and attachment to the lord.

The holder of a knight's fee was bound to attend the lord to the wars on horseback, armed as a knight, for forty days in every year, if called upon, and this attendance was his rent or service for the land he held; but if he had only half a knight's fee, he attended only twenty days, and so on in proportion. Seven other services were afterwards superinduced upon this tenure, viz.:—

(1) Aids, which were three, to ransom the lord's person, if taken prisoner; to make the lord's eldest son a knight, attended with great pomp and expense, when he was fifteen years of age; and to marry the lord's eldest daughter, by giving her a portion.

(2) Relief, which was a fine or composition with the lord for taking up the tenure lapsed or fallen in by the death of the last tenant. The fine was 100*s*. payable if the heir at his ancestor's death were of age.

(3) Primer seisin was a right which the king had, when any of his tenants *in capite* died, possessed of a knight's fee, to receive from the heir (if he were of age) a year's profits of the lands, if they were in immediate possession, and half a year's profits, if they were expectant on a life estate.

(4) Wardship of the heir, if under the age of twenty-one, being a male, or fourteen, being a female, belonged to the lord, who was then called the guardian in chivalry. He had the custody of the heir, together with the lands (without accounting for the profits, and subject only to the infant's bare maintenance), till the age of twenty-one (males), and sixteen (females). The heir-male was supposed to be incapable of performing knight-service till twenty-one; but the female was supposed to be capable of marrying at fourteen, and then her husband might perform the service. When the heir-male attained twenty-one, or the female sixteen, he or she might sue out a writ of *ousterlemain* (*amovere manum*, Lat.), in order to get the lands out of the guardian's hand, the fine upon which was one half year's profits of the land. In order to ascertain these profits, which arose to the Crown, the court of awards and liveries was erected by the 32 Hen. VIII. c. 46.

(5) Marriage, which was the right of disposing of the infant-ward in matrimony by the guardian in chivalry. If the infant refused the person tendered, he or she forfeited the value of the marriage, i. e. so much as a jury would assess, or any one would give to the guardian for such an alliance; or if the infant married without the guardian's consent, the fine was double the value of the marriage; but this last fine did not extend to heirs female.

(6) Fines due to the lord for every alienation, i. e. whenever the tenant had occasion to make over the land to another. One-third of the yearly value was paid for the lord's license; but if the tenant aliened without the lord's license, a full year's value was the fine.

(7) Escheat, which is a species of reversion; for if the tenant died without heirs of his blood, or if he had committed treason or felony, the mutual bond between the lord and such tenant was dissolved, and the tenure being determined, the land resulted back to the lord who gave it. But the statute 3 & 4 Wm. IV. c. 106, s. 10, enacts, that after the death of a person attainted of treason or felony, the attainder (i. e. when sentence is pronounced upon the conviction), shall not prevent any person from inheriting land who would have been capable of inheriting the same by tracing his descent through such relation, if he had not been attainted, unless such lands shall have escheated in consequence of such attainder *before* the 1st January, 1834, when the law was, that the attainder of a person abolished every inheritable quality, by which he was rendered not only incapable of himself inheriting, or transmitting his own property by heirship, but he also obstructed the descent of his lands to his posterity, in all cases where they were obliged to derive their title through him.

Grand serjeanty was another species of tenure, which some writers think was superior to knight-service, whereby the tenant was bound instead of serving the king *generally* in the wars, to do him some special, certain, and honorary service in person, as to be marshal of his host, or high steward of England, or to carry his banner or his sword, or to be his butler, champion, or other officer at his coronation. In most other respects it was similar to knight-service, only he was not bound to pay aid or escuage; and when tenant by knight-service paid 5*l.* for a relief, tenant by grand serjeanty paid one year's value of his land, were it much or little.

Cornage tenure was a species of grand serjeanty. The service was to wind a horn in order to warn and rouse the king's subjects to arms when the Scots or other enemies poured over the borders.

These tenures were held by personal and uncertain services, which, at length, becoming inconvenient and troublesome, were commuted into certain monetary assessments, called *escuage* or *scutage*, from *scutum* [Lat.], then a well-known denomination for money, as it had previously been for a shield. These scutages became the groundwork of subsidies, which were afterwards levied by our kings upon the people, to defray the expenses of their wars, out of which the land-tax of the present day sprung. Thus the gallant knight degenerated into the tame and overtaxed slave, the national militia into a band of mercenaries, and the nobles who fought for the sovereign into crafty adventurers, enriching themselves by means of systematic extortion, while, during peace, these feudal barons ravaged their neighbours, oppressed the commoners, and were, in fact, bandits and robbers.

At last these military tenures, together with all their grievances, were destroyed at the Restoration. The statute 12 Car. II. c. 24, enacted, 'that the court of awards and liveries, and all wardships, liveries, *primer seisins* and *ousterlemains*, values, and forfeitures of marriage, by reason of any tenure of the king or others, be totally taken away. And that all fines for alienations, tenures by homage, knight-service, and escuage, and also aids for marrying the daughter or knighting the son, and all tenures of the king *in capite*, be likewise taken away. And that all sorts of tenures, held of the king or others, be turned into free and common socage, save only tenures in frankalmoign, copyholds, and the honorary services (without the slavish part) of grand serjeanty; and that all tenures which shall be created by the king, his heirs or successors, in future shall be free and common socage.'

The other subdivision of frank tenement is *free socage* [*soca*, Lat.], which, most probably, means plough-service. It is distinguished from knight-service in this respect, that it is held by a certain determinate but honorable duty; whereas, we have seen, that the tenure in chivalry or knight-service was uncertain, precarious, and indeterminate. These free socage tenures are said by the learned to be the relics of Saxon liberty, which were left untouched by the oppressive hand of the Norman.

The three species of free socage tenures are, *petit serjeanty*, *tenure in burgage*, *and gavelkind*.

(1) *Petit serjeanty* [*parva serjeantia*, Lat.] greatly resembles grand serjeanty, for as the latter is a personal service, the former is a rent or render, both tending to some purpose concerning the king's person. The service in petit serjeanty is the rendering annually to the king some small implement of war; as a sword, a buckler, a bow without a string, or the like. Both the tenures in serjeanty must be held from the Crown. The lands and property which were granted to the Dukes of Marlborough and Wellington for their brilliant military services are held in *petit serjeanty*, each rendering annually a small flag or ensign, which is deposited in Windsor Castle.

(2) *Tenure in burgage* [*burgus*, Lat.], is, where houses or lands, which were formerly the site of houses in an ancient borough, are

held of some lord by a certain rent. There are a great many customs affecting these tenures, the most remarkable of which is the custom of *borough-English*, evidently of Saxon origin, and so named to distinguish it from the Norman customs. See BOROUGH-ENGLISH.

(3) *Gavelkind* [*gyfe-eal-kyn*, given to all the kindred]. See GAVELKIND.

The nature of these free socage tenures is feudal, and this will more plainly appear from a brief comparison of their incidents with those of tenure and chivalry. They were both held of superior lords, they were both subject to services (one being held by uncertain, the other by certain services, as we have seen), and the oath of fealty. They were subject to aids, *primer seisin*, marriage, and fines for alienation, all which the statute of Charles II. abolished. Free socage tenures are subject to something very similar to relief, which the ancient lawyers will not allow to be properly a relief. It is one year's rent, be the same either small or great, which the heir pays to the lord upon the death of the tenant, and this is due even though the heir be under age, which was not the case in knight-service, and the reason given is, because the lord had no wardship over him. The difference of the wardship was this: the lord never had it, because in free socage tenure, no military or other personal service being required, there was no occasion for the lord to take the profits, in order to provide a proper substitute for the infant tenant; bnt the infant's nearest relation, to whom the *immediate* inheritance can by no possibility descend, was the guardian in socage, and he had the custody of the land and the infant's person until he was fourteen. For instance, if the land descended from the father of the infant, his uncle by the mother's side cannot immediately inherit, and therefore he may be guardian. Our laws have deemed it proper, in order to avoid every suspicion of temptation, not to intrust the person of an infant to the custody of his possible heir. This wardship ceased at fourteen, and the heir might have ejected the guardian and called him to account for the rents and profits. He was then capable of choosing a guardian for himself, but in order to prevent an improvident choice, the 12 Car. II. c. 24 (quoted before), enacted that it should be in the power of any father by will to appoint a guardian till his child should attain twenty-one. And if no such appointment be made, the Court of Chancery will frequently interpose and appoint a guardian, to prevent an infant-heir from improvidently exposing himself to ruin.

The other great class of tenements is *villenage*, which is subdivided into *pure* and *privileged* villenage.

Pure villenage was the origin of the present copyhold tenures, or tenure by copy of court-roll, at the will of the lord, to understand which it is necessary to explain the origin and nature of manors.

A manor from the Norman-French word *mesner*, to guide, was a district of land held by a superior lord, who, keeping in his own actual occupation so much of it as was necessary for the use of his family (which part was, therefore, called *terræ dominicales* or *demesne* lands), distributed the remainder or tenemental lands among sundry tenants, who held by one of two different tenures. One of these tenures was called *book-land* or charter-land, which was held by deed under certain rents and free services, and was very similar to free socage lands; the other species was called *folk-land*, which was not held by deed, but distributed among the common people at the lord's pleasure, who might resume the occupation thereof at his discretion. These tenants, denominated serfs and villeins, and the females, neifes, were in a condition of absolute slavery, resembling the Spartan *helotes*, the boors in Denmark, and the *traals* or slaves in Sweden. The lords had the power of enfranchising them by manumission, either expressed or implied. See MANOR.

The two material elements of a manor were, therefore, demesne and services. Some part of the manor, termed the lord's waste, remained uncultivated, and was common both to the lord and his tenants. The lord of a manor was empowered to hold a court, called a court-baron, where speedy and effectual justice was administered to all the tenants. It is said by some authorities that this court is an inseparable ingredient of a manor, and that if the number of suitors should so fail as not to leave sufficient to make a jury, or homage, that is, two tenants at least, the manor itself is lost; but, by other authorities, it would seem that the manor itself may continue to exist, though the power of holding a court-baron may be gone, for want of a sufficient number of suitors. See COPYHOLD.

Thus copyhold tenures are of mean but ancient descent, for copyholders were the villeins, who by continuous encroachments upon their lords, established, at length, a customary right to their lands, which had been held absolutely at their lord's will. They now call themselves tenants by copy of court roll, because the admissions into their lands are entered on the manor rolls, and the copies of such entries are witnessed by the steward. The statute 12 Car. II. c. 24, virtually abolished tenure in villenage, but reserved copyhold, which is a mitigation of the state of villenage, for though their persons are enfranchised, their lands remain subject to the same servile conditions and forfeitures as before, though these services are almost universally commuted for pecuniary rents.

Immemorial custom is the very life of these tenures. Some customs permit the heir to succeed to the lands on his ancestor's death, when such tenures are called copyholds of inheritance; and these are liable to reliefs, escheats, wardships, and fines due on the change of the lord by death, or the change of the tenant in any way, or for a license empowering the tenant to demise or do any other act, which, without such license, would cause a forfeiture. These fines are sometimes arbitrary, and in other manors fixed by custom, but at all events they must not exceed two years' improved value of the lands, without deduction of land-tax; others are only enjoyed for life, which are subject to fealty, and services usually rendered in rents. Both species of copyholds are liable to heriots (a Danish custom, whose origin is merely conjectural). See HERIOT.

Privileged villenage, sometimes called *villein-socage*, is where lands have been held of the Crown from the Conquest. This is an exalted species of copyhold, held according to custom, and not according to the mere will of the lord. It is still subsisting under the name of tenure in *ancient demesne*, which consisted of those lands or manors that appeared in Domesday-Book, to have been actually in the possession of the Crown in the reign of Edward the Confessor or William the conqueror. These tenants, although their services were of a base original, were esteemed highly privileged villeins, for they could not be compelled to relinquish their lands at the will of their superior, *et ideo dicuntur liberi*. They had also a peculiar court of their own, in which to contest their rights. This tenure was not abolished by the 12 Car. II. c. 24.

Tenures in ancient demesne are of three kinds:—

(1) Tenures in ancient demesne (properly so called), which is a free holding by grant from the Crown. The tenants are bound, in respect of their lands, to perform some of the better sort of certain villein services, which are now commuted into money rents.

(2) Privileged copyholds, customary freeholds or free copyholds, are held of a manor, which is ancient demesne, according to the custom of the manor, but not of the lord's will. These lands are in fact copyholds, and therefore the term customary freeholds is not strictly correct; for although the tenants have an interest nearly as good as freehold, yet they have not a freehold interest.

(3) Copyholds of base tenure are lands of a manor, which is ancient demesne, but held merely at the lord's will.

The old Saxon ecclesiastical tenures, which were continued under the Norman Revolution, are the two following:—

(1) *Frankalmoigne* [*libera eleemosyna*, Lat., free alms], by which religious corporations and their successors for ever hold lands of the donor, without any service other than the praying for the souls of the donor and his heirs. See FRANKALMOIGNE.

A lay person cannot be a tenant in *frankalmoigne*. The ancient monasteries and religious houses held their land by this tenure, and so do a great many ecclesiastical and eleemosynary foundations at the present day; but the service of praying for the souls of the donors has been discontinued, and other services introduced more conformable to the doctrines of the Established Church of England.

(2) *Tenure by divine service*, to which is annexed some special divine service, as to sing so many masses, to distribute a certain sum in alms, &c., which were contradistinguished from *free* alms; for if unperformed the lord can distrain without complaining to the visitor.

The statute 12 Car. II. c. 24, excepts these spiritual tenures from abolition, so that many are now subsisting, but only the Crown can create them in the present day.

The feudal system then consolidated our English tenures, and preserved the rights of property during the chivalrous ages. This system, in order that its beneficial effects might be seen, ought to be compared with the state of society preceding it, and not with the commercial civilization of modern times. The great cause of feudality was the feeble administration of that vast and barbarous empire jumbled together by the children of Charlemagne. The confusion and anarchy arising from this overgrown and disconnected military alliance required the bands and fetters of the feudal tenure to bind the community in mutual dependence, so as to enforce the common rights and duties of social intercourse. It resisted the ambitious aim of universal despotism, and fostered, even in its slavish ceremonies, the notions of commercial liberty. History tells us that the feudal policy protected from the iron hand of the warrior the sacred institutions of civil freedom; that it restrained the desolating tyranny of the Conqueror, by interposing the barriers of a free and brave nobility, as an invincible protection to a poor and disorganized people. The spirit of liberty, and the notions of private right, can be distinctly traced in the limited services of the vassal; in the mutual obligations between the lord and his tenant; in the consent required in order to effect legislative changes; and above all, in that security which the people experienced in the administration of justice by their peers. Feudality was also a school of moral discipline. The dissolution of the Roman empire fostered the vices of falsehood, treachery and ingratitude. Now the very essence of the feudal tenure was destructive of every violation of faith, which was severely and promptly

avenged, and branded by universal infamy. And the trial by peers was peculiarly calculated to promote a keener feeling, a quicker perception of moral and legal obligations. But since private wars were perpetuated by these institutions, they did not promote the peace and good order of society. The feudal system was therefore adverse to the accumulation of wealth, and the improvements of those peaceful arts which mitigate the evils and abridge the labors of mankind.

When the feudal baron first raised his banner, he lived amidst his vassals; he was their patron and defended them; but at length, by the various changes of property, and the centralization of a parliament, the baron became separated from his dependents, his protection became more fictitious than real; voluntary associations of the people were formed, and thus the force of the feudal connection became weakened.

The peaceful art of agriculture and the Roman jurisprudence preserved to us by the Pandects of Justinian materially affected the *personal* and *civil* capacities of the people, for they began to erect corporations endowed with privileges, and separate municipal governments. Hence the tyranny of the barons was opposed, and their violent system of ruling broken down. At length, commerce arose and the energy of man expanded in all its living power. Commerce, even from its dawn to the present moment, has worked wonders throughout this peopled globe. It has embellished the amenities of our social being, it has ameliorated the condition of the people, it has elevated the dignity of intellect, it has liberalised the manners of mankind. The history of commerce teems with records of these beneficent tendencies. The information gained by foreign intercourse created new thoughts, and luxury demanded new food, new pleasures. Another agent was thus evoked, and trade was the great function of correspondence. It displaced physical strength, it created mental competition, and science went into the ascendant. The fetters of feudalism were unloosed, and its vast influence was at an end, though some of its elements yet remain in a very modified state, in the laws of real property. But while we eulogise commerce, there is one evil that we are in danger of falling into. We must beware of placing in the market all the arts and sciences, the intellectual and moral attributes, as well as the produce of manufacture and agriculture. We must be cautious not to plunge ourselves altogether into the intoxicating and virtue-destroying waters of avarice!

'The feudal customs,' said Lord Kames, 'ought to be the study of every man who proposes to reap instruction from the history of modern European nations; because among these nations public transactions, not less than private property, were, some centuries ago, regulated by the feudal system. Sovereigns formerly were many of them connected by the relation of superior and vassal. The King of England, for example, by the feudal tenure, held of the French king many fair provinces. The King of Scotland, in the same manner, held many lands of the English king. The controversies among these princes were generally feudal; and without a thorough knowledge of the feudal system, one must be ever at a loss in forming any accurate notion of such controversies, or in applying to them the standard of right and wrong.'

An endeavor has thus been made to sketch briefly the effects of the feudal system upon the tenures of property. The modern freehold and copyhold tenures were severally derived in this way. From the military tenures, which were parcelled out among the martial followers of the chief, and dedicated to arms and ambition, and also from the free socage tenures, have proceeded the *freeholds* of the present day; while from the villenage tenures, which attached the tenants to the soil, rather by the chain of slavery than by the bond of tenure, the *copyholds* were derived. The main distinction between these two species of tenure is this:—Freehold property is held independently, while copyhold is held by the will of some superior lord, which will is regulated according to custom.

Tenures may be thus tabularized:—

LAY TENURES.

- (I.) Frank tenement or freehold.
  - (1) Military tenures (abolished, *except* grand serjeanty, and reduced to free socage tenures).
    - (1) Knight service proper, or tenure in chivalry.
    - (2) Grand serjeanty.
    - (3) Cornage.
  - (2) Free socage, or plough-service.
    - (1) Petit serjeanty.
    - (2) Tenure in burgage.
    - (3) Gavelkind.

(II.) Villenage.
- (1) Pure villenage (whence copyholds at the lord's (nominal) will, which is regulated according to custom).
- (2) Privileged villenage, sometimes called villein socage (whence tenure in ancient demesne, which is an exalted species of copyhold, held according to custom, and not according to the lord's will), and is of three kinds.
  - (1) Tenure in ancient domesne.
  - (2) Privileged copyholds, customary freeholds, or free copyholds.
  - (3) Copyholds of base tenure.

Spiritual Tenures.

(1) Frankalmoigne, or free alms. | (2) Tenure by divine service.

Terce, thirds; dower.—*Scotch term.*

Terminating Building Societies, societies where the members commence their monthly contributions on a particular day, and continue to pay them until the realisation of shares to a given amount for each member, by the advance of the capital of the society to such members as required it, and the payment of interest as well as principal by them, so as to ensure such realisation within a given period of years. They have been almost superseded by Permanent Building Societies, which see.

Term fee, a certain sum charged to a suitor for each term that his cause is in the paper of business to be done.

Term in gross. See Outstanding Term.

Termor, he that holds lands or tenements for a given number of years or for life.

Terms, the times during which the superior courts at Westminster are open to all that complain of wrong, or seek their right by course of law.

There are four terms in each year, Hilary, Easter, Trinity, and Michaelmas, which see.

If a term end on a Sunday, the following Monday will be taken to be the last day. There is no provision for the case of the first day of term beginning on a Sunday, and though no judicial act can be done till the following day, Sunday will perhaps be considered the first day of term for purposes of computation.

Hilary and Trinity Terms are called issuable terms; because in them the issues are joined, and the records made up for trial at the Lent and Summer assizes; Easter and Michaelmas are the non-issuable terms.—1 *Chit. Arch. Prac. by Pren.* 156.

Our university terms are different from the law terms.

Terms for years. An estate for years is denominated a term, because its enjoyment is strictly fixed, for by "term' is meant not only the interest which passes, but also the period for which it is held. It is a chattel real; chattel, because the estate passes to the owner's executors at his death, and not to his heir-at-law, and so far partakes of the nature of personalty; real, because it is an interest in land, and therefore partakes of the nature of real property. An estate for years, then, is an interest in lands, tenements, and hereditaments for an ascertained period. Every estate of a determinate duration is a term, and of the nature of a term of years, though for a less period than a year, a year being the shortest time which the law in this case takes notice of. Hence every term must have a certain beginning from which the computation is to be made, and a certain point beyond which it cannot endure. It may be made determinable on a life, or on any other contingent event, before the effluxion of the time named, as, to A. for 99 years, if B. live so long. Should B. die before the 99 years expire, the estate will cease, but though B. should survive the term, the estate, on the expiration of the 99 years, would be absolutely at an end, for the interest is an estate for years, determinable on a life.

A term is usually created by a deed or specialty contract, called a lease or demise under the common law (see Lease), and the appropriate operative verbs therein are 'demise, *or* grant, lease, and to farm let;' but any words showing the intent of the parties that the one (the lessor) shall divest himself of the possession, and the other (the lessee) come into it for a determinate time, are generally sufficient for the purpose.

It is usual, though not necessary, in the demise after the name of the lessee, to add the words 'his executors and administrators,' in analogy to the use of heirs in a conveyance in fee, an analogy extending so far, that where any estate is given to a person, and an estate for years to his executors by the same instrument, the latter is held to vest also in himself.

It may, however, be created by other means, as by will, or by declaration of use.

In every lease for years, there are four times to be considered:—

(1) The time of computation.

This marks the period whence the continuance of the estate is to be calculated. The time of computation may be either from —

(*a*) A day past; as to hold from the 25th of December last.

(*β*) The present time; as to hold henceforth, or from the making of the lease.

(*γ*) A day to come; as to hold from the 29th of next September.

(*δ*) An event which is to arise; as a grant to B. that when he pays 20*l*. he shall thenceforth have and occupy, &c.

(*ε*) It may be referred to a third person to name the time; as to hold for so many years as A. shall name.

(2) The time of commencement in interest.

This marks the time at which the lessee or termor is to have the enjoyment of the property under the lease or limitation. This time must not be beyond the period allowed by the rule preventing perpetuity; i. e. beyond a life or lives in being and twenty-one years afterwards; but it may be made to commence *in futuro*, as the estate does not effect the feudal seisin, but only the possession. The times of computation and commencement may be the same, or they may be different, the first running from a day past, whilst the last begins from a day to come, which is determined by the form of the limitation. No agreement can confer a title to an estate on a tenant for any period prior to the time when he actually acquired the estate. The time of commencement in interest, or the right of enjoyment, must be either from—

(*a*) The time present; as to hold from a day past, or henceforth, or generally, without naming a time.

(*β*) A fixed future day; as to hold from the 25th of December next, or

(*γ*) A given event, as to hold from the time of payment of 20*l*.

A lease to hold generally, without particularising any time, or from a day that is passed or henceforth, commences from the instant when the deed is delivered or other act, which evidences the lease, is perfected. When the time of commencement is to begin from the present time, or from a fixed future day, it is absolute; if it depend upon a given event, it rests upon a contingency.

The usual forms of leases limit the time according to some one of the following circumstances:—

(*a*) Generally, without specifying any time of computation or commencement, when the term commences from the delivery of the lease, according to the inferred intention of the parties.

(*b*) From the day of the date or writing, which contains the lease of the term, or some evidence thereof, or from the making or sealing of the deed, or by the word 'henceforth'— all which phrases refer to the delivery of the lease.

(*c*) From the day of the date, which, of course, excludes the day of the date (for the word 'from' is privative, and excludes the day), or from some day in particular.

(*d*) From the end of the term in particular or from the end of the time comprised in a term. The word 'term' refers to the continuance of the interest under the lease; the word 'time' to the space of the term. This distinction is important, for if a man make a lease for twenty-one years, and after make a lease to begin *à fine et expiratione prædicti termini annorum dimiss.* (from and after the end and expiration of the aforesaid term of twenty-one years demised), and after the first lease is surrendered, the second lease shall begin presently; but if it had been to begin *post finem et expirationem prædict.* 21 *annorum* (after the end of the said twenty-one years) in that case, although the first term had been surrendered, yet the second lease would not begin till after the twenty-one years be ended *by effluxion of time*, and so *note* the diversity between the term of twenty-one years and the time of twenty-one years.

(*e*) From an event, or one of several events.

When the time of computation is to run from the date of the deed, and it bears an impossible date, as the 34th day of November, or the 31st day of February, the words referring to the date will be rejected, and the time begin from the delivery of the deed. So, when a lease is made for years, to commence and be computed from the determination of a former lease supposed to be subsisting, when in truth there is no such lease, the lease thus granted will commence immediately, and the computation of the term made from the time of the delivery. But a distinction is drawn between an impossible date and one which is possible, and may happen in some year, though it will not happen in every year, as the 29th of February; in the first case, the estate commences immediately; in the last, the time referred to will happen in a Bissextile or Leap-year; the computation will then run from the first 29th of February after the making of the lease.

(3) The time of continuance.

This must be for a period of certain duration, to be calculated by a given space of time, of arithmetical import, and measured by number. It is ascertained either

(*a*) By an enumeration of years, months, weeks, or days;

(*β*) By a reference to them; or

(*γ*) By passing a right which before it vests

in interest is to be reduced to a certainty by a reference to these periods.

(4) The time for the determination of the estate.

This must be certain.

Terms for years are divided into three kinds: (1) absolute; (2) upon condition; and (3) with collateral determinations.

A term for years is absolute when it is for a certain and fixed number of years, without any condition or collateral determination, and is to end by effluxion of time.

A term for years upon condition may be terminated before it arrive at the period to which the limitation has extended it; *ex. gra.* an estate to A. for 500 years, provided that if B. should pay to A. 1,000*l.* on the 1st of next January the term shall cease. It is obvious, then, that a condition annexed to the estate, to defeat it before the end of the term by the effluxion of time, if the event pointed out by the clause of condition shall arise within the term, the estate is on condition, and not an absolute estate.

A term for years, with collateral determinations, may continue under the limitation, till the time at which the term or space for which it is granted will expire. Collateral determinations may be moulded in any manner according to the agreement of the parties. By these means that may be effected which cannot be accomplished by express and direct limitations, as is evident from the following cases:—A lease by a parson for twenty-one *years* determinable on his *ceasing to be a parson*, and a lease *for so many years as he shall continue parson*; and of a lease for twenty-one years, *if a man shall so long live*, and a lease for *so many years as a man shall live*, without ascertaining the number of these years.

Long terms for years, with provisions for their determination, are resorted to in marriage and other settlements, and especially in mortgage transactions.

If a term of years be created by a lease or demise operating at the common law, the lessee, before he actually enters upon the premises, has no estate, but only a right of entry or *interesse termini*, which is an executory interest, and is assignable.

But if the term be created by any assurance which takes effect under the Statute of Uses, the estate vests in possession, and becomes perfected without entry, at the period when it is intended to take effect. And terms created by a devise in a will do not require entry to vest them as estates.

Where a long term for years had been created for a given purpose, and that purpose had been fully accomplished, the term was, of course, fully satisfied. It should, therefore, have been merged by an assignment or surrender to the reversioner, but the practice was to keep such a term on foot, and upon a purchase or mortgage of the land, to make an assignment of such satisfied term to a trustee for the purchaser or mortgagee upon trust to protect him and his estate from all mesne or middle incumbrances, i. e. all estates and charges created intermediately between the creation of the term and the assignment of it, of which the purchaser or mortgagee had no notice at the time of his purchase or mortgage. This practice afforded a shield to purchasers, and mortgagees, who as to their loan are purchasers *pro tanto*. But it seemed wise to our law-makers to put an end to the system, for by 8 & 9 Vict. c. 112, every satisfied term which, on the 31st December, 1845, either by express declaration or by construction of law [*more correctly of equity*], was attendant on the inheritance, absolutely ceased; so has every term which has been satisfied since that day, and which either by express declaration or by construction of law, has since that day become attendant on the inheritance; and so will cease every term which shall hereafter be satisfied, and so become attendant on the inheritance. With this only exception, that every term which was so attendant by express declaration on the 31st December, 1845, is to afford to every person the same protection against every incumbrance, charge, estate, right, action, suit, claim, and demand, as it would have afforded to him had it continued to subsist, but had not been assigned or dealt with after the 31st December, 1845.

The incidents to this estate are the following:—

(1) The tenant is entitled to the same estovers as a tenant for life, unless restrained by special agreement.

(2) He cannot commit any kind of waste with impunity, unless he be a tenant without impeachment of waste, when he has the same privilege as a tenant for life under similar circumstances.

(3) He is entitled to emblements where the term for years depends upon an uncertainty, or is determined by another's act, and not his voluntary conduct.

(4) His estate is first subject to the payment of debts, being part of the natural fund for such purpose.

(5) He may by deed assign his whole interest in the estate, or underlease part of it, unless restrained by condition or covenant. A surrender may either be by deed duly executed, or it may arise by operation of law, as in case of the acceptance of another interest incompatible with the first. If the tenant have underleased, he cannot, by surrendering his original lease, destroy the underlease, for it would be unjust to frustrate his own grant. But if

the original lease be rendered void, by breach of any of its conditions, or an entry be made in consequence of such breach, the underlease will then be defeated; otherwise the original grantee might, by granting an underlease, deprive the original grantor of the benefit of the conditions contained in his grant.

(6) When the term for years vests in the person who is seised of the freehold, by which there is an union of the two interests in the same person at the same time, and there is no intervening estate between the term and the freehold, the term merges in the freehold and becomes extinct.

(7) The estate may be lost by fine and non-claim as to transactions affecting the title before the passing of 3 & 4 Wm. IV. c. 74, and c. 27; and by merger, extinguishment, surrender, written cancellation, forfeiture incurred by non-observance of provisoes, or violation of conditions, or disclaiming the lessor's title, and naturally by effluxion of time. See PARTICULAR TENANTS, *alienation by.*

Termes (Les) de la Ley. See RASTELL.

Terminum, a day given to a defendant.

Terminus ad quem, the terminating point.

Terminus annorum certus debet esse et determinatus.—*Co. Litt.* 45.—(A term of years ought to be certain and determinate.)

Terminus a quo, the starting point.

Terminus et feodum non possunt constare simul in unâ eâdemque personâ.—*Plow.* 29.—(A term and the fee cannot both be in one and the same person at the same time.)

Terra, arable land.

Terra affirmata, land let to farm.

Terra boscalis, woody land.

Terra culta, cultivated land.

Terra debilis, weak or barren land.

Terra dominica, or **Indominicala,** the demesne land of a manor.

Terra excultabilis, land which may be ploughed.

Terra extendenda, a writ addressed to an escheator, &c., that he inquire and find out the true yearly value of any land, &c., by the oath of twelve men, and to certify the extent into the Chancery.—*Reg. of Writs,* 293.

Terra frusca, or **frisca,** fresh land, not lately ploughed.

Terra hydala, land subject to the payment of hydage.

Terra lucrabilis, land gained from the sea or enclosed out of a waste.

Terra manens vacua occupanti conceditur.—1 *Sid.* 347.—(Land lying unoccupied is given to the occupant.)

Terra Normanorum, land held by a Norman.

Terra nova, land newly converted from wood ground to arable.

Terra putura, land in forests, held by the tenure of furnishing food to the keepers therein.

Terra sabulosa, gravelly or sandy ground.

Terra sterilis, ex vi termini, est terra infœcunda, nullum ferens fructum.—2 *Inst.* 665.—(Sterile land is by force of the term barren, bearing no fruit.)

Terra testamentalis, gavelkind land, being disposable by will.

Terra transit cum onere.—*Co. Litt.* 231.—(Land passes with its incumbrance).

Terra vestita, land sown with corn.

Terra wainabilis, tillable land.

Terra warennata, land that has the liberty of free warren.

Terræ dominicales regis, the demesne-lands of the Crown.

Terræ et tenementa debitoris regis ad quascunque manus quocunque titulo devenerunt, post debitum regis inceptum, regi tenentur, si non aliunde satisfacere possit.—2 *Inst.* 19.—(The lands and tenements of the king's debtor, by whatever title or into whatever hands they may come after the contracting of the debt, are bound to the king if he cannot be satisfied in any other manner.)

Terrages, an exemption from all uncertain services.

Terrarius, a landholder.

Terre-tenant, Tertenant, he who is in the actual possession and enjoyment of land.

Terrier, or **Terrar,** a register or survey of land.

Terris bonis et catallis rehabendis post purgationem, a writ for a clerk to recover his lands, goods, and chattels, formerly seized, after he had cleared himself of the felony of which he was accused, and delivered to his ordinary to be purged.—*Reg. Orig.*

Terris et catallis tentis ultra debitum levatum, a judicial writ for the restoring of lands or goods to a debtor who is distrained above the amount of the debt.—*Reg. Judic.*

Terris liberandis, a writ that lay for a man convicted by attaint, to bring the record and process before the king, and take a fine for his imprisonment, and then to deliver to him his lands and tenements again, and release him of the strip and waste.—*Reg. Orig.* 232; also, it was a writ for the delivery of lands to the heir, after homage and relief performed, or upon security taken that he should perform them.—*Ibid.* 293.

Territory of a Judge, the extent of a judge's jurisdiction.

Tertius interveniens, one who voluntarily interposes in a suit depending between others, with a view to the protection of his own interests.—*Civ. Law.*

Test, to bring one to a trial and examination; or to ascertain the truth.

Test Act, 25 Car. II. c. 2, by which it was provided that all persons having any offices, civil or military (with the exception of some few of an inferior kind), or receiving pay from

the Crown, or holding a place of trust under it, should take the oaths of allegiance and supremacy, and subscribe a declaration against transubstantiation, and also receive the Sacrament of the Lord's Supper according to the usage of the Church of England. The provisions of the Test Act were afterwards extended by 1 Geo. I. st. 2, c. 13; 2 Geo. II. c. 31; and 9 Geo. II. c. 26. The Test Act was repealed by 9 Geo. IV. c. 17; which also repealed the Corporation Act, 13 Car. II. st. 2, c. 1.

Testacy, leaving a will.

Testa de Nevil, an ancient document in two volumes, in the custody of the Queen's Remembrancer in the Exchequer, more properly called *Liber Feodorum.*

These books contain principally accounts (1) of fees holden either immediately of the king, or of others who held of the king *in capite*, and if alienated whether the owners were infeoffed *ab antiquo* or *de novo*, as also fees holden in frank-almoigne, with the values thereof respectively; (2) of serjeanties holden of the king, distinguishing such as were rented or alienated, with the values of the same; (3) of widows, and heiresses of tenants *in capite*, whose marriages were in the gift of the king, with the values of their lands; (4) of churches in the gift of the king, and in whose hands they were; (5) of escheats, as well of the lands of Normans as others, in whose hands the same were, and by what services holden; (6) of the amount of the sums paid for scutage and aid, &c. by each tenant.

These volumes were printed in 1807, under the authority of the commissioners of the records of the realm.

Testament, a disposition of personal property to take place after the owner's decease, according to his desire and direction. See WILL.

As to the modes of making a testament according to the civil law, see *Sand. Just.* 254, *et seq.* and *Cum. C. L.* 117.

Testamenta cum duo inter se pugnantia reperiuntur, ultimum ratum est: sic est, cum duo inter se pugnantia reperiuntur in eodem testamento.—Co. Litt. 112.—(When two conflicting wills are found, the last prevails: so it is when two conflicting clauses occur in the same will.)

Testamenta latissimam interpretationem habere debent.—Jenk. Cent. 81.—(Wills ought to have the broadest interpretation.

Testamentary, given by will; contained in a will.

Testamentary causes, proceedings in the Probate Court relating to the validity of wills and intestacies of personal property, over which it has acquired exclusive jurisdiction, by 20 & 21 Vict. c. 77; amended by 21 & 22 Vict. c. 95. It also has jurisdiction (not exclusive) in certain cases to inquire into the validity of wills, which concern realty as well as personalty.

Testamentary guardian, one appointed by a father's will over his child, pursuant to 12 Car. II. c. 24. See GUARDIAN.

Testamenti factio, the ceremony of making a testament, either as testator, heir, or witness. *Civ. Law.*

Testamentum, i. e. *testatio mentis, facta nullo præsente metu periculi, sed cogitatione mortalitatis.—Co. Litt.* 322.—(A testament, that is, the witnessing of the mind, made under no present fear of danger, but in expectancy of death.)

Testamentum omne morte consummatum.—Ibid.—(Every will is perfected by death.)

Testate, having made a will.

Testation, witness, evidence.

Testator, a man who makes a will or testament.

Testatoris ultima voluntas est perimplenda secundum veram intentionem suam.—Ibid.—(The last will of a testator is to be thoroughly fulfilled according to his real intention.)

Testatrix, a woman who makes a will.

Testatum, the witnessing part of a deed or agreement. See DEED.

Testatum writ, a process of execution which was issued into a different county than that in which the venue was laid in the declaration; it must have been founded on a writ *ejusdem generis*, issued into the county of the venue, and returned *nulla bona*, &c. It is abolished by C. L. P. A. 1852, s. 121. See GROUND WRIT.

Teste, the witnessing part of a writ, warrant, or other proceeding, which expresses the date of its issue.

Testes, qui postulat debet dare eis sumptus competentes.—Reg. Jur. Civ.—(Whosoever demands witnesses, must find them in competent provision.)

Testibus deponentibus in pari numero digniori-bus est credendum.—4 Inst. 279.—(Where the number of witnesses is equal on both sides, the more worthy are to be believed.)

Testimoignes, witnesses.

Testimonia ponderanda sunt, non numeranda. (Evidence is to be weighed, not enumerated.)

Testimonial, a writing produced by a person as an evidence for himself.

Testimonial proof, parol evidence.—*Civ. Law.*

Testimony, evidence given; proof by a witness. See PERPETUATING TESTIMONY.

Testis de visu præponderat aliis.—4 Inst. 279.—(An eye-witness is preferred to others.)

Testis lupanaris sufficit ad factum in lupanari. Moor, 817.—(A strumpet is a sufficient witness to a fact committed in a brothel.)

Testis nemo in suâ causâ esse potest.—Reg. Jur. Civ.—(No one can be a witness in his own cause.) See now 14 & 15 *Vict.* c. 99.

Testis oculatus unus plus valet quam auriti decem.—4 Inst. 279.—(One eye-witness is worth more than ten ear-witnesses.)

Testis should be able to say from his heart, *non sum doctus nec instructus nec curo de victoriâ, modo ministretur justitia.*—4 *Inst.* 279.—(A witness *should be able to say from his heart*, I am not taught nor instructed, neither do I care about the success of either party, only that justice be administered.)

Testium numerus si non adjicitur, duo sufficiunt.—*Ibid.*—(If the number of witnesses is not added, two suffice.)

Testmoignes ne poent testifie le negative, mes l'affirmative.—*Ibid.*—(Witnesses cannot witness to a negative, they must witness to an affirmative.)

Thames Embankment, from Westminster Bridge to Blackfriars Bridge, 25 & 26 Vict. c. 93; 26 & 27 Vict. cc. 45, 75.

Thames Watermen. By 7 & 8 Geo. IV. c. 75, the watermen, wherrymen, and lightermen of the Thames were consolidated into one body corporate, in the freemen and apprentices whereof is vested, subject to certain exceptions, the exclusive right of navigating that river for hire.

Thanage of the King, a certain part of the king's land or property, of which the ruler or governor was called thane.—*Cowel.*

Thane [fr. *thegn*, Sax., a servant], an Anglo-Saxon nobleman; an old title of honor, perhaps equivalent to baron. There were two orders of thanes, the king's thanes and the ordinary thanes. Soon after the Conquest this name was disused.

Thanelands, such lands as were granted by charter of the Saxon kings to their thanes with all immunities, except the *trinoda necessitas.*—*Cowel.*

Thaneship, the office and dignity of a thane; the seigniory of a thane.

Theatres. The Act for regulating theatres is the 6 & 7 Vict. c. 68. See 3 *Step. Com.* 308.

Theft, larceny, which see.

Theftbote [fr. *theof*, Sax., thief, and *bote*, compensation], compounding a felony. See COMPOUNDING.

Theftbote est emenda furti capta, sine consideratione curiæ domini regis.—3 *Inst.* 134.—(Theftbote is the paying money to have goods stolen returned, without having any respect for the court of the king.)

Thellusson's Act, 39 & 40 Geo. III. c. 98. See ACCUMULATION.

Thelonio rationabili habendo, a writ that formerly lay for him that had any part of the king's demesne in fee-farm, to recover reasonable toll of the king's tenants there, if his demesne had been accustomed to be tolled.—*Reg. Orig.* 87.

Thelonium, an abolished writ for citizens or burgesses to assert their right to exemption from toll.—*F. N. B.* 226.

Thelonmannus, the toll-man or officer who receives toll.

Them, or **Theme,** the right of having all the generation of villeins, with their suits and cattle. *Termes de la Ley.*

Themmagium, a duty or acknowledgment paid by inferior tenants in respect of theme or team.—*Cowel.*

Theoden, an under-thane; a husbandman or inferior tenant.

Theof [*prædones*, Lat.], offenders who joined in a body of seven to commit depredations.—*Ang.-Sax.*

Theowes, Theowmen, or **Thews,** slaves, captives, or bondmen.—*Spelman on Feuds*, cap. 5.

Thesaurus, Thesaurium, the treasury.

Thesaurus competit domino regi, et non domino libertatis, nisi sit per verba specialia.—*Fitz. Corone.* 281.—(A treasure belongs to the king and not to the lord of a liberty, unless it be through special words.)

Thesaurus inventus, treasure-trove, which see.

Thesaurus inventus est vetus dispositio pecuniæ, &c., cujus non extat modo memoria, adeo ut jam dominum non habeat.—3 *Inst.* 132.—(Treasure-trove is an ancient hiding of money, &c., of which no recollection exists, so that it now has no owner.)

Thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum.—*Ibid.*—(Treasure does not belong to the king, unless no one knows who hid it.)

Thesaurus regis est vinculum pacis et bellorum nervus.—*Godb.* 293.—(The king's treasure is the bond of peace and the sinew of wars.)

Thesmothete, [fr. θεσμοθέτης, Gk.], a law-maker; a law-giver.

Thethinga, a tithing.

Thigsters, a sort of gentle beggars.—*Scotch word.*

Thingus, a thane or nobleman; knight or freeman.

Things, the subjects of dominion or property as distinguished from *persons.* They are distributed into three kinds: (1) things real or immovable, comprehending lands, tenements, and hereditaments; (2) things personal or movable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*), and incorporeal (*tangi non possunt*).

Thirdborough, an under constable.

Thirdings, the third part of the corn growing on the land, due to the lord for a heriot on the death of his tenant, within the manor of Turfat in Hereford.—*Blount.*

Third-night-awn-hinde [*trium noctium hospes*, Lat.]. By the laws of St. Edward the Confessor, if any man lay a third night in an inn,

he was called a third-night-awn-hinde, and his host was answerable for him if he committed any offence. The first night, forman-night, or uncuth (unknown), he was reckoned a stranger; the second night, twa-night, a guest; and the third night, an agenhinde, a domestic.—*Bract.* l. 3.

Third Penny. See DENARIUS TERTIUS COMITATUS.

Thirlage, a servitude or tenure in Scotland, by which the possessor of certain lands is bound to carry his grain to a certain mill to be ground, for which he is bound to pay a portion of the flour or meal, varying from a thirtieth to a twelfth part, which is termed multure. This servitude is now commuted for an annual payment in grain, by 39 Geo. III. c. 55.

This day six months, or **three months,** fixing 'this day six months or three months' for the next stage of a bill, is one of the modes in which the House of Lords and the House of Commons reject bills of which they disapprove. A bill rejected in this manner cannot be reintroduced in the same session. See AVOIDANCE OF A DECISION.

Thistle take. It was a custom within the manor of Halton, in Chester, that if, in driving beasts over a common, the driver permit them to graze or take but a thistle, he shall pay a halfpenny a piece to the lord of the fee. And at Fiskerton, in Nottinghamshire, by ancient custom, if a native or a cottager killed a swine above a year old, he paid to the lord a penny, which purchase of leave to kill a hog was also called thistle-take.—*Cowel.*

Thornton (C. J.), author of a *summa* or abridgment of Bracton, containing most of the titles of the law in a concise form. Though a professed epitomiser, he omits many things in that author, and does not adhere to his method. 2 *Reeves*, c. xi., p. 281.

Thorp, Threp, Trop [*villa*, *vicus*, Lat.], either in the beginning or end of the names of places, means a street or village.

Thrave, or **Threave** [Nor.-Fr.], twenty-four sheaves or four shocks of corn; a certain quantity of straw; also a herd, a drove, a heap.

Threatening Letters. By 24 & 25 Vict., c. 100, s. 16, 'Whosoever shall maliciously send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding ten years, and not less than three years; or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement; and if a male under the age of sixteen years, with or without whipping.'

By 24 & 25 Vict., c. 96, s. 44, 'Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing demanding of any person, with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security or other valuable thing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years; or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement; and if a male under the age of sixteen years, with or without whipping.'

By 24 & 25 Vict., c. 96, s. 45, 'Whosoever shall with menaces or by force demand any property, chattel, money, valuable security, or other valuable thing, of any person, with intent to steal the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years; or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement.'

'Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing, accusing or threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years, or with any assault with intent to commit a rape, or of any infamous crime as hereinafter defined, with a view or intent in any of such cases to extort or gain by means of such letter, or writing, any property, chattel, money, valuable security, or other valuable thing, from any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years; or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement; and if a male under the age of sixteen years, with or without whipping; and the abominable crime of buggery committed either with mankind or with beasts, and every assault with intent to commit the said abominable crime, and every attempt or endeavor to commit the same abominable crime, and every solicitation, persuasion, promise or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this Act' (s. 46).

As to threatening to publish, or offering to abstain from publishing a libel with intent to

extort money, &c., see 6 & 7 *Vict.* c. 96, s. 3.

Threats, or *menaces of bodily hurt*, through fear of which a man's business is interrupted, are civil injuries affecting the right of personal security. The remedy for this species of injury is in pecuniary damages.

By 24 & 25 Vict. c. 96, 'Whosoever shall accuse, or threaten to accuse, either the person to whom such accusation or threats shall be made, or any other person, of any of the infamous or other crimes, lastly hereinbefore mentioned (see s. 46), with the view or intent, in any of the cases last aforesaid, to extort or gain from such person so accused or threatened to be accused, or from any other person, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years; or to be imprisoned for any term not exceeding two years, with or without hard labor; and if a male under the age of sixteen years, with or without whipping' (s. 47).

'Whosoever, with intent to defraud or injure any other person, shall, by any unlawful violence to, or restraint of, or threat of violence to or restraint of the person of another, or by accusing, or threatening to accuse any person of any treason, felony or infamous crime, as hereinbefore defined, compel or induce any person to execute, make, accept, indorse, alter, or destroy, the whole, or any part of any valuable security, or to write, impress, or affix his name or the name of any other person or of any company, firm, or co-partnership, or the seal of any body corporate, company, or society, upon or to any paper or parchment, in order that the same may be afterwards made or converted into, or used, or dealt with as a valuable security, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life, or for any term not less than three years; or to be imprisoned for any term not exceeding two years, with or without solitary confinement' (s. 48).

By 24 & 25 Vict. c. 97, s. 50, 'Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to burn or destroy any house, barn, or other building, or any rick or stack of grain, hay, or straw, or any such agricultural produce in or under any building, or any ship or vessel, or to kill, maim, or wound any cattle, shall be guilty of felony,' and being convicted, is liable to the same punishment.

Threnges, vassals, but not of the lowest degree, of those who held lands of the chief lord.

Thrithing, a division consisting of three or four hundreds.

Thrymsa, a Saxon coin worth four pence.—*Du Fresne.*

Thude-weald, a woodward, or person that looks after a wood.

Thwertnick, the custom of giving entertainments to a sheriff, &c. for three nights.

Tick, credit.

Tickets of leave, licenses to be at large, which are granted to convicts for good conduct, but are recallable upon subsequent misconduct. See 6 & 7 *Vict.* c. 7; 16 & 17 *Vict.* c. 99, s. 9; and 20 & 21 *Vict.* c. 3, s. 5.

Tidesman, a tidewaiter or custom-house officer, who watches on board of merchant ships till the duty of goods be paid, and the ships unladen.

Tiel, or **Tel** [Nor.-Fr.], such.

Tierce, the third part of a pipe, or 42 gallons.

Tigh [fr. *teag*, Sax.], a close or inclosure.

Tigni immittendi, a servitude which is the right of inserting a beam or timber from the wall of one house into that of a neighboring house, in order that it may rest on the latter, and that the wall of the latter may bear this weight.—*Civ. Law.*

Tignum, any material for building.—*Ibid.*

Tihla, an accusation.

Timber, wood felled for building or other such like use; in a legal sense it extends to oak, ash, elm, &c.—1 *Roll. Abr.* 649. See *St. Leon. V. and P.* 26 and *Dart's V. and P.* c. iv., s. 3; and also 19 & 20 *Vict.* c. 120. s. 11.

Timberlode, a service by which tenants were bound to carry timber felled from the woods to the lord's house.

Time bargains, contracts for the sale of a certain amount of stock at a certain price at a future day, sometimes called *puts and refusals*, which see.

Time immemorial, from time whereof the memory of man is not to the contrary. See MEMORY, *time of legal.*

Timocracy [Gk.], an aristocracy of property.

Timores vani sunt æstimandi qui non cadunt in constantem virum.—7 *Co.* 17.—(Fears which do not assail a resolute man are to be accounted vain.)

Tinckings, signals given to give warning of the approach of an enemy.—*Scotch term*

Tinel le roy, the king's hall, wherein his servants used to dine and sup.

Tineman, or **Tienman,** a petty officer in the forest, who had the care of vert and venison at night, and other servile duties.

Tinet, brushwood and thorns.

Tinewald, the ancient parliament or annual convention of the people in the Isle of Man.

Tinkermen, fishermen who destroyed the

young fry on the river Thames, by nets and unlawful engines.

Tinpenny, a tribute paid for the liberty of digging in tin mines.

Tinsel of the Feu, the loss of an estate held by feu-duty in Scotland, from allowing two years' feu-duty to remain unpaid.

Tippling Act, 24 Geo. II. c. 40, s. 12, enacted that no person shall be entitled unto or shall maintain any action or suit for any debt 'for or on account of any spirituous liquors, unless such debt shall have really been and *bonâ fide* contracted at one time, to the amount of 20*s*., or upwards, nor shall any particular article or item in any account or demand for spirituous liquors, be allowed or maintained where the liquors delivered at one time, and mentioned in such article or item, shall not amount to the full value of 20*s*.'

By 25 & 26 Vict. c. 38, 'the above enactment is repealed, so far only as relates to spirituous liquors sold to be consumed elsewhere than on the premises where sold, and delivered at the residence of the purchaser thereof in quantities not less at any one time than a reputed quart.'

Tipstapps, or **Tipstaves**, constables attending courts. See 5 & 6 *Vict.* c. 22, s. 23; and 11 & 12 *Vict.* c. 7, s. 5.

Tisri, the first Hebrew month of the civil year, and the seventh of the ecclesiastical, answering to a part of our September and a part of October.

Tithe Commissioners for England and Wales. This Board is consolidated with that of the Inclosure Commissioners, and that of the Copyhold Commissioners.—14 & 15 *Vict.* c. 53; continued by 21 & 22 *Vict.* c. 53. See 25 & 26 *Vict.* c. 72.

Tithe Commutation Acts, 6 & 7 Wm. IV. c. 71, amended by 7 Wm. IV. and 1 Vict. c. 69; 1 & 2 Vict. c. 64; 2 & 3 Vict. c. 62; 3 & 4 Vict. c. 15; 5 & 6 Vict. c. 54; 9 & 10 Vict. c. 73; 10 & 11 Vict. c. 104; and 23 & 24 Vict. c. 93.

Tithe-free, exempted from the payment of tithes.

Tither, one who gathers tithes.

Tithes [fr. *teotha*, Sax.], a species of incorporeal hereditaments, being the tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands and the personal industry of the inhabitants; the first species being usually called *prædial*, the second *mixed*, the third *personal*.

The following persons are exempt from the payment of tithes by personal privilege: the sovereign, rectors, vicars. All spiritual persons and corporations have been always capable of having their lands discharged of tithes in various ways—as by real composition, by the pope's bull of exemption, by unity of possession, by prescription, by virtue of their order. All persons spiritual and lay may claim an exemption from tithes, either partial or total, by a real composition, or a partial exemption by custom (see MODUS) or by long usage, in pursuance of 2 & 3 Wm. IV. c. 100.

Tithes are now commuted into a rent-charge, the amount of which is annually adjusted, according to the average price of corn. See TITHE COMMUTATION ACTS.

The commutation may be effected in one of two ways; either by a voluntary parochial agreement, confirmed by the commissioners, or by the compulsory award of the commissioners. The value, either voluntarily agreed upon or awarded by the commissioners, is to be considered as the amount of the total rent-charge to be paid in respect of the tithes in that parish, and to be afterwards apportioned among the lands of that parish, having regard to their average titheable produce and productive quality; and after the apportionment shall have been confirmed, such lands are to be absolutely discharged from the payment of all tithes, and instead thereof, shall be subject to their portion of the rent-charge which shall be thenceforth payable to the former tithe-owner, by two half-yearly payments, which are to fluctuate according to the price of corn. An advertisement is inserted by authority in the *London Gazette*, in January in every year, stating the average price of wheat, barley, and oats, for seven years, ending on Thursday before Christmas then next preceding; every rent-charge then is deemed of the value of as many bushels of wheat, barley, and oats, in equal quantities, as it would have been competent to purchase according to the prices contained in such advertisement; and after every first of January it varies so as always to consist of the price of the same quantities, according to the advertisement then next preceding.

A tithe rent-charge varies in amount, and no person is personally liable to its payment, thus differing from a rent-charge generally. When the rent-charge is in arrear for twenty-one days, the remedy is by distress on the land, as in the case of landlord and tenant; but if it be in arrear for forty days, and there be no sufficient distress, a writ may then be obtained from one of the judges at Westminster to assess the arrears, after which the owner of the rent-charge may sue out a writ of execution for taking possession of the lands, and holding them till his debt and costs be fully satisfied. But neither a distress nor writ of execution can be resorted to for more than two years' arrears at any one time.

In some cases lands may obtain an exemption under the Commutation Acts from all liability either to tithe or rent-charge. For to the extent of twenty acres in the same parish, land

is allowed to be given to the tithe-owner as an equivalent; and any person seised in possession of an estate in fee-simple, or fee-tail, of any tithe or rent-charge, may dispose of the same so that it shall be merged in the inheritance of the land charged.—3 *Step. Com.* 79–84; 2 *Hall. M. A.*, c. vii., pt. 1, p. 144.

Tithing, the number or company of ten men, with their families, knit together in a society, all of them being bound to the king for their peaceable and good behaviour, the chief of whom was the tithing-man (toothing-man).—*Cowel.*

Tithing-man, a peace-officer, an under constable.

Tithing-penny. See TEDING-PENNY.

Title, a general head, comprising particulars; an appellation of honor or dignity; a claim of right. It is the means whereby an owner possesses his property justly, or the evidence of ownership.

As to title to realty:—

There are several stages and degrees requisite to form a complete title to lands and tenements.

The lowest and most imperfect degree of title consists in the mere naked possession, or actual occupation of the estate, without any apparent right or any shadow of pretence of right to hold and continue such possession.

The next step to a good and perfect title is the right of possession, which may reside in one man, while the actual possession is in another.

The last step is the right of property (*jus proprietatis*), without either possession or even the right of possession. This is frequently styled mere right (*jus merum*), and the estate of the owner is in such cases said to be totally divested and put to a right.

It is the union of these three degrees, viz.: actual possession, right of possession, and right of property, which forms a complete title to lands, tenements and hereditaments. See DROIT-DROIT.

There are three modes of acquiring a title to realty:—

(1) By operation of law.

(2) By purchase, as distinguished from law, and

(3) By law and purchase.

Title by operation of law is either by (*a*) descent, or (*b*) prescription.

Title by purchase is either by (*a*) forfeiture, or (*b*) alienation.

Title by law and purchase is by escheatage.

The text-writers give occupancy, which is described as the taking possession of property, which did not at the time belong to anybody; but this is now entirely exploded.—1 *Vict.* c. 26, ss. 3, 6. In the mining districts of Derbyshire and Cornwall, by the Stannary Laws, an estate in mines might, and it is believed still may, be gained by occupancy.—*Geary* v. *Bancroft*, 1 *Sid.* 347.

The principal circumstances in drawing conclusions as to title to be attended to, are—

1st. That there is a deduction of title to the legal estate for a period of sixty years;

2ndly. That the legal estate can be obtained free from any equities affecting it;

3rdly. That all the particular estates either are determined, or can be conveyed to the purchaser or his trustee;

4thly. That no reversion or remainder is outstanding in the Crown, or in any stranger; and

5thly. That there are not any incumbrances by way of condition, or limitation over, mortgages, Crown-debts, judgments, statutes, decrees, *lites pendentes*, annuities, rents, legacies, portions, charges, dower, courtesy, forfeitures, leases, &c., or any outstanding term of years, which the purchaser cannot procure either to be extinguished or assigned.

There are at least three species of doubtful titles: 1st, where the title is doubtful by reason of some uncertainty in the law itself; 2ndly, where the doubt is as to the application of some settled principle or rule of law; and 3rdly, where a matter of fact upon which a title depends is either not in its nature capable of satisfactory proof, or, being capable of such proof, is yet not satisfactorily proved.

It may be safely asserted that there is no defect which more frequently renders it impossible for a person who has a good title to prove it, or enables a party who has a bad title fraudulently to exhibit a colorable ownership than the want of evidence of the identity of the parcels.

A good title is produced whenever it appears that upon certain acts being done, the legal and equitable estates in the property contracted for will become vested in the purchaser, those acts being such as the vendor can either himself perform or cause to be performed.

The title to things personal may be acquired or lost by—(1) Occupancy. (2) Invention. (3) Prerogative. (4) Forfeiture. (5) Custom. (6) Succession. (7) Marriage. (8) Judgment. (9) Gift of grant. (10) Contract. (11) Bankruptcy or insolvency. (12) Testament. (13) Administration. See DECLARATION OF TITLE.

Title of clergymen, some certain place where they may exercise their functions; also, an assurance of being preferred to some ecclesiastical benefice.

Title to Lands, document of. By 24 & 25 Vict. c. 96, 'Whosoever shall steal, or shall for any fraudulent purpose, destroy, cancel, obliterate, or conceal the whole or any part of any *document of title to lands*

shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for the term of three years; or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement' (s. 28).

The term, 'document of title to lands,' includes any deed, map, paper, or parchment, written or printed, or partly written and partly printed, being or containing evidence of the title, or any part of the title, to any real estate, or to any interest in or out of real estate (s. 1).

Title-deeds, the muniments or evidences of ownership. See TITLE TO LANDS, DOCUMENT OF.

Titulars of Erection, persons who, after popery was destroyed in Scotland, became entitled to the parsonage-tithes which had fallen to monasteries, in right of several parishes that had belonged to them in mortmain. They are the same as impropriators in England.

Titulus est justa causa possidendi id quod nostrum est; dicitur à tuendo, quia per illum, possessor defendit terram: et plerumque constat ex munimentis, quæ muniunt et tuentur causam.—8 *Co.* 153.—(A title is the just right of possessing that which is our own; it is called from defence [*tuendo*], because by it the possessor defends his land; and it generally consists of muniments which fortify and protect the right.)

Toalia, a towel. There is a tenure of lands by the service of waiting with a towel at the king's coronation.

Tobacco Duties Act, 26 Vict. c. 7.

Tobago and Trinidad. See 11 & 12 *Vict.* c. 22.

Toft, a place where a messuage has stood.—*Cowel.*

Toftman, the owner or possessor of a toft.

Togati, Roman advocates.

Token, a sign of the existence of a fact; also, private money.

Toleration Act, 1 W. & M. st. 1, c. 18, confirmed by 10 Anne, c. 2, by which all persons dissenting from the Church of England (except Papists and persons denying the Trinity) were relieved from such of the acts against Nonconformists as prevented their assembling for religious worship according to their own forms, or otherwise restrained their religious liberty, on condition of their taking the oaths of allegiance and supremacy, and subscribing a declaration against transubstantiation; and in the case of dissenting ministers, subscribing also to certain of the Thirty-nine Articles. The clause of this Act, which excepted persons denying the Trinity from the benefits of its enactments, was repealed by 53 Geo. III. c. 160.

Toll [fr. *tollo*, Lat.], to bar, defeat, or take away, as to toll an entry is to deny and take away the right of entry. See 3 & 4 *Wm. IV.* c. 27.

Toll [fr. *tol*, Sax. and Dut.; *told*, Dan.; *toll*, Wel.; *taille*, Fr.], an excise of goods; a seizure of some part for permission of the rest.

It has two significations:—

(1) A liberty to buy and sell within the precincts of the manor, which seems to import as much as a fair or market.

(2) A tribute or custom paid for passage.—*Cowel.*

Tollage, any custom or imposition.

Tollbooth, a prison, a custom-house, an exchange; also the place where goods are weighed.

Tolldish, a vessel by which the toll of corn for grinding is measured.

Toller, one who collects tribute or taxes.

Tollgatherer, the officer who takes or collects toll.

Toll-thorough, when a town prescribes to have toll for such a number of beasts, or for every beast that goes through the town, or over a bridge or ferry belonging to it.—*Com. Dig.* tit. 'Toll' (*C*).

Toll-traverse, or **Travers**, toll taken for every beast driven across a man's land. He may prescribe and distrain for it *viâ regiâ*.—*Cro. Eliz.* 710.

Tolsester, an old excise; a duty paid by tenants of some manors to the lord for liberty to brew and sell ale.

Tolsey, the same as Tollbooth, which see. Also, a place where merchants meet; a local tribunal held at the Guildhall, Bristol.

Tolt, a writ whereby a cause depending in a court-baron was taken and removed into a county-court.—*O. N. B.* 4.

Tolta, wrong, rapine, extortion.

Ton, twenty hundred weight of 112 lbs. avoirdupois each.

Tonnage, the number of tons burden that a ship will carry.

Tonnage duties, those imposed on wines imported, according to a certain rate per ton. This, with poundage, was formerly granted to the sovereign for life by Acts of Parliament, usually passed at the beginning of each reign; but by 9 Anne, c. 6; 1 Geo. I. c. 12; and 3 Geo. I. c. 7, they were made perpetual, and mortgaged for the public debt.

Tontine, a life-annuity, or a loan raised on life-annuities, with benefit of survivorship. The term originated from the circumstance that Lorenzo Tonti, an Italian, invented this kind of security in the seventeenth century, when the governments of Europe had some difficulty in raising money in consequence of the wars of Louis XIV., who first adopted the plan in France. A loan was obtained from several individuals on the grant of an annuity

to each of them, on the understanding that, as deaths occurred, the annuities should continue payable to the survivors, and that the last survivor should take the whole. This scheme was adopted by other nations as well as France, but was not introduced into England until recently, and then only for the purpose of raising money to carry private speculations into effect, which could not be satisfactorily accomplished without a combination of capital. As to the formation of such a scheme, see *Stone's Benefit Build. Soc.* 78.

Tools, *Exportation of.* This was formerly a criminal offence, but is no longer so, since the restrictions upon trade are removed.—4 *Step. Com.* 346 n.

Top annual, an annual rent out of a house built in a burgh.

Tora Garas Huk, an annual payment or rent-charge of a fixed nature on a village *jampa*, made by the Bombay Government through their collectors in the different *zillahs* of Guzerat. The names of the recipients of such rent-charges, with the amounts paid to them, are entered in the collector's book, and the payments are made according to such entries out of the monies received by such collector.—*Indian.*

Torra [fr. *tor*, Sax.], a mount or hill.

Tort [fr. *tortus*, Lat.], injury or wrong. See ACTION.

Tort à le ley est contrarie.—Co. Litt. 158.—(Tort is contrary to the law.)

Tortfeasor, a wrongdoer; a trespasser.

Tortious, anything done by wrong; an act involving a forfeiture of property.

Torture. See RACK.

Tory, originally a nickname for the wild Irish in Ulster. Afterwards given to, and adopted by, one of the two great parliamentary parties which have alternately governed Great Britain since the Revolution of 1688. See WHIG.

Totidem verbis [Lat.] (*in so many words*).

Toties quoties (*as often as a thing shall happen*).

Totted, a good or sperate debt to the Crown.

Totum præfertur unicuique parti.—3 Co. 41.—(The whole is preferable to any single part.)

Toujours et encore presz [Nor.-Fr.] (*always and still ready*).

Tourn, the sheriff's tourn or rotation. See SHERIFFS' TOURN.

Tout temps presz et encore est [Nor.-Fr.] (*always was and is at present ready*).

Towage, money paid for towing.

Town [fr. *tun*, Sax.], a tithing or vill; any collection of houses larger than a village.

Towns are either corporate, that is, having a corporation to transact their business, or not corporate. Some have the liberty or franchise of a market, others have not. Towns are usually divided into cities, boroughs, or common towns.

Town Clerk, an officer who manages the public business of a place.

Town Crier, an officer in a town, whose business it is to make proclamations.

Town-house, the hall where the public business of a town is transacted.

Town Police Clauses Act, 1847, 10 & 11 Vict. c. 89.

Township, the corporation of a town; the district belonging to a town.

Toxical, poisonous; containing poison.

Toxicology [fr. τοξικόν, Gk., poison, and λόγος, discourse], the science of poisons.

Tractent fabrilia fabri.—3 Co. Epist.—(Let smiths perform the work of smiths.)

Trade [fr. *tratta*, Ital.], traffic; commerce; exchange of goods for other goods, or for money. All wholesale trade, all buying in order to sell again by wholesale may be reduced to three sorts: the home trade, the foreign trade of consumption, and the carrying trade.—2 *Smi. Wealth of Nat.* b. 2, c. v.

Offences against trade are—

(1) Smuggling.
(2) Frauds by bankrupts and insolvents.
(3) Cheating.
(4) Monopoly.

Trade Marks, Fraudulent. 'The Merchandise Marks Act, 1862,' 25 & 26 Vict. c. 88, some of the provisions of which did not come into operation until after December 31, 1863, contains in substance the following provisions. It makes it a misdemeanor to forge or counterfeit any trade mark (defined by the 1st section), or falsely to apply any such trade mark, with intent to defraud, to any article, or to any cask, bottle, stopper, vessel, case, cover, wrapper, band, reel, ticket, label, or any other thing in or with which any commodity is sold, or intended to be sold (ss. 2, 3). It is an offence for anyone to sell or expose, either for sale or for any purpose of trade or manufacture, articles with forged or false trade marks attached, the penalty being the forfeiture of a sum of money equal to the value of such articles, and a sum, besides, not exceeding 5*l.* nor less than 10*s.* (s. 4). Every addition to and every alteration and imitation of any trade mark made, applied, or used, with intent to defraud, are to be deemed forgeries (s. 5). It is made obligatory on every person who shall sell an article having a false trade mark to give information, on a demand in writing being made upon him, as to where he procured it; and power is given to justices of the peace to summon parties refusing or neglecting to afford such information; and, in the event of their persisting in their neglect or refusal, to impose a penalty of 5*l.* (s. 6). To mark any false indication of quantity upon an article

with intent to defraud is made punishable by a penalty equal to the value of the article and the payment of an additional sum not exceeding 5*l.* and not less than 10*s.* (s. 7). Selling or exposing for sale articles with false statements of quantities, &c., is an offence punishable with a penalty of not more than 5*l.* or less than 5*s.* (s. 8). It is not to be an offence to apply names or marks generally used for indicating particular classes or descriptions of manufacture (s. 9). Section 10 relates to the description of trade marks, &c. in indictments. A conviction under the powers of the Act is not to affect any right or civil remedy to which any person aggrieved may be entitled at law, in equity, or otherwise (s. 11); nor in any indictment, information, or proceeding under its provisions need an intent to defraud any person in particular be alleged or proved (s. 12). Persons aiding in the commission of misdemeanors under the Act are also guilty of misdemeanors (s. 13). The punishment on conviction of any offence which by the Act is made a misdemeanor is to be, at the discretion of the court, imprisonment for not more than two years, with or without hard labor, or by fine, or both by imprisonment with or without hard labor and fine, and also by imprisonment until the fine (if any) shall have been paid and satisfied (s. 14). The time within which any action or proceeding may be commenced for the recovery of penalties or procuring a conviction is limited to three years next after the commission of the offence, or one year after its first discovery by the person proceeding (s. 18). The vendor of an article with a trade mark is to be deemed to warrant or contract with the vendee that the mark is genuine, unless the contrary shall be expressed in some writing signed by or on behalf of the vendor, and delivered to and accepted by the vendee (s. 19). The vendor of an article with a description upon it of its quantity is to be deemed to contract and warrant that the description is true, unless, as before, the contrary shall be expressed in writing delivered to and accepted by the vendee (s. 20). In suits at law or in equity against persons for using forged trade marks the court may not only order the article to be destroyed, but may by injunction command the defendant to forbear from repeating the offence upon pain of contempt of court (s. 21). Persons aggrieved by forgeries may recover damages against the guilty parties (s. 22). A plaintiff suing for a penalty under the Act may be compelled to give security for costs, and a defendant, in case of judgment going in his favor, is to have a full indemnity for costs (ss. 23, 24). The Act is not in any way to affect the rights and privileges of the Corporation of Cutlers, of Hallamshire, in the county of York, nor to repeal or make void any of the provisions of the statute 59 Geo. III. c. 7, which regulates the cutlery trade in England (s. 25).

Trader, one engaged in merchandise or commerce.

Tradesman, a shopkeeper.

Trading or **farming,** *by clergymen*, prohibited by 1 & 2 Vict. c. 106, ss. 28–30.

Traditio loqui facit chartam.—5 *Co.* 1.—(Delivery makes the deed speak.)

Tradition, the act of handing over; delivery.

Trailbaston, *Court of*, erected by Edward I., by the statute of Ragman. This was a commission of oyer and terminer of an unusual kind, and was issued in the fulness of zeal for the correction of public disorders. The rigor, however, with which this was executed creating some discontents, it was thought expedient, in course of time, to discontinue it.—2 *Reeves*, p. 277.

TrainBands, the militia; the part of a community trained to martial exercises.

Training military, without full authority, illegal, by 60 Geo. III. & 1 Geo. IV. c. 1.

Traitor [fr. *traditor*, Lat.], one who, being trusted, betrays; one guilty of treason.

Traitorously, in a manner suiting traitors; perfidiously; treacherously.

Traitress, a woman who betrays.

Transcript, a copy; anything written from an original.

Transcriptio pedis finis levati mittendo in Cancellarium, a writ which certified the foot of a fine levied before justices in eyre, &c. into the Chancery.—*Reg. Orig.* 669.

Transcriptio recognitionis factæ coram justiciariis itinerantibus, &c. an old writ to certify a recognizance taken by justices in eyre.—*Reg. Orig.* 152.

Transfer, to convey; to make over from one to another; to remove.

Transference, the name of an action by which a suit, which was pending at the time the parties died, is transferred from the deceased to his representatives, in the same condition in which it stood formerly. If it be the pursuer who is dead, the action is called a transference active; if the defender, it is a transference passive.—*Scotch Law.*

Transfer of Land Act. To facilitate the proof of title to, and the conveyance of, real estates, 25 & 26 Vict. c. 53, was passed. The Act is confined to England, and is divided into four parts. Part I. is headed 'As to the Registration of Real Estates and the Title thereto.' It establishes a registry, which is to be confined to a registration of the titles to estates of freehold tenure, and leasehold estates in freehold lands. Applications for registry may be made by:—

(1) The owner of the fee-simple.
(2) Persons who collectively are the owners of the fee-simple, or have the power of acquiring the same.
(3) Persons who have the power of appointing the fee-simple.
(4) Trustees for sale of the fee-simple.
(5) The owner of the first estate of freehold and first vested estate of inheritance.
(6) Any purchaser of a fee-simple, where his contract empowers him so to do, or the vendor consents.
(7) Any person authorized by the Court of Chancery to make such application. Application may be made though the estate be subject to encumbrances (ss. 1-4). No title shall be accepted for registration as indefeasible, unless it shall appear to be such as a court of equity would hold to be a valid marketable title (s. 5). Any question that may arise as to any matter of title may be referred to a judge of the Court of Chancery (s. 6). If the title shall appear to be good and marketable, the applicant shall furnish to the registrar, and he shall examine and settle for the purposes of registration: (1) an exact description of the lands; (2) a statement of the persons interested, and their interests; (3) a statement of the incumbrances (s. 7). The registrar may require the description to be verified by oath (s. 8). The mines and minerals if not expressly mentioned shall be deemed not to be included (s. 9). The identity of the parcels shall be established, and the registrar shall make inquiries, and except in the case of incorporeal hereditaments, a map shall be deposited (s. 10). If satisfied with the title, the registrar is to require notice to be given by public advertisement of his intention to register the land with an indefeasible title at the expiration of a period not exceeding three months (s. 11). A copy of the notice, containing a description of the land and of the applicants, is to be served upon every adjoining occupier and person interested, &c., stating place, time, and manner of showing cause (s. 12). Any person may show cause before the registrar against the registration, or claim that it shall be subject to conditions or reservations. The registrar may decide or refer to the judge, and if he decide, either party may appeal (s. 13).

If no sufficient cause is shown, the registrar shall complete the registration by entering (1) in a book called 'The Register of Estates with an Indefeasible Title' the description of the estate, with a map or plan annexed, and shall distinguish the estate by a number or numbers; and the entry shall refer to another book entitled 'The Record of Title to Lands on the Registry;' and (2) in the Record of Title book, under the same number or numbers, a concise record of the existing estates and interests in the land, and persons interested; and (3) in a book entitled the 'Register of Mortgages and Incumbrances' under the same number or numbers, an account of all charges and incumbrances (s. 14). Subject to general orders, the books may be inspected by the owners or incumbrancers, but by no other person except by order of the court (s. 15). The registrar may specify any exception, qualification, or condition, or reserve a right, or describe any outstanding right or possibility. If there is a disputed question of boundary, either party may object to its being decided by the registrar or by the Court of Chancery, under this Act (s. 16). Doubtful and disputed questions arising in making up or continuing the record may be referred to a judge of the Court of Chancery (s. 17). Deeds, wills, and other instruments may be referred to instead of being set out in the record; but copies thereof must be deposited in the registry, and such copies shall be conclusive evidence of the contents (s. 18). The names of the persons entitled to moneys under a trust for sale, or a trust estate or term, need not be entered, but the trustee's estate shall be described (s. 19). It is declared that persons described in the record of title shall be deemed to have the property therein named absolutely and indefeasibly subject to such exceptions or qualifications as are mentioned in the record of title (s. 20). Irregularities, &c., in previous proceedings, do not vitiate the record of title (s. 21). Before final registration, the applicant and his solicitor or agent are to make oath, that all deeds, charges, incumbrances, and material facts have been to the fullest extent of their respective knowledge made known to the registrar (s. 22), who may call for further evidence, or refuse to register (s. 23), and he may also demand security for costs (s. 24).

As to registration without an indefeasible title, application may be made by any person; but: (1) He shall prove actual enjoyment as owner in fee for the last ten years. (2) The last deed or will (if any) shall be produced; an applicant heir shall evidence his ancestor's seisin. (3) The above rules as to the description of the land, and ascertaining its accuracy and that of the boundaries, shall apply. (4) A statutory declaration shall be made by the applicant, his solicitor or agent, or certificated conveyancer, that the applicant (subject as may be stated) is well entitled in fee. (5) The registrar shall in the record define when the indefeasible title shall attach; then the judge, if there be no other objection, after notices, as in indefeasible title, shall direct a transfer to the indefeasible register, and thereupon the registrar shall make up a proper record, and the applicant and other persons named in it have the same estates, rights, and privileges, as if the land had been registered with an indefeasible title. (6) Subject to the Act, registration without indefeasible title

shall not prejudice any interests existing before the registration (s. 25). Leasehold estates where fifty years of the term demised is unexpired, or where two lives are subsisting, may be registered with an indefeasible title in like manner as freeholds (s. 26).

The following charges and liabilities are not to be deemed incumbrances under this Act, viz. (1) land-tax succession duty, tithe rent-charges, rents payable to the Crown; (2) public rights of way, liability to repair highways by reason of tenure, rights of way, watercourses and rights of water and other easements or servitudes, rights of common, manorial rights and franchises; (3) leases or agreements for leases not exceeding twenty-one years, where there is an actual occupation under the same; but where they exist the registrar shall notice them, as he may think fit, in the register (s. 27). Land entered on the register may, at the option of the proprietor, be registered as one estate or separate estates (s. 28). Notice of any legal condition, e. g. that the land may not be built upon, shall be entered in the record of title, and any transfer shall be subject to such condition. The Court of Chancery may discharge, alter, or modify any such condition (s. 29). Notice of registration shall be given by the registrar to persons entitled to any charge or incumbrance, the owner of which has not had notice of the application (s. 30). Any person obtaining a declaration under the Declaration of Title Act may be entered on the record accordingly, and the land thenceforth shall be subject to this Act (s. 31). After the registration every estate or interest, right or title coming into existence (except as excepted in the Act), shall be entered or noticed in the record of title, or register of incumbrances (s. 32). Subject to the Act, the estates of registered proprietors shall be subject to the existing law, and may be dealt with according to it (s. 33). With the consent of all parties on the register, the land may be withdrawn from it (s. 34).

Caveat.—A person entitled to object to a disposition of land without his consent may lodge a caveat that he is entitled to notice of any application for registration, supporting it by affidavit (ss. 35 & 36).

Notice on the cautioner may be served personally, or through the post (s. 37). Ten days' notice is necessary (s. 38). A person wrongfully lodging a caveat is liable to such damages as the Court of Chancery shall deem just (s. 39). A caveat is not to prejudice any person's claim or title (s. 40).

Part II. is entitled Simplification of Titles by Judicial Sales. It provides that after a due examination of the title, sales of estates may be authorized by the Court of Chancery, and the payment of the purchase money into court is to exonerate the purchaser from all further liability (ss. 41–62).

Part III. relates to the transfer of registered land. It provides that all registered land, and every part thereof, may be conveyed, settled, charged, dealt with, or affected in or by any of the following modes or dispositions: that is to say, first, by a statutory disposition in any of the forms sanctioned by this Act; secondly, by endorsement on the land certificate; thirdly, by deposit of the land certificate; fourthly, by any deed, will, judgment, decree, or instrument, by which such land, if not registered, might now, according to law, be conveyed, charged, settled, devised, dealt with, or affected, but no equitable mortgage is to be created by a deposit of title-deeds (s. 63). The attendance at the registry and the forms of conveyance are prescribed in 64 to 67. The registrar is to deliver, on request, to the owner of an estate a land certificate, containing a description of the lands with all the entries relating thereto; a copy of the entries relating to the lands appearing in the record of title; and a copy of the entries in the registry of incumbrances. The certificate to state whether such lands are registered with or without an indefeasible title (s. 68); ss 69-88 contain various other provisions respecting land certificates and their effect. Every land certificate shall be evidence of the matters therein contained (s. 71). Estates described in such certificate may be conveyed or charged by endorsement in a prescribed form (s. 72); and the deposit of a certificate is to create a lien in the same way as the deposit of title deeds (s. 73). The following clauses relate chiefly to the forms of proceeding, but by s. 88 it is enacted that no dealing with registered land is to be valid until the stamp and *ad valorem* duties are paid.

Part IV. contains General Provisions to facilitate Registration. These provisions enable the judges in Chancery to decide upon questions relating to money charges, incumbrances, &c. (89–92). A registered proprietor may place certain restrictions on the transfer or conveyance of the lands so as to prevent its being done without due notice to such persons as he may direct (s. 93). By s. 108 and the following clauses, an office of land registry is established and regulated. There is to be a registrar with not more than three assistants, examiners of titles, clerks, messengers, &c., to be paid by the Treasury.

Then follow general provisions specifying forms and giving the Lord Chancellor and the registrar power to frame general orders and to determine the amounts of fees, &c. Any person fraudulently procuring, or assisting to procure, or who is privy to the fraudulent procurement of any order, or the entry of any caveat, or notice of a charge, or of the erasure or alteration on the register of

any caveat or notice of a charge, shall be deemed to be guilty of a misdemeanor, and any order procured by such fraud is to be deemed null and void (s. 138). If convicted of the misdemeanor the punishment is to be imprisonment with or without hard labor for a term not exceeding three years, or a fine as the court may think fit (s. 139). It is important to observe, where land situate in the counties of Middlesex and York has been put upon the register under this Act, whilst it remains thereon the provisions of the Acts of Parliament relating to registries in those counties cease to be applicable (s. 104). See *General Rules and Orders of the Office of Land Registry, October* 1, 1862; and see *Gough's Land Registry Manual.*

Transferree, the person to whom a transfer is made.

Transferror, the person who makes a transfer.

Transferuntur dominia sine titulo et traditione, per usucaptionem, scil. per longam continuam et pacificam possessionem.—*Co. Litt.* 113.—(Right of dominion are transferred without title or delivery, by usucaption, to wit, long and quiet possession.)

Transgressio est cum modus non servatur nec mensura, debet enim quilibet in suo facto modum habere et mensuram.—*Co. Litt.* 37.—(Transgression is when neither mode nor measure is preserved, for every one in his act ought to have a mode and measure.)

Transgressione multiplicatâ, crescat pœnæ inflictio.—2 *Inst.* 479.—(Where transgression is multiplied, let the infliction of punishment be increased.

Transgressione, a writ or action of trespass.

Transhipment, the taking of the cargo out of one ship, and loading another with it.

Transire, a warrant or permit from the custom-house to let goods pass.

Transitory actions, the opposite to local actions, which see.

Transitu, *stoppage in.* See STOPPAGE IN TRANSITU.

Translation, the removing from one place to another; the removal of a bishop to another diocese. As to copyright in translated books, see 2 *Step. Com.* 42.

Transportation, the banishing or sending away a criminal into another country; also, the carriage of property.

This punishment was introduced in the reign of Queen Elizabeth, 39 Eliz. c. 4. The word is first used in the 13 & 14 Car. II. c. 23. The punishment was chiefly regulated by 5 Geo. IV. c. 84.

Returning from transportation before the expiration of the term of punishment was an offence against public justice, and punishable by transportation for life.—4 & 5 *Wm. IV.* c. 67. This punishment has been superseded for penal servitude by 16 & 17 Vict. c. 99, and 20 & 21 Vict. c. 3.

Transumpts, judicial copies of rights to certain lands.—*Scotch term.*

Traverse, the denial of some matter of fact alleged in a pleading, whether at common law, in equity, or in criminal prosecutions.

Of traverses there are several kinds, but the most ordinary is the common traverse, which consists of a tender of issue, i. e. of a denial, accompanied with a formal offer of the point denied for decision, and the denial that it makes is by way of express contradiction, in terms of the allegation traversed. The common traverse is not invariably a negative, for if opposed to a precedent negative allegation, it will, of course, be in the affirmative. There is also a sort of traverse, somewhat in the style of the old general issue, as *non est factum*, never indebted, *ne disturba pas*, which see, under their appropriate heads.—*Step. Plead.* 170.

Traverse of an office, proof that an inquisition made of lands or goods by the escheator is defective and untruly made.

Traversing indictment, postponing the trial of it.

The 14 & 15 Vict. c. 100, s. 16, repeals 60 Geo. III. and 1 Geo. IV. c. 4, as to the traverse of indictments in cases of misdemeanor, and provides, by s. 27, that no person prosecuted shall be entitled to traverse or postpone the trial of any indictment found against him at any session of the peace, session of oyer and terminer, or session of gaol delivery: provided always, that if the court, upon the application of the person so indicted or otherwise, shall be of opinion that he ought to be allowed a further time, either to prepare for his defence or otherwise, such court may adjourn the trial of such person to the next subsequent session, upon such terms as to bail or otherwise as to such court shall seem meet, and may respite the recognizances of the prosecutor and witnesses accordingly; in which case the prosecutor and witnesses shall be bound to attend and prosecute and give evidence at such subsequent session, without entering into any fresh recognizance for that purpose.

Traversing note. In equity, a plaintiff, after an appearance has been entered by or for a defendant defending in person, or by a solicitor, but not otherwise, to a bill, may, in default of answer to which interrogatories have been filed for the examination of such defendant, proceed with his cause by filing a traversing note as to such defendant. A traversing note appears in practice to be required in all cases where a defendant has been served with interrogatories to answer, and has not answered, before a certificate to set down

the cause can be obtained. It is, however, unnecessary to file a traversing note in order to set down a cause or motion for a decree, although interrogatories may have been filed by the plaintiff, if the time for answering such interrogatories have expired, and no replication have been filed.—*Smi. Ch. Pr.* 338.

Traversum, a ferry.

T. R. E., the initials of the phrase, *tempore regis Edwardi.*

Treacher, Treachetour, or **Treachour,** a traitor.

Treadmill, an instrument of prison discipline. It is composed of a large revolving cylinder, having ledges or steps fixed round its circumference; the prisoners walk up these ledges, and their weight revolves the cylinder.

Treason [fr. *trahir*, Fr., to betray; *proditio*, Lat.], or *leze-majesty*, an offence against the duty of allegiance, and the highest known crime, for it aims at the very destruction of the commonwealth itself. There are ten species of treason, five of which are declared by 25 Edw. III. st. 5, c. 2, as follows:—

(1) When a man doth compass or imagine the death of our lord the king (a queen regnant is within these words), of our lady his queen, or of their eldest son and heir.

(2) If a man do violate the king's companion (i. e. his wife), or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir.

(3) If a man do levy war against our lord the king in his realm. (After a battle has taken place, it is termed, *bellum percussum*; before it, *bellum levatum.*)

(4) If a man be adherent to the king's enemies in his realm, giving to them aid or comfort in the realm or elsewhere.

(5) If a man slay the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices.

The following species have been created by subsequent statutes:—

(6) If any person shall endeavor to deprive or hinder any person, being the next in succession to the crown, according to the limitations of the Act of Settlement (12 & 13 Wm. III. c. 2), from succeeding to the crown, and shall maliciously and directly attempt the same by any overt act.—1 *Anne*, st. 2, c. 17, s. 3.

(7) If any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm that any other person hath any right or title to the crown of this realm, otherwise than according to the Act of Settlement, or that the kings of this realm, with the authority of parliament, are not able to make laws and statutes to bind the crown and the descent thereof.—6 *Anne*, c. 7.

(8) The 3 & 4 Vict. c. 52, s. 4, provides (having reference to the contingency of any issue of Her present Majesty ascending the throne while under the age of eighteen), that every person who shall be aiding or abetting in obtaining, or bringing about any marriage to, as well as any person so marrying, such issue under the age of eighteen, without the consent in writing of the Regent, and the assent of both Houses of Parliament previously obtained, shall be guilty of treason.

(9) If any person within this realm or without, compass, imagine, invent, devise, or intend to deprive or depose the Queen from the crown, or to levy war within this realm, in order by force to compel her to change her measures or counsels, or to intimidate either House of Parliament, or to excite an invasion of any of Her Majesty's dominions, and shall express, utter, or declare such intentions by publishing any printing or writing, or by open and advised speaking, or by any overt act, shall be guilty of felony. This was formerly a species of treason, pursuant to 36 Geo. III. c. 7, and 57 Geo. III. c. 6, which were repealed by 11 Vict. c. 12.

(10) Misprision or bare concealment of treason.—1 & 2 *P. & M.* c. 10.

The offence of treason must be prosecuted within three years from its commission, if committed within the realm, except in the case of a designed assassination of the sovereign.—7 & 8 *Wm. III.* c. 3. Information for open and advised speaking must be given within six days after its utterance, and a warrant for the apprehension of the offender must have been issued within ten days after and within two years from April 22, 1848.—11 *Vict.* c. 12, s. 4.

The punishment of a convicted traitor is—1st, that the offender be drawn on a hurdle to the place of execution; 2nd, that he be hanged by the neck until he be dead; 3rd, that his head be severed from the body; 4th, that his body be divided into four quarters; 5th, that his head and quarters shall be at the disposal of the Crown. The sovereign may, however, change the whole sentence into beheading. A traitress is to be drawn to the place of execution, and hanged by the neck until she be dead.—4 *Step. Com.*; 2 *Reeves*, p. 451; and *Foster's Crim. L.* 183–251.

Treasonable, having the nature or guilt of treason.

Treasurer, one who has the care of money or treasure.

There was a Lord High Treasurer of England, but the duties are now executed by commissioners. The Prime Minister generally fills the office of First Lord of the Treasury.

Treasurer of a county, he that keeps the county stock. There are two of them in each county, chosen by the major part of the

justices of the peace, &c. at the Easter-sessions; they must have 10*l.* a year in land, or 150*l.* in personal estate, and shall not continue in their office above a year; they are to account yearly at the Easter-sessions, or within ten days after, to their successors under penalties. There are treasurers of the county-courts.

Treasurer's Remembrancer, he whose charge was to put the Lord Treasurer and the rest of the judges of the Exchequer in remembrance of such things as were called on and dealt in for the sovereign's behoof. There is still one in Scotland.

Treasure-trove [*thesaurus inventus*, Lat.], money or coin, gold, silver, plate, or bullion found hidden in the earth or other private place, the owner thereof being unknown or unfound, in which cases it belongs to the Crown. Bracton defines it, *vetus depositio pecuniæ.*

Concealing treasure-trove is punishable by fine or imprisonment.

Coroners ought to inquire of treasure-trove, being certified thereof.—4 *Edw. I.* st. 2. See *Sand. Just.* 200.

Treasury, the place where treasure is deposited.—*Cowel.*

Treasury-bench, the front seat on the right-hand of the Speaker of the House of Commons, upon which the members of the ministry who have seats in that house sit.

Treating Act. The 17 & 18 Vict. c. 102, s. 4, amended by 21 & 22 Vict. c. 87, and continued by 25 & 26 Vict. c. 109, and amended and continued by 26 & 27 Vict. c. 29, enacts that every candidate at an election, who shall corruptly by himself, or by or with any person, or by any other ways or means on his behalf, at any time, either before, during, or after any election, directly or indirectly give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay, wholly or in part, any expenses incurred for any meat, drink, entertainment, or provision, to or for any person, in order to be elected, or for being elected, or for the purpose of corruptly influencing such person, or any other person, to give or refrain from giving his vote at such election, or on account of such person having voted or refrained from voting, or being about to vote or refrain from voting at such election, shall be deemed guilty of the offence of treating, and shall forfeit the sum of fifty pounds to any person who shall sue for the same, with full costs of suit. And every voter who shall corruptly accept or take any such meat, drink, entertainment, or provision, shall be incapable of voting at such election, and his vote, if given, shall be utterly void, and of none effect. As to the origin of treating at elections, see 3 *Hall. Const. Hist.* c. xxi., p. 302, n. *g.*

Treaty, negotiation, act of treating, a compact between nations.

It is the sovereign's prerogative to make treaties, leagues, and alliances with foreign states and princes.

Treble costs. See DOUBLE OR TREBLE COSTS.

Treble damages. See DOUBLE OR TREBLE DAMAGES.

Trebucket, a tumbrel, castigatory, or cucking-stool. See CASTIGATORY.

Treet [fr. *triticum*, Lat.], fine wheat.—51 *Hen. III.*

Tremagium, Tremesium, Termisium, the season or time of sowing summer-corn, being about March, the third month, to which the word may allude.

Tremellum, a granary.

Tresayle, an abolished writ sued on ouster by abatement, on the death of the grandfather's grandfather.

Trespass [fr. *transgressio*, Lat.], any transgression of the law, less than treason, felony, or misprision of either.

The action of trespass lies where a person claims damages for trespass committed against him. A trespass is an injury committed with violence, and this violence may be either actual or implied; and the law will imply violence, though none is actually used, where the injury is of a direct and immediate kind, and committed on the person or tangible and corporeal property of the plaintiff. Of actual violence, an assault and battery is an instance; of implied, a peaceable but wrongful entry upon the plaintiff's lands.—*Step. Plead.* 16. As to trespass on the case, see CASE.

Trespass *quare clausum fregit*, an entry on another's land without lawful authority, for which injury an action will lie.—2 *Selw. N. P.* 1295–1326.

Trespasser, one who commits a trespass.

Trestornare, to turn or divert another way. *Cowel.*

Tret. See TARE.

Trethings [fr. *trethu*, Welch, to tax], taxes, imposts.

Treyts, taken out or withdrawn, as withdrawing or discharging a juror.

Tria genera sunt executorum:—(1) *A lege constitutus, et ideo dicitur legitimus: ut episcopus.* (2) *A testatore constitutus, et ideo dicitur testamentarius, ut executor.* (3) *Ab episcopo constitutus, et ideo dicitur dativus; ut administrator.*—*Swinb.* p. 4, s. 3.—(There are three sorts of executors:—(1) Such a one as the law itself constitutes, and therefore called legitimate, viz. a bishop. (2) Such a one as is appointed by the testator, and thence called testamentary, viz. an executor. (3) Such a one as the bishop appoints, called thence dative, viz. an administrator.) See PROBATE COURT.

Trial, the examination of a cause, civil or criminal, before a judge who has jurisdiction over it, according to the laws of the land.—1 *Inst.* 124.

Trial list, a catalogue of causes for trial.

Tria sequuntur defamatorem famosum; pravitatis incrementum: bursæ decrementum: conscientiæ detrimentum.—5 *Co.* 126.—(Three things follow a noted defamer: the increase of crime; the decrease of purse; and the injuring of conscience.)

Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam.—7 *Co.* 1.—(Trial ought to be had always there where the jury can have the best knowledge.)

Tribunal, the seat of a judge, a court of justice.

Tribute, payment made in acknowledgment; subjection.

Tricesima, an ancient custom in a borough in the county of Hereford, so called, because thirty burgesses paid 1*d.* rent for their houses to the bishop, who was lord of the manor.—*Lib. Nig. Heref.*

Tridingmote, the court held for a triding or trithing.

Triennial Elections Act, 6 W. & M. c. 2, prolonged to seven years, by 1 Geo. I. st. 2, c. 38.

Triens, a third part; also dower.

Trinepos, the male descendant in the 6th degree in direct line.—*Civ. Law.*

Trinity House, a society at Deptford Strond, incorporated by Henry VIII. in 1515, for the promotion of commerce and navigation, by licensing and regulating pilots, and ordering and erecting beacons, light-houses, buoys, &c.

The Trinity House is empowered, by 17 & 18 Vict. c. 104, to appoint and license pilots for the following limits:—(1) 'The London District,' comprising the waters of the Thames and Medway, as high as London Bridge and Rochester Bridge respectively, and also the seas and channels leading thereto or therefrom, as far as Oxfordness to the north, and Dungeness to the south; so, nevertheless, that no pilot shall be hereafter licensed to conduct ships both above and below Gravesend. (2) 'The English Channel District,' comprising the seas between Dungeness and the Isle of Wight. (3) 'The Trinity House Outports Districts,' comprising any pilotage-district for the appointment of pilots, within which no particular provision is made by Act of Parliament or charter. And, in general, the employment of pilots, in the first and third of these districts, is compulsory. But the following ships, when not carrying passengers, shall be exempted from compulsory pilotage in the London District, and the Trinity House Outports Districts. (1) Ships employed in the coasting trade of the United Kingdom. (2) Ships of no more than sixty tons burthen. (3) Ships trading to Boulogne, or to any place in Europe north of Boulogne. (4) Ships from Guernsey, Jersey, Alderney, Sark, or Man, which are wholly laden with stone, the produce of those islands. (5) Ships navigating within the limits of the ports to which they belong. (6) Ships passing through the limits of any pilotage district on their voyages between two places, both situate out of such limits, and not being bound to any place within such limits nor anchoring therein (ss. 369–388).

Trinity Term, an issuable term, beginning on the 22nd May, and ending on the 12th of June. See EASTER TERM.—*Wheat. Com. Pr.* 241.

Trinobantes, Trinonantes, or **Trinovantes,** inhabitants of Britain, situated next to the Cantii northward, who occupied, according to Camden and Baxter, that country which now composes the counties of Essex and Middlesex, and some part of Surrey. But if Ptolemy be not mistaken, their territories were not so extensive in his time, as London did not then belong to them. The name seems to be derived from the three following British words:—*Tri, now, hant,* i. e. inhabitants of the new city (London).—*Encyc. Lond.*

Trinoda necessitas. Under this denomination are comprised three distinct imposts, to which all landed possessions, not excepting those of the church, were subject, viz.:—

(1) Bryge-bót, for keeping the bridges and high roads in repair.—(*Pontis constructio.*)

(2) Burg-bót, for keeping the burgs or fortresses in an efficient state of defence.—(*Arcis constructio.*)

(3) Fyrd, or contribution for maintaining the military and naval force of the kingdom.—*Anc. Inst. Eng.*

Triors, Triours, or **Triers,** such as are chosen by the court to examine whether a challenge made to the panel of jurors, or to any of them, be just or not.

Tripartite, divided into three parts, having three correspondent copies; a deed to which there are three distinct parties.

Triplicatio, a rebutter.

Tristis, a forest immunity.—*Manw.* p. 1, 86.

Tritavia, a great-grandmother's great grandmother; the female ascendant in the 6th degree.—*Civ. Law.*

Tritavus, a great-grandfather's great-grandfather; the male ascendant in the 6th degree. *Ibid.*

Trithing, the third-part of a shire or province; a riding.

Trithing-reeve, a governor of a trithing.

Triumvir, a trithing man or constable of three hundred.

Triverbial days [*dies fasti,* Lat.], judicial days, when the courts are open for business.

Tronage, a customary duty, or toll for weighing wool.

Tronator, a weigher of wool.

Trophy money, money formerly collected and raised in London, and the several counties

of England, towards providing harness, and maintenance for the militia, &c.

Trover [fr. *trouver*, Fr., to find], a special action upon the case, which may be maintained by any person who has either an absolute or special property in goods, for recovering the value of such goods, against another, who having or being supposed to have obtained possession of such goods by lawful means, has wrongfully converted them to his own use. In order to maintain an action of trover, it is necessary that it should appear: (1) That the plaintiff had either an absolute or special property in the goods, which are the subject of the action. (2) That the plaintiff had the right of possession in the goods. (3) That the goods are the subject-matter of the action. (4) That the defendant has been guilty of a wrongful conversion.

Troy weight [*pondus Trojæ*, Lat.], a weight of twelve ounces to the pound, having its name from Troyes, a city in Aube, France.

Truce, a league or cessation of arms.

Truchman, an interpreter.

Truck system, the payment of wages in goods instead of money. The plan has been for masters to establish warehouses or shops, and the workmen in their employ have either had their wages accounted for to them by supplies of goods from such depôts, without receiving any money, or they have had the money given them with an express understanding that they were to resort to the warehouses or shops of their masters for the articles of which they stood in need. This system was abolished by 1 & 2 Wm. IV. cc. 36, 37. See *Archer* v. *James*, 31, *L. J.* (*Q. B.*) 153.

True bill [*billa vera*, Lat.], the endorsement which the grand jury makes upon a bill of indictment when, having heard the evidence, they are satisfied of the truth of the accusation.

Trustee, one entrusted with property for the benefit of a *cestui que* trust, which see.

Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to any judge of the High Court of Chancery, or by summons upon a written statement to any such judge at chambers, for the opinion, advice, or direction, of such judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the said judge shall think expedient; and the trustee, executor, or administrator acting upon the opinion, advice, or direction given by the said judge shall be deemed as far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject-matter of the said application; provided nevertheless that this Act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction, as aforesaid, if such trustee, executor, or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the judge to whom the said application shall be made.—22 & 23 *Vict.* c. 35, s. 30; and 23 & 24 *Vict.* c. 38, s. 9.

Trustee Acts, for the appointment of new trustees, 13 & 14 Vict. c. 60; 15 & 16 Vict. c. 55; 18 & 19 Vict. c. 91, s. 10; and 19 & 20 Vict. c. 120, ss. 17, 36. As to gratuitous trustees in Scotland, see 24 & 25 *Vict.* c. 84; 26 & 27 *Vict.* c. 115.

Trustee Relief Acts, 10 & 11 Vict. c. 96; and 12 & 13 Vict. c. 74.

Trustees, fraudulent, *Punishment of.* By 24 & 25 Vict. c. 96, s. 80, it is enacted, that 'Whosoever, being a trustee of any property for the use or benefit, either wholly or partially for some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise dispose of or destroy such property or any part thereof, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to any of the punishments which the court may award as hereinbefore last mentioned, i. e. penal servitude for any term not more than seven nor less than three years; or imprisonment for not more than two years, with or without hard labor, and with or without solitary confinement. Provided that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of Her Majesty's Attorney-General, or in case that office be vacant, of Her Majesty's Solicitor-General; provided also that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the court or judge before whom such civil proceedings shall have been had or shall be pending.'

Truster, the creator of a trust.

Trusts. A trust is simply a confidence, reposed either expressly or impliedly in a person, (hence called the trustee), for the benefit of another (hence called the *cestui que* trust, or beneficiary), not, however, issuing out of real or personal property, but as a collateral incident

accompanying it, annexed in privity to (i. e. commensurate with) the interest in such property, and also to the person touching such interest, for the accomplishment of which confidence, the *cestui que* trust or beneficiary has his remedy in equity only; the trustee himself likewise being aided and protected in the proper performance of his trust, when he seeks the court's direction as to its management.

Every kind of property in which a legal interest may be given, whatever may be its quantity or quality, if it will yield a profit, may be impressed with a trust, which equity will carry out without regard to form, provided its purpose do not contravene the policy of the law, or the principles governing the rights of property; for *qui hæret in literâ hæret in cortice.*

Trusts may be classed thus:—

(I.) Express, divided into—

(*a*) Trusts executed, perfect, complete, or constituted.

(*b*) Trusts executory, imperfect, incomplete, or directory.

(II.) Arising by operation of law, divided into—

(*a*) Constructive.

(*b*) Resulting.

(*c*) Implied.

Trusts are also divisible into (1) permanent, when there is a continuing duty to be performed for the benefit of several persons in succession, and (2) temporary, when there is one particular duty only to perform. Again, trusts may be general, where a trustee's duty is passive; and special, where it is active.

A trust, being in contemplation of equity, the substantial ownership of property, its legal possessor can create a trust in relation thereto, co-extensive with his ability to dispose of it at law.

The Statute of Frauds, 29 Car. II. c. 3, s. 7, requires that 'all declarations or creations of trusts or confidences of any lands, tehements, or hereditaments shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect.' This provision does not include declarations of trusts affecting chattels personal, which may be created by parol, provided they are to take effect during the life of their creator.

Since it is not necessary that a trust be declared in writing, but only so manifested and proved, no form is requisite either as regards the nature of the instrument or the language, the statute will be satisfied if the trust can be established by any subsequent acknowledgment of the trustee, however informally or indirectly made, as by a letter under his hand, by his answer to a bill in Chancery, or by a recital in a deed, provided it relate to the subject-matter, and the precise nature and object of the trust can be ascertained. A trust cannot be engrafted upon a will unless by a testamentary or codicillary paper executed with the statutory formalities, but if a devise or bequest of the legal estate be accompanied with any *mala fides* in the devisee or legatee, as if there be an express or implied undertaking to execute the intent of making a provision for third persons, the court will certainly establish such a trust.

A trust may be declared either directly or indirectly:—

To create a trust by a direct or formal declaration, a person need only make his meaning clear as to the interest he intends to give, without regarding the technical terms of the common law in the limitation of legal estates. An equitable fee may be granted without the word 'heirs,' and an equitable entail without the words 'heirs of the body;' but, though technical terms be not absolutely necessary, yet no rule is better established than that where technical terms are employed, they shall be taken in their legal and special sense. A distinction, however, must be drawn between trusts executed and trusts executory.

A constructive trust is properly a trust declared by a person indirectly, and construed by the court in favor of the intention. Thus when property is given absolutely to any person, and he is recommended, or entreated, or wished, by the donor having power to command, to dispose of such property in favor of another, the recommendation, entreaty, or wish creates a trust, provided the words are so used that, upon the whole, they ought to be construed as imperative; and also provided that the subject of the recommendation or wish, as well as the objects or persons intended to have the benefit of such recommendation or wish, be certain and definite. There is not any inclination to extend the rule of construction, which gives an imperative effect to precatory or recommendatory words.

Where, from the different parts of the instrument, it appears that the words are expressive of a mere expectation or wish, no trust will arise; as where the words are, that the donee will be kind to, or remember certain objects or classes, or the like; or where the donor uses such expressions as trusting to the justice of his successors, and it is to be collected that it is their own sense of justice on which he relies. When the testator recommends, but adds that he does not absolutely enjoin, it is clear that the expressions are to be taken as precatory only and not imperative. If it appear from the context that the first taker was intended to have a discretionary power to withdraw the whole or any part of the subject from the object of the wish or request, or if there are any words

by which it is expressed or from which it can be implied that the first taker may apply any part of the subject to his own use, it will not be held that a trust is created.

If a testator in one part of his will give property unfettered, the legatee is not generally bound to comply with a subsequent recommendation. So, where a father devised an estate to his daughter, as a reward for her affectionate, unwearied, and unexampled attention to him, superadded words of recommendation were held not to create a trust.

In recommendatory trusts, if the words for any reason do not amount to a trust, or the intended trust fail in the whole or in part, the absolute interest remains in the donee; or if the trust established do not exhaust the property given, the donee retains, in virtue of the gift, so much of the property as is not affected with the trust; but if property be given to a person as trustee only, if no trust be declared, or the trust declared or purporting to be declared, should fail, then there is a resulting trust for the donor or those claiming under him, and the donee can claim nothing beneficially, nothing being given to him but as trustee.

Any person may be appointed a trustee, except an alien (who can, however, be a trustee as to personal estate) and a criminal attainted. A corporation may be constituted a trustee of personalty and also of realty upon charitable trusts; but not upon private trusts, by reason of the statutes of mortmain. Equity will, however, supply a trustee where realty is so devised to a corporation. It is never advisable to select a married woman to be a trustee, on account of her inability to join in the requisite assurances without her husband's concurrence; nor should an infant be appointed a trustee, on account of his legal disability. If a trust involve the receipt and custody of money, the safeguard of at least two trustees ought rarely to be dispensed with.

In order to vest the legal estate of a simple trust in a trustee, it should be conveyed or devised 'to the trustee and his heirs to the use of the trustee and his heirs,' or 'unto and to the use of the trustee and his heirs,' then superadding the trusts. Should, however, the trusts be special, imposing an agency upon the trustee, then by a limitation to A. and his heirs, upon trust to pay the rents or to permit and suffer a person to receive and take the net rents and profits, or to convey the estate; or if any control is to be exercised, or duty to be performed, as upon trust to apply the rents to a person's maintenance, or in making repairs, or to hold for the separate use of a *feme covert*, or to permit a *feme covert* to receive the profits for her separate use, or to preserve contingent remainders, and *à fortiori* to raise a sum of money, or to dispose of by sale, the operation of the statute of uses is effectually excluded, and the trustee takes the legal estate. But if the trust is simply to 'permit and suffer A. to receive the rents,' or the legal estate be limited to the trustees charged with debts, and subject thereto in trust for A., and no direction is given to the trustees personally to pay the debts, then as the trustees have no agency assigned to them, but merely stand seised in trust, the statute of uses will operate, and execute the possession in A.

Any person who can purchase and hold a legal estate may become a beneficiary of the equitable interest in property.

A trust will be enforced wherever there is a valuable consideration; but, if it be merely voluntary, the equitable interest will not be enforced, unless an actual trust be created, and no act remains to be done to complete the title of the trustees, for then a consideration is not essential. An agreement founded on a meritorious consideration (i. e. a secondary valuable consideration, as in favor of a wife or children), will not be executed as against the settlor himself, but as between parties claiming under the settlor, if the court can act in favor of the meritorious consideration without inflicting a hardship on persons peculiarly entitled to protection, the voluntary agreement will in such a case be specifically executed.

The rule is to carry into effect the object proposed by the trust, unless it is in contravention of the public policy of the law; as, for instance, seeking to create a perpetuity, or accumulating annual income beyond the statutory limits.

Tub, 60 lbs. of tea.

Tub-man, a barrister who has a pre-audience in the Exchequer, and also a particular place in court.

Tumbrell, a castigatory, or dung-cart.

Tumultuous petitioning. By 13 Car. II. st. 1, c. 5, it is enacted, that not more than twenty names shall be signed to any petition to the Crown, or either house of parliament, for any alteration of matters established by law in Church or State: unless the contents thereof be previously approved, in the country by three justices, or the majority of the grand jury at the assizes or quarter-sessions; and in London by the lord mayor, aldermen, and common council; and that no petition shall be delivered by a company of more than ten persons, on pain, in either case, of incurring a penalty not exceeding 100*l.* and three months' imprisonment. See 57 *Geo. III.* c. 19, s. 23; 4 *Step. Com.* 335.

Tun, four hogsheads.

Tuncaw, Tunkha, an assistant of the revenue for personal support or other purposes.—*Indian.*

Tungreve, a town-reeve or bailiff.

Turbary [fr. *turbus*, or *turba*, obs. Lat., turf, or Saxon, meaning either the right of taking

turf, or the ground whence it is taken], the liberty of digging turf.

Turn, or **Tourn**, the great court-leet of the county, as the old county-court was the court-baron; of this the sheriff is judge, and the court is incident to his office; wherefore it is called the sheriff's tourn; and it had its name originally from the sheriff's making a turn of circuit about his shire, and holding this court in each respective hundred.—2 *Hawk. P. C.* c. x.

Turned to a right, where a person's possession of property cannot be restored by entry, but can only be recovered by action, it is said to be turned to a right.

Turner's (Sir George) Act, 13 & 14 Vict. c. 35. See 23 & 24 *Vict.* c. 38, ss. 12 & 14.

Turnkey, a gaoler.

Turnpike-roads, ways maintained out of tolls paid by passengers. These do not generally fall within the operation of the Highway Act, 5 & 6 Wm. IV. c. 50, but are regulated, primarily, by the local Acts relative to each particular road, which, though temporary, are renewed by the legislature from time to time as they are about to expire; and, in the next place, by statutes of a general description, applicable (with very few exceptions) to all turnpike-roads, that is, all roads maintained by tolls, and placed under the management of trustees or commissioners for a limited period of time.—*Northam Bridge and Road Company*, v. *London and Southampton Railway Company*, 6 M. & W. 428. The general Turnpike Acts are 3 Geo. IV. c. 126; 4 Geo. IV. c. 95; 7 & 8 Geo. IV. c. 24; 9 Geo. IV. c. 77, s. 19; 1 & 2 Wm. IV. c. 25; 2 & 3 Wm. IV. c. 124; 3 & 4 Wm. IV. c. 80; 4 & 5 Wm. IV. c. 81; 4 & 5 Vict. cc. 33, 51. And as to South Wales, 7 & 8 Vict. c. 91; 8 & 9 Vict. c. 61; and 10 & 11 Vict. c. 72. The 3 & 4 Vict. c. 33, s. 81; 12 & 13 Vict. c. 87; 13 & 14 Vict. c. 79; 17 & 18 Vict. c. 58, provide for mortgages of turnpike-tolls; and 14 & 15 Vict. c. 38; 15 & 16 Vict. c. 33; 17 & 18 Vict. c. 51; 18 & 19 Vict. c. 102; 19 & 20 Vict. c. 12; 20 & 21 Vict. c. 9; 21 & 22 Vict. c. 80; 22 & 23 Vict. c. 33; and 23 & 24 Vict. c. 70, provide for relief of insolvent turnpike-trusts. And see 21 & 22 *Vict.* c. 63; 22 & 23 *Vict.* c. 51; 23 & 24 *Vict.* c. 83; 25 & 26 *Vict.* cc. 56, 72; and 26 & 27 *Vict.* cc. 78, 94, 98.

Turpis causa, a base or vile consideration on which no action can be founded.

Turpis est pars quæ non convenit cum suo toto.—*Plow.* 161.—(That part is bad which accords not with its whole.)

Tuta est custodia quæ sibimet creditur.—*Hob.* 340.—(That guardianship is secure which is entrusted to itself alone.)

Tutelage, guardianship; state of being under a guardian.—*Sand. Just.* 136.

Tutius erratur ex parte mitiore.—3 *Inst.* 220. (It is safer to err on the gentler side.)

Tutius semper est errare acquitando quam in puniendo, ex parte misericordiæ quam ex parte justitiæ.—*H. H. P. C.* 290.—(It is always safer to err in acquitting than in punishing: on the side of mercy than of strict justice.)

Tutorship, the office and power of a tutor.

Tutor, a guardian; a protector; an instructor.

Tutrix, a female tutor.

Twanight gëste, a guest at an inn a second night.

Twelfhindi, the highest rank of men in the Saxon government, who were valued at 1,200*s.* If any injury were done to such persons, satisfaction was to be made according to their worth.

Twelvemonth (sing.), a year; but twelve months (plur.) are computed according to twenty-eight days for each month.—6 *Rep.* 62.

Twyhindi, the lower order of Saxons, valued at 200*s.* in the scale of pecuniary mulcts inflicted for crimes.

Tyburn ticket, a certificate given to the prosecutor of a felon to conviction.

Tyhslan, an accusation, impeachment, or charge.

Tylwith, a tribe, house, or family.

Tyrannicide, the slaughter of a tyrant.

Tythe, tithe, or tenth part.

Tything, a company of ten; a district; a tenth part. See TITHING.

Tzar, Tzarina, the Emperor and Empress of Russia. See CZAR.

U.

Uberrima fides [Lat.] (*most abundant faith*).

Ubi aliquid impeditur propter unum, eo remoto, tollitur impedimentum.—5 *Co.* 77.—(Where anything is impeded by some one particular cause, that cause being removed, the impediment is taken away.)

Ubication, or **Ubiety** [fr. *ubi*, Lat., where], local position.—*Encyc. Lond.*

Ubi cessat remedium ordinarium, ibi decurritur ad extraordinarium.—4 *Co.* 93.—(Where a common remedy ceases, there recourse is had to an extraordinary one.)

Ubi culpa est, ibi pœna subesse debet.—*Jenk. Cent.* 325.—(Where there is culpability, there punishment ought to follow.)

Ubicunque est injuria, ibi damnum sequitur.—10 *Co.* 116.—(Where there is an injury, there a loss follows.)

Ubi damna dantur, victus victori in expensis condemnari debet.—2 *Inst.* 289.—(Where damages are given, the losing party should be condemned in costs to the victor.)

Ubi eadem ratio, ibi eadem lex; et de similibus idem est judicium.—7 *Co.* 18.—(Where the same reason exists, there the same law prevails; and of things similar, the judgment is similar.)

Ubi factum nullum, ibi sortia nulla.—4 *Co.* 43.—(Where there is no deed, there can be no consequences.)

Ubi jus, ibi remedium.—*Co. Litt.* 197 *b.*—(Where there is a right there is a remedy.)

Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima.—2 *Inst.* 269.—(Where the law compels a man to show cause, it is incumbent that the cause be just and legal.)

Ubi lex est specialis, et ratio ejus generalis, generaliter accipienda est.—2 *Inst.* 43.—(Where the law is special, and the reason of it general, it ought to be taken as being general.)

Ubi lex non distinguit, nec nos distinguere debemus.—7 *Co.* 5.—(Where the law makes no distinction, we ought not to make any.)

Ubi major pars est, ibi totum.—*Moor.* 578.—(Where the greater part is, there the whole is.)

Ubi non est annua renovatio, ibi decimæ non debent solvi.—(Where there is no annual renovation, there tithes should not be paid.)

Ubi non est cogendi auctoritas, ibi non est parendi necessitas.—*Dav.* 69.—(Where there is no authority to compel, there is no necessity to obey.)

Ubi non est directa lex, standum est arbitrio judicis, vel procedendum ad similia.—*Ellesm. Postn.* 41.—(Where there is no direct law, the opinion of the judge is to be taken, or references to be made to similar cases.)

Ubi non est lex, ibi non est transgressio, quoad mundum.—4 *Co.* 16.—(Where there is no law there is no transgression, as far as relates to society.)

Ubi non est principalis non potest esse accessorius.—4 *Co.* 43.—(Where there is no principal there cannot be an accessary.)

Ubi nullum matrimonium, ibi nulla dos.—*Co. Litt.* 32.—(Where there is no marriage there is no dower.)

Ubi quid generaliter conceditur, inest hæc exceptio, si non aliquid sit contra jus fasque.—10 *Co.* 78.—(Where a thing is conceded generally this exception arises, that there shall be nothing contrary to law and right.)

Ubi quis delinquit, ibi punietur.—6 *Co.* 47.—(A person shall be punished where he commits an offence.)

Ubiquity, omnipresence; being present everywhere at the same moment.

Udal, allodial, which see.

Ukaas, or **Ukase,** a Russian law or ordinance.

Ullage [fr. *uligo*, Lat., ooziness], the quantity of fluid which a cask wants of being full, in consequence of the oozing of the liquor.—*Malone.*

Ulnage, alnage, which see.

Ulna ferrea, the standard ell of iron, kept in the Exchequer for the rule of measure.—*Mon. Angl.* ii. 383.

Ultimatum, or **Ultimation,** the last offer; concession or condition.

Ultima voluntas testatoris est perimplenda secundum veram intentionem suam.—*Co. Litt.* 322.—(The last will of a testator is to be fulfilled according to his true intention.)

Ultima voluntas esset libera.—(A last will should be free.)

Ultimum supplicium, the last or extreme punishment; death.

Ultimus hæres, the last or remote heir; this is the sovereign who succeeds, failing all relations.

Ultra posse non est esse: et vice versâ.—*Wing. Max.*—(What is beyond possibility cannot exist: and so contrariwise.)

Ultra vires [Lat.] (*beyond their powers*), said of a company when exceeding the authority imparted to it by Act of Parliament.

Umpirage, friendly decision of a controversy; arbitration.

Umpire [fr. *imperator* or *impar*, odd, Lat.]. A submission to arbitration usually provides, that in case of arbitrators not agreeing in an award, the matters should be decided by a third person, who is called an umpire. The submission either provides that the arbitrators shall appoint the umpire, or he is named therein. This appointment should always be made a condition precedent to the proceeding at all in the reference. The appointment of an umpire must be the act of the will and concurring judgment of both the arbitrators. The umpire's authority commences when arbitrators are unable to agree, but if there be a time limited for the award, his authority absolutely commences from such time. The umpire, when called upon to act, is generally invested with the same powers as the arbitrators, and bound by the same rules, and has to perform the same duties.

Unalienable, a thing which cannot be sold.

Una persona vix potest supplere vices duarum. 7 *Co.* 118.—(One person can scarcely supply the places of two.)

Unâ voce [Lat.] (*with one voice*, i. e. *unanimously*).

Unceasesath [fr. *ceas*, Sax., prosecution, *un*, without, and *ath*, oath], an oath by relations not to avenge a relation's death.—*Blount.*

Unclaimed dividends in the public funds, see 56 *Geo. III.* c. 60; and 8 & 9 *Vict.* c. 62. As to Ireland, 23 & 24 *Vict.* c. 71.

Uncle and Nephew. A nephew, the son of a deceased elder brother, is preferred in the inheritance to his uncle, a younger brother of the deceased.

Uncore prist, the plea of a defendant in

nature of a plea in bar, where, being sued for a debt due on bond at a day past, to save the forfeiture of the bond, he says that he tendered the money at the day and place, and that there was none there to receive it, and that he is also still ready to pay the same.

Uncuth [Sax.], unknown.

Unde nihil habet. See DOWER.

Under Chamberlains of the Exchequer, two officers who cleaved the tallies written by the clerk of the tallies, and read the same, that the clerk of the pell and comptrollers thereof might see their entries were true. They also made searches for records in the treasury, and had the custody of Domesday-Book. Abolished.

Under-lease, a grant by a lessee to another of a part of his whole interest under the original lease, reserving to himself a reversion; it differs from an assignment, which conveys the lessee's whole interest, and devolves upon the assignee the responsibility of the covenants in the original lease.

Under-sheriff [*sub vicecomes*, Lat.], the sheriff's deputy. See SHERIFF.

Under-tenant, one who holds by under-lease, from a lessee.

Between the original lessor and an under-tenant there is neither privity of estate nor privity of contract, so that these parties cannot take advantage, the one against the other, of the covenants, either in law or in deed, which exist between the original lessor and lessee.—*Watk. Conv.* 308.

Under Treasurer of England [*vice-thesaurarius Angliæ*, Lat.], he who transacted the business of the Lord High Treasurer.

Under-writer, an insurer of ships, so called from his writing his name under the policy of insurance.

Undress, minors or persons under age not capable of bearing arms.—*Fleta*, l. 1, c. ix.

Undue influence, any force, violence, or restraint, or the infliction of, or threat to inflict, any injury, or the practice of any intimidation, in order to induce any person to vote, or refrain from voting, or on account of his having done so; every person so offending is guilty of a misdemeanor, and forfeits the sum of 50*l.*; and if any candidate for any county or borough shall be declared by any election committee guilty of this offence, he shall be incapable of sitting in parliament for such county or borough during the parliament then in existence.—17 & 18 *Vict.* c. 102, ss. 5, 36; amended and continued by 21 & 22 *Vict.* c. 87, and 26 *Vict.* c. 29.

As to the undue influence which will invalidate a will, Mr. Justice Williams says:—'The sort of influence which will invalidate a will is thus described by Eyre, C. B., in *Mountain* v. *Bennett*, 1 *Cox*, 355. There is another ground which, though not so distinct as that of actual force, nor so easy to be proved, yet if it should be made out, would certainly destroy the will, that is if a dominion was acquired by any person over a mind of sufficient sanity *to general purposes*, and of sufficient soundness and discretion to regulate his affairs *in general*, yet if such a dominion or influence were acquired over him as to prevent the exercise of such discretion, it would be equally inconsistent with the idea of a disposing mind.' But the influence to vitiate an Act must amount to force and coercion, destroying free agency. It must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act. Further, there must be proof that the act was obtained by this coercion; by importunity which could not be resisted; that it was done merely for the sake of peace; so that the motive was tantamount to force and fear.—1 *Williams on Executors*, p. 44.

Unfitness of clerk. See REFUSING TO INSTITUTE A CLERK.

Unfrid [Sax.], one who has neither peace nor quiet.

Ungeld, an outlaw.

Unica taxatio, the obsolete language of a special award of *venire*, where, of several defendants, one pleads, and one lets judgment go by default, whereby the jury, who are to try and assess damages on the issue, are also to assess damages against the defendant suffering judgment by default.

Uniformity, *the Act of*, 13 & 14 Car. II. c. 4. See 9 & 10 *Vict.* c. 59.

Uniformity of Process Act, 2 Wm. IV. c. 39.

Unigeniture, the state of being the only begotten.

Unilateral, one-sided.—*Scotch term.*

Unilateral contract. When the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. A loan of money and a loan for use are of this kind.—*Civ. Law.*

Union-jack, the national flag of Great Britain and Ireland, which combines the banner of St. Patrick with the crosses of St. George and St. Andrew. The word jack is most probably derived from the surcoat, charged with a red cross, anciently used by the English soldiery. This appears to have been called a *jacque*, whence the word *jacket*, anciently written *jacquit*. Some, however, without a shadow of evidence, derive the word from *Jacques*, the first alteration having been made in the reign of King James I.

Union of benefices. See 18 & 19 *Vict.* c. 127, and 23 & 24 *Vict.* c. 142.

Union, *Clause of*, a clause in an infeftment, whereby lands or tenements lying discontiguous are incorporated, so that one seisin may suffice for them all.—*Scotch phrase.*

Union Assessment Committee Act, 1862, 25 & 26 Vict. c. 103.

Union Relief Aid Act, 25 & 26 Vict. c. 110, continued by 26 & 27 Vict. cc. 4 & 91.

Unions, *Poor Law.* See 4 & 5 *Wm. IV.* c. 76.

Unitas personarum, the unity of persons, as that between husband and wife, or ancestor and heir.

United States of America declared their independence on 4th July, 1766, and were acknowledged by England on the 3rd Sept. 1783.

Unity, a coincidence of qualities.

Unity of possession, where one has a right to two estates, and holds them together in his own hands, as if a person take a lease of lands from another at a certain rent, and afterwards buys the fee-simple, this is an unity of possession by which the lease is extinguished, because that he who had before the occupation only for his rent, is now become lord and owner of the land.—*Termes de la Ley.* See JOINT-TENANCY.

Universal agent, one who is appointed to do all the acts which the principal can personally do, and which he may lawfully delegate the power to another to do. Such an universal agency may potentially exist, but it must be of the rarest occurrence. And indeed it is difficult to conceive of the existence of such an agency practically, inasmuch as it would be to make such an agent the complete master, not merely *dux facti* but *dominus rerum*, the complete disposer of all the rights and property of the principal. It is very certain that the law will not from any general expressions, however broad, infer the existence of any such universal agency; but it will rather construe them as restrained to the principal business of the party, in respect to which it is presumed his intention to delegate the authority was principally directed.—*Story's Agency*, 18.

Universal legacy, a testamentary disposition by which the testator gives to one or more persons the whole of the property which he leaves at his decease.—*Civ. Law.*

Universal partnership, a species of partnership, by which all the partners agree to put in common all their property, *universorum bonorum*, not only what they then have, but also what they shall acquire.—*Civ. Law.*

Universalia sunt notiora singularibus.—2 *Rol. Rep.* 294.—(Things universal are better known than things particular.)

Universitas vel corporatio non dicitur aliquid facere nisi id sit collegialiter deliberatum, etiam si major pars id faciat.—*Dav.* 48.—(An university or corporation is not said to do anything unless it be deliberated upon collegiately, although the majority should do it.)

Universities and College Estates' Act, 1858, 21 & 22 Vict. c. 44, extended by 23 & 24 Vict. c. 59.

University, a corporation forming one whole out of many individuals; a school where all kinds of literature are taught. As to the corporations of Oxford and Cambridge, see 22 & 23 *Vict.* c. 19; as to Oxford, see 17 & 18 *Vict.* c. 81, and 23 *Vict.* c. 23; as to the Craven Scholarship at Oxford, see 23 & 24 *Vict.* c. 91 (No. 2).

University press, the public press of the University of Oxford.

Unlage [Sax.], an unjust law.

Unlawful assembly, any meeting of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and raise fears and jealousies among the subjects of the realm.—4 *Step. Com.* 282, 334.

Unliquidated damages, penalties or damages not ascertained.

Unnatural offence, the infamous crime against nature.

Uno absurdo dato, infinita sequuntur.—1 *Co.* 102.—(One absurdity being allowed, an infinity follow.)

Unsworn testimony. As to its admission, in certain cases in colonial, civil, and criminal proceedings, see 6 & 7 *Vict.* c. 22.

Unthrift, a person of outrageous prodigality.

Unumquodque eodem modo quo colligatum est dissolvitur; quo constituitur, destruitur.—2 *Rol. Rep.* 39.—(In the same manner in which anything is bound it is loosened; in the same manner in which it is constituted it is destroyed.)

Unumquodque est id quod est principalius in ipso.—*Hob.* 123.—(That which is the principal part of a thing is the thing itself.)

Unumquodque principiorum est sibimetipsi fides; et, perspicua vera non sunt probanda.—*Co. Litt.* 11.—(Every principle is its own evidence, and plain truths are not to be proved.)

Unques [Nor. Fr.] (*yet*).

Unques prist. See UNCORE PRIST.

Unsound mind. See MENTAL ALIENATION.

Unwholesome provisions, *the selling of*, an offence against public health. 51 Hen. III. st. 6; 12 Car. II. c. 25, s. 11; 1 W. & M. st. 1, c. 39, s. 20; 3 Geo. IV. c. 106; 6 & 7 Wm. IV. c. 37; 11 & 12 Vict. c. 107; and 23 & 24 Vict. c. 84.

Upper bench [*bancus superior*, Lat.], the style of the Queen's Bench during the protectorate of Cromwell.

U. R. (initials of *uti rogas*, be it as you desire), a ballot, thus inscribed, by which the Romans voted in favor of a bill or candidate.—*Tay. C. L.* 191. See A.

Urban servitudes, tenures in cities.

Ure, custom, practice, habit.

Usage, practice long continued.

Usance [Fr.], the time which it is the usage of the countries, between which bills are drawn, to appoint for payment of them. According to the language of merchants, 'usance' signifies a month.

The length of the usance or time which it includes varies in different countries from fourteen days to one, two, or even three months after the date of the bill. Double or treble usance is double or treble the usual time, and half usance is half that time; when it is necessary to divide a month upon a half usance, the division, notwithstanding the difference in the length of the month, contains fifteen days. It has been said that the court could take judicial notice of foreign usances, which vary, being longer in one place than another, and therefore certainly the duration must be averred and proved.

A usance between London and—	Cal. months after date	Days after date	Days after sight or acceptance
Aleppo (sometimes accounted as treble usance) is	1		
Altona	1		
America (North) said to be		60	
Amsterdam	1		
Antwerp	1		
Bahia (none)			
Barcelona		60	
Berlin			14
Bilboa	2		
Bordeaux		30	
Brabant	1		
Brazil (none)			
Bremen	1		
Bruges	1		
Buenos Ayres (none)			
Cadiz	2		
Constantinople & Smyrna		31	
Dantzic			14
Flanders	1		
Florence (sometimes accounted as treble usance)		30	
France		30	
Frankfort on the Main			14
Geneva		30	
Genoa	3		
Germany		30	
Gibraltar		{	2 mos.
Hamburg	1		
Holland and Netherlands	1		
Italy	3		
Leghorn	3		
Leipsic			14
Lisbon		60	
Lisle	1		
Lucca (sometimes)	3		
Madrid, and all Spain, except Cadiz		60	
Malta		30	
Middleburgh	1		
Milan	3		
Naples	3		
Netherlands	1		
Oporto		60	
Palermo	3		
Paris	1		
Petersburgh (none)			
Portugal		60	
Rio de Janeiro (none)			
Rome	3		
Rotterdam	1		
Rouen	1		
Seville		60	
Smyrna		31	
Spain		60	
Sweden			30
Switzerland			30
Trieste (same as Vienna)			
Venice	3		
Vienna			14
West Indies			31
Zante	3		
Zealand	1		
A usance between Amsterdam and Brabant, France, Flanders, and Holland, or Zealand	1		
Frankfort, Nuremberg, Vienna, and other places in Germany, on Hamburg, and Breslau, 14 days after sight; two usances, 28 days; and half usance, 7 days			
Italy, Spain, and Portugal	2		
A usance between Amsterdam, Antwerp, Rotterdam, and—			
Germany and Switzerland			14
Dantzic, Königsberg, and Riga			30
England and France	1		
Italy, Spain, and Portugal	2		
Genoa (abolished by the code Napoleon)			

A *usance* between London and—	Cal. Months after date	Days after date	Days after sight or acceptance
A usance between Hamburgh, Altona, and—			
Germany . . .			14
France and Holland .	1		
Italy, Spain, Portugal, Trieste, and Fiume .	2		
A usance between Leghorn and—			
Holland, Spain, and Hamburgh . . .	2		
Lisbon	3		
Paris	1		
A usance between Lisbon, Oporto, and—			
Spain			15
Holland, Germany .	2		
Italy	3		
France			60
A usance between Palermo, and most other places, except London . . .			21
A usance between Venice, Holland, and Hamburgh	2		

Chitty on Bills, 255–257.

Uses. The austere and unbending rules of our common law were, at a very early period of our history, found to be altogether unfit for those intricate arrangements of realty which family settlements, commercial speculations, and the multiplied relationships amongst individuals in society required. The common law, in its pure but inflexible strictness, treated the actual possession of property, and the abstract right to it, as one and inseparable. In order to have ascertained the owner of a landed estate, the question was, 'Who was in possession of it?' The person who satisfied this inquiry was to all intents and for all purposes the owner of the property. Nor was it difficult to find him out, since the possession of his estate was conferred upon him by a formal and notorious ceremony, technically called livery of seisin, which was performed openly and in the presence of the people of the locality. Simple as this principle of law undoubtedly was, and convenient as the union of possession and proprietorship may appear, yet its simplicity was attended with hardship to the vassal, and resulted in the tyranny and oppression of the proud baron and the martial lord.

It soon became evident that the iron rules of the common law were unfit for an age in anywise advanced beyond barbarism, and guided by reason. An inflexible tenure and a difficult alienation were stumbling blocks to the increasing transfer of property, the career of commerce, the untrammelled dominion of one's own rights, and the complicated wants of an enterprising and refined people. As speculation expanded and the efforts of competitive industry multiplied, pressing emergencies and transitory difficulties sought accommodation and supply from landed property, and thence ingenuity was excited and experience sharpened to hit upon a device which should set at nought the sternness of existing law and the hardship of rigid ceremony.

A scheme was invented by the monastic jurists upon a model furnished to them by the civil law, which, by a nice adaptation, evaded, without overturning, the common law. Thus two methods of transferring realty began to coexist in this country—the ancient common law system, and the monkish invention, which is denominated Uses.

It is beyond the scope of the present inquiry to investigate the original cause of the introduction of Uses into this country, for whether they owe their origin to mystery, or were suggested under the influence of fraud and fear, they were furnished forth from the vast resources and recondite learning of the civil law, and rejoiced in the happy fortune of securing for their nurse and protector the ample influence of the Court of Chancery, which enabled them, notwithstanding the robust opposition with which they were received by the partisans and advocates of the old but impracticable institutions, to make a stand, to acquire strength, to become stable, then to be sanctioned, and eventually legalised by senatorial provision.

Thus a novel contrivance, which was at first but a trivial innovation, treated with contempt and indifference, has become, in its progress, a gigantic system, which having superseded the doctrines and practice of feudal law, is in fact the foundation of modern conveyancing.

Before the Statute of Uses, a use was in its nature equitable, and it may be defined to have been a right in Chancery to the beneficial ownership of an estate, the possession of which was vested, through confidence, in another. The person enjoying the beneficial right was called the *cestui que* use, or he to whose use the land was conveyed, and the person in possession the feoffee to uses. Thus A. conveyed an estate to F. to his (A.'s) own use *or* to the use of C.; F. was the feoffee to uses, and A. or C. as the case may be, the *cestui que* use.

The use consisted of three parts:—(1) That the feoffee to uses should suffer the *cestui que* use to take the profits; (2) that the feoffee to uses, upon the request of the *cestui que* use, or notice of his will, would convey the estate to the *cestui que* use or his heirs, or any other person by his direction; and, (3) that if the feoffee to uses had been deprived, and so the *cestui que* use disturbed, the feoffee to uses would re-enter or bring an action to recontinue his possession.

The following were the requisites to be observed in raising uses:—

(1) There should have been a person capable of standing seised to a use.

(2) There should have been a person capable of receiving or taking the use.

(3) There should have been either a consideration to raise, or a declaration of, the use.

(4) There should have been a sufficient substance or hereditament out of which the use might have arisen.

The properties of uses were these:—

(1) They were descendible according to the rules of the common law relating to the inheritable estates of intestates; and the special customs of gavelkind, borough-english, and copyholds, determined the particular descent of uses. This is an illustration of the well-known maxim, *Æquitas sequitur legem.*

(2) They were devisable even before the Statute of Wills, 32 Hen. VIII. c. 1.

(3) They were transferable, although at law they were mere *choses in action.*

(4) A *cestui que* use in possession of the land was deemed a tenant at will only, for he had neither *jus in re*, i. e. an estate, nor *jus ad rem*, i. e. a demand, and therefore he could bring no action, having neither title nor legal estate in the property.

(5) Neither could a widow be endowed, nor could a husband have his curtesy of a use, because the *cestui que* use had no legal seisin of the land.

(6) The *cestui que* use might have been impanelled on a jury.—2 *Hen V.* c. 3.

(7) The feoffee to uses, being complete owner of the land at law, performed the feudal duties, had power to sell, brought actions, his widow became entitled to dower, and his estate was subjected to wardship, relief, and forfeiture for treason or felony. In fact, he was treated at common law as the absolute tenant of the fee.

(8) A use, being but a creature of equity, could not have been taken in execution for the debts of the *cestui que* use; for there was no process at common law but against legal estates.

(9) A use, not being an object of tenure, was therefore exempt from the oppressive burdens of the feudal system. It was not forfeitable for treason or felony, because it was not held of any person. This was afterwards broken in upon by statute 12 Ric. II. c. 3.

(10) A use was neither a chattel nor an hereditament; it was not then assets either for the executor or the heir-at-law.

There were two kinds of uses, viz.—

(1) Official or active;
(2) Permissive or passive.

Uses were also distributable into

(1) Express;
(2) Constructive; and
(3) Resulting.

There appears to have been a distinction between a use and a trust, even before the Statute of Uses. The use was an equitable interest general and permanent in the land, but an equitable interest which was either special or transitory was strictly a trust. Let us give an illustration of the difference; suppose a feoffment in fee, which transferred the possession to the feoffee, in whom a confidence was placed to pay to some other person and his heirs the rents and profits, and to make such transfers as he or they should direct, this confidence was clearly the use, commensurate with the legal estate; the feoffee's permanent fee being subject to the distribution of the profits, and the direction of the *cestui que* use and his heirs. A trust, however, did not divide the property into possession and use, for in such a case they were both transferred to the feoffee, in whom a confidence was placed that he would retain *both* for some given purpose; *ex. gra.* a feoffment made by A. to B. in trust or to the intent to re-enfeoff A., or that B. should convey to a third person: the trusts or intents were not uses, for the feoffee was not to pay over the profits merely, but to dispose of the profits *and also* the possession. This was not deemed a use, but a special trust lawful, in contradistinction to the special trust unlawful, which was created for fraudulent purposes, as to defraud creditors, to defeat the Statute of Mortmain, and the like.

If the two following statutes be compared, it will be manifest that Parliament did not consider the use and special trust to be the same: the 50 Edw. III. c. 6, subjected the *special trust* to an execution by a creditor of the *cestui que* trust; while the 19 Hen. VII c. 15, extended, for the first time, the estate of the *cestui que* use.

It is, therefore, important clearly to distinguish these three interests:—(1) The use, properly so called (which we have tried to explain); (2) the special trust lawful; and (3) the special trust unlawful. See TRUSTS.

'Though these uses,' remarks Lord C. B. Gilbert (*Uses*, c. i., s. 8), 'had a very equitable beginning, yet like all new models and general schemes of ordering property, it introduced a great many unforeseen inconveniences, and subverted in many instances the institution and policy of the common law.

'First. Estates passed by way of use, from one to another, by bare words only, without any solemn ceremony or permanent record of the transaction, whereby a third person that had right knew not against whom to bring his action.

'Secondly. Uses passing by will, the heirs were disinherited by the inadvertent words of dying persons.

'Thirdly. Lords lost their wardships, reliefs,

marriages, and escheats: the trustees letting *cestui que* use continue the possession, whereby the real tenants that held the lands could not be discovered.

'Fourthly. The king lost the estates of aliens and criminals; for they made their friends trustees, who kept possession, and secretly gave them the profits so as the use was undiscovered.

'Fifthly. Purchasers were insecure; for the alienation of *cestui que* use in the possession was at common law a disseisin, and 1 Ric. III. c. 1, gave him power to alien what he had; yet the feoffees may still enter to revest a remainder or contingent use, which were never published by any record or livery, whereby the purchaser could know of them.

'Sixthly. The use was not subject to the payment of debts.

'Seventhly. Many lost their rights by perjury in averment of secret uses.

'Eighthly. Uses might be allowed in mortmain.'

These grievances led the way to the Statute of Uses.

The Act 27 Hen. VIII. c. 10, which transferred the equitable use into the legal estate by executing it in possession, is known by several names. It is usually called The Statute of Uses; its title on the Parliament Roll is, 'An Act concerning Uses and Wills,' and in pleading, it is described as *Statutum de usibus in possessionem transferendis*. It is the Magna Charta of English conveyancing.

It has been generally said that the object aimed at by the passing of this statute, which entirely revolutionised the system of the transfer of real property, was the total destruction of the use, by effecting an amalgamation of the legal and equitable interests; but, however this might be, it is certain that such an object has been signally defeated by the creation of the modern trust, which sprang from the judicial interpretation by the common law judges of the meaning of this celebrated statute.

There are six circumstances necessary to the execution of uses under the statute, viz.:—

(1) A person seised to the use.

(2) A *cestui que* use *in esse*.

(3) A use *in esse* in possession, reversion, or remainder.

(4) Every species of realty, except copyholds, whether corporeal or incorporeal, in possession, reversion, or remainder, may be conveyed to uses, but it must be *in esse*.

(5) There must be a seisin in the grantee, or feoffee, to uses at the time of the execution of the use.

(6) The use may be raised by a conveyance, operating either by transmutation or non-transmutation of possession.

A classification of uses may be thus arranged:

I. Present or executed, distributable into:

(*a*) Those arising by act of parties, which are created either

(1) By express declaration in a deed,

(2) By presumed intention in a will,

(3) By certain considerations.

(*b*) Those arising by act of law, which are either

(1) Resulting,

(2) Implied.

II. Future or executory (so called because they are not executed into legal estates, by the statute, till they arise), distributable into:—

(*a*) Shifting or secondary,

(*b*) Springing,

(*c*) Contingent.

The following interests have been adjudged to be unaffected by the Statute of Uses:—

(1) Uses limited of copyholds: since no person can be introduced into the estate without the lord's consent; for if uses were permitted, there would then be effected a transmutation of the possession by operation of law, which would be contrary to the peculiarity of this kind of tenure.

Yet shifting or springing uses may be limited by copyhold surrenders, so as to have the effect of divesting prior vested estates.

(2) Leaseholds for years and chattel interests. It is said that the statute contemplated *freeholds* only, and therefore employed the word SEISED; now a tenant is *possessed* only of a leasehold for years.

(3) Active and constructive uses. When the use involves a direction to sell the estate and then divide the proceeds of the sale or to pay debts, or to pay over the profits, or to convey to a child on attaining majority, or to reconvey on the repayment of a mortgage-loan, the statute was precluded from the very nature of the transaction from converting such a use into a legal right to the land, and equity, therefore, compels the trustee, who retains the legal estate notwithstanding the statute, to perform the duty confided in him.

And the trustee has the legal estate in the following cases:—A trust to permit a *feme covert* to receive the profits for, or to pay the same to, her separate use; and so of a trust to permit and suffer a party to receive and take the *net* rents and profits.

(4) A second use, or a use upon a use. The common law judges determined that the statute could only operate upon one use, and where another use was superadded, it was a mere nullity, so that in a grant to A. to the use of B., to the use of C., the statute transferred A.'s possession to B., and turned B.'s use into the legal estate, and having done this, it went no farther, but stopped short and could not meddle with C.'s use, which was an interest unknown before the statute. Upon this, equity

interfered, and resuming her old dominion, treated C., the person having the second use, as the beneficiary, and compelled B., having the statute-use, to deal with the estate for C.'s benefit as a trustee, and then giving the technical term of 'trust' to C.'s second use, deprived the use properly so called of its beneficial interest, which was its very essence before the statute, and revived the twofold system of one person holding the legal estate in the land, while the equitable estate or the usufructuary right therein was actually enjoyed by another. So that the old scheme of things was recurred to, whilst the terms were somewhat changed, for uses executed by the statute still retained their name, the *cestui que* use being called the legal owner; but, uses not so executed, i. e. secondary uses, or a use upon a use, took the appellation of trusts, while the holder of such uses is commonly denominated the *cestui que* trust or beneficiary; and thus the Court of Chancery regained its jurisdiction over uses under the name of trusts.

Although for distinction's sake, and in practice, the first use, executed by the statute, is called a use, and the second use, not executed by the statute, a trust, yet this phraseology is altogether arbitrary, for either word may be applied indiscriminately and convertibly to either estate, since the particular interests enjoyed by the parties depend upon their position with regard to one another, and not upon the term employed in their denomination. The usual and strictly technical form is:—

To F. to the use of C. in trust for E.; but it is immaterial whether it is in this form; or,

To F. to the use of C. to the use of E.; or,

To F. in trust for C. to the use of E.; or,

To F. in trust for C. in trust for E.;

the effect in any of the above *formulæ* being precisely the same, for C. would be the legal owner and E. the beneficial; so that a trust in name may be a use in effect, and *è converso*.

(5) Contingent uses, during the suspense of the contingency, cannot be executed by the statute, because the requisites to execute the use cannot concur.

(6) It is said, that devises are not within the Statute of Uses, because it was passed before the Statute of Wills (32 *Hen. VIII.* c. 1, A.D. 1540). But this is of no practical importance, since the courts, in their decisions, are entirely guided by a testator's intention, and it has been always held, that if A. devise to B. and his heirs, to the use of or in trust for C. and his heirs, or in trust to permit C. and his heirs to take the profits, it shows that the testator intended that C. should have the legal estate in fee, and so the law decides. And if there be a devise to the use of A. for life, with remainder over, although it cannot take effect by way of a use executed by the statute, because there is no seisin to serve the use, yet A. will have the legal estate. Indeed uses will be executed in a will, as if they were limited by deed, if such be the testator's intent.

Conveyances to uses legalise many dispositions, which are altogether void at the common law, for uses may be suspended, revived, postponed and accelerated in a way altogether opposed to the rules of the ancient feudal law. Amongst the most important relaxations thus introduced are the following:—

(1) A person can convey to himself, which he could not at the common law, as it would have been absurd to give possession by livery of seisin to one's self. This is found to be convenient, especially in the following example:—

It frequently happens, that upon the death or removal of trustees, it becomes necessary to fill up their number pursuant to a power for that purpose, usually introduced into settlements of real property. In order to effect this, it is now the practice for the old trustees to make a conveyance, which operates by way of transmutation of possession (either by release or grant), to the new trustees and their heirs, to the use of the old and new trustees and their heirs. Without the assistance, therefore, of the Statute of Uses, it would have been necessary in the above case that the old trustees should have first enfeoffed A., who would have re-enfeoffed the old and new trustees jointly: thereby making two conveyances necessary. Indeed, in the case of terms of years, and other personal property, two assignments were required for this purpose, until 22 & 23 Vict. c. 35, s. 21.

(2) A conveyance could not have been made by a husband to his wife, but now by limiting a seisin to the grantee or releasee, the husband may declare the use to his wife, which the statute will execute.

(3) A man could not make his own heir a purchaser, even of an estate-tail, for *filius est pars patris—hæres est pars antecessoris*; but now a man may limit the use so as to make his heirs special take, either by purchase or descent.

(4) No person could take a present interest in the *habendum* of a deed who was not named in the premises. But in a case where A. enfeoffed B., *habendum* to the said B. and C., their heirs and assigns, to the use and behoof of the said B. and C. their heirs and assigns; it was resolved, that as C. was not named in the premises, he could take no *possession* originally by the *habendum*; and that the livery, made according to the intent of the indenture, did not give anything to C. because as to him it was void; but though the feoffment did not give any *seisin* to C. yet it did to B. and his heir, which *seisin* was sufficient to serve the use declared to C. Therefore the use limited

to B. and C. was good, and the statute executed it. But this limitation of the use in a bargain and sale to a person not named in the premises, after a previous disposition of it to the bargainee, would be void, for the reasons before mentioned.

(5) So it is a rule of law, that if an estate be conveyed to two, the one being capable and the other incapable at the time of the grant, he who is capable shall take the whole; and that *joint tenants* cannot take at different periods. But since the introduction of uses, if A. make a feoffment in fee, to the use of B. and his wife that shall be: though the whole estate will vest in B. at first, yet upon his marriage the wife shall take jointly with him. So if a disseisin be had to the use of two, and the one agrees to it at one time, and the other at another, they shall be *joint tenants*.

(6) An estate of freehold cannot be granted at the common law, to commence *in futuro*, nor can a contingent remainder be supported, without an express particular estate of freehold; but by a conveyance under the Statute of Uses, a freehold can be created to commence *in futuro*, and future limitations will be supported, when no particular estate has been made, either as remainders or springing uses.

(7) An estate cannot at the common law be limited upon a fee-simple, i. e. a fee-simple cannot be made to cease as to one, and take effect by way of limitation upon a contingent event, in favor of another person; but such a limitation may take effect by way of shifting or springing use. A shifting or springing use, after a previous limitation of the fee, cannot be barred by the *cestui que* use by any kind of conveyance, but where it is limited upon an estate-tail the tenant-in-tail may bar it.

(8) Every remainder, at the common law, must be limited, so as to await the determination of the particular estate, before it can take effect in possession; but an abridgment of the particular estate, upon a certain condition, can be effected by a conveyance to uses, so as to accelerate the expectant estate into possession.

There are three conveyances, viz. Appointment to uses, Bargain and Sale, and Covenant to stand seised, which do not transmute the possession; and three, viz. Feoffment, Grant, and Release, which do transmute the possession. The following examples point out the peculiar operation of these two classes of transfers, as to the vesting of the legal and equitable estates:—

An Appointment, Bargain and Sale, or Covenant to stand seised	to D. and his heirs	To the use of T. and his heirs	To the use of, or in trust for, S. and his heirs

vests the legal estate or use in D. and the equitable estate in S., T. not taking anything. But

A Feoffment, Grant, or Release	to D. and his heirs	To the use of T. and his heirs	To the use of, or in trust for, S. and his heirs

gives D. but a seisin, and vests the use or legal estate in T., and the equitable estate in S.

Use and Occupation. By 11 Geo. II. c. 19, s. 14, it is enacted, that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant in an action on the case, for the use or occupation of what was so held or enjoyed; and if in evidence on the trial of such action, any parol demise, or any agreement (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *quantum* of the damages to be recovered.—*Woodf. Land. and Ten.* 663, *et seq.*; 2 *Selw. N. P.* 1380.

User de action, the pursuing or bringing an action in the proper county, &c.

Usher [fr. *huis*, Fr., a door], a door-keeper, an officer who keeps a court quiet. The office of usher of the Court of Chancery is abolished by 15 & 16 Vict. c. 87, s. 27.

Usque ad filum aquæ [Lat.] (*even to the middle of the stream*).

Usual terms, a phrase in the common law practice, which means pleading issuably, rejoining gratis, and taking short notice of trial.

Usucapio, the enjoying, by continuance of time, a long possession or prescription; property acquired by use or possession.—*Civ. Law.*

Usufruct, the right of using (*usus*) and reaping the fruits (*fructus*) of things belonging to others, without destroying or wasting the subject over which such right extends.—*Ibid.*

Usufructuary, he who has the use and reaps the profit of a thing.

Usura dicitur quia datur pro usu æris.—2 *Inst.* 89.—(Usury is so called, because it is given for the use of money.)

Usura est commodum certum quod propter usum rei (vel æris) mutuatæ recipitur; sed, secundariò sperare de aliquâ retributione, ad voluntatem ejus qui mutuatus est, hoc non est vitiosum.—5 *Co.* 70.—(Usury is a certain benefit which is received for the use of a thing (or of money) lent; but, secondly, to hope for a certain return, at the option of the party who borrowed, this is not vicious.)

Usura maritima [*fœnus nauticum*, Lat.], interest taken on bottomry or respondentia bonds, which is proportioned to the risk, and was not affected by the abolished usury-laws. 19 *Geo. II.* c. 37.

Usurpation, a keeping or holding by using that which is another's; an interruption of usucapio, or disturbing a man in his right and possession, &c. It is called *intrusion* in the civil and canon laws.—*Sand. Just.* 236.

Usury, any reward taken for the use of money. The term is usually applied to the taking of exorbitant interest, or of interest to a greater amount than is allowed by law. Many statutes have at different times been passed fixing the legal rates of interest; the 17 & 18 Vict. c. 90, repeals all existing laws against usury. But nothing therein contained shall prejudice or affect the rights or remedies of any person, or diminish or alter the liabilities of any person, in respect of any act done previously to the passing of this Act (10th Aug. 1854) (s. 2).

Where interest is now payable upon any contract, express or implied, the payment of the legal or current rate of interest (5*l.* per cent. per annum), or where upon any debt or sum of money interest is now payable by any rule of law, the same rate of interest shall be recoverable as if this Act had not been passed (s. 3).

Nothing therein contained shall extend or be constructed to extend to repeal or affect any statute relating to pawnbrokers, but that all laws touching and concerning pawnbrokers shall remain in full force and effect, to all intents and purposes whatsoever, as if this Act had not been passed (s. 4). By 13 Geo. III. c. 63, s. 30, the highest rate of legal interest to be taken on any contract by any British subject in the East Indies is 12*l.* per cent.

Usus est dominium fiduciarium.—Bacon's Read. Stat. Uses.—(Use is a fiduciary dominion.)

Usus et status sive possessio potius differunt secundum rationem fori, quam secundum rationem rei.—Ibid.—(Use and estate, or possession, differ more in the rule of the court than in the rule of the matter.)

Utas [*octava*, Lat.], the eighth day following any term or feast.

Uterine brother [*uterinus frater*, Lat.], a brother born of the same mother, but by a different father.

Utero-gestation, pregnancy.

Utfangethef. See OUTFANGTHEF.

Utile per inutile non vitiatur.—Dyer, 292.—(The useful is not vitiated by the useless.)

Uti possidetis [Lat.] (*as you possess*).

Utlagatus est quasi extra legem positus: caput gerit lupinum.—7 *Co.* 14.—(An outlaw is, as it were, put out of the protection of the law: he carries the head of a wolf.)

Utlagatus pro contumaciâ et fugâ, non propter hoc convictus est de facto principali.—Fleta.—(One who is outlawed for contumacy and flight, is not on that account convicted of the principal fact.)

Utlaghe [fr. *utlagatus*, Lat.], an outlaw.

Utlawry, outlawry, which see.

Utlesse, an escape of a felon out of prison.

Ut pœna ad paucos, metus ad omnes perveniat.—4 *Inst.* 6.—(So that punishment may fall on few, the fear of it on all.)

Ut summæ potestatis regis est posse quantum velit, sic magnitudinis est velle quantum possit. 3 *Inst.* 236.—(As the highest power of a king is to be able to do what he wishes, so the highest greatness of him is to wish what he is able to do.)

Utter barristers [*juris consulti*, Lat.], barristers who plead without the bar; ouster barristers.

Uttering, tendering, selling; putting in circulation; publishing.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet, nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir.—3 *Inst.* 108.—(A woman married to a thief shall not be bound by his actions, for she cannot accuse her husband, nor discover the robbery nor felony, since she has no power over herself, but her husband has power over her.)

Uxor non est sui juris, sed sub potestate viri, cui in vitâ contradicere non potest.—(A wife has no power of her own, but is under the government of her husband, whom in his lifetime she cannot contradict.)

V.

Vacant possession. See EJECTMENT.

Vacant succession, an inheritance the heir to which is unknown.

Vacantia bona, things without an owner.—*Civ. Law.*

Vacation, intermission of juridical proceeding or any other stated employments; recess of courts or senates.—*Encyc. Lond.* See LONG VACATION and HOLIDAY.

Vacatura, an avoidance of an ecclesiastical benefice.

Vaccaria, a dairy.—*Co. Litt.* 5 *b.*

Vaccination (compulsory) Act, 16 & 17 Vict. c. 100, amended by 21 Vict c. 25, s. 7; 24 & 25 Vict. c. 59; and see 3 & 4 *Vict.* c. 29, amended by 4 & 5 *Vict.* c. 32. As to Ireland, 26 & 27 *Vict.* c. 52; as to Scotland 26 & 27 *Vict.* c. 108.

Vackeel, Vakeel, Vaqueel, one endowed with authority to act for another; ambassador; agent sent on a special commission, or residing at a court; also a native law pleader or attorney. *Indian.*

Vadiare duellum (*to wage combat*), where two contending parties, on a challenge, do

give and take a mutual pledge of fighting.—*Cowel.*

Vadium [fr. *vas, vadis,* Lat.], a pledge or surety.—*Civ. Law.*

Vadium mortuum, a mortgage or dead-pledge.

Vadium ponere, to take bail or pledges for a defendant's appearance.

Vadium vivum, a vifgage or living pledge. See VIVUM VADIUM.

Vadlet, the king's eldest son—hence the *valet* or knave follows the king and queen in a pack of cards.—*Barr. on Stat.* 344.

Vagabond, a wanderer; an idle fellow. See 23 *Edw. III.* c. 7; 12 *Ric. II.* c. 7; 11 *Hen. VII.* c. 2; 19 *Hen. VII.* c. 12; 22 *Hen. VIII.* c. 12; 27 *Hen. VIII.* c. 25; 1 *Edw. VI.* c. 3; 3 & 4 *Edw. VI.* c. 16; 5 & 6 *Edw. VI.* c. 2; 5 *Eliz.* c. 3; 14 *Eliz.* c. 5; 18 *Eliz.* c. 3; 35 *Eliz.* c. 5, s. 24; 39 *Eliz.* c. 4; 1 *Jac. I.* cc. 7, 25; 12 *Anne,* st. 2, c. 23; and 5 *Reeves,* c. xxxiii., p. 14.

Vagrants, sturdy beggars; vagabonds.

The Act which is now in force, embodying and extending numerous former provisions, is 5 Geo. IV. c. 83, amended by 1 & 2 Vict c. 38. It points out three classes of persons:—

1st, Idle and disorderly persons; 2nd, rogues and vagabonds; 3rd, incorrigible rogues.

First. *Idle and Disorderly Persons.*—The following are, under 5 Geo. IV. c. 83, s. 3, to be deemed 'idle and disorderly persons,' within its true intent and meaning, so that any justice of the peace may commit them (being convicted before him on his own view, or by the confession of the offender, or by the evidence of one or more credible witness or witnesses) to the house of correction, there to be kept to hard labor for any time not exceeding one calendar month, subject to an appeal to the sessions, viz.:—

(1) Every person being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he or she, or any of his or her family whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township, or place.

(2) Every person returning to and becoming chargeable in any parish, township, or place, whence he or she shall have been legally removed, by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled in such other parish, township, or place.

(3) Every petty chapman or pedlar wandering abroad, and trading without being duly licensed or otherwise authorised by law.

(4) Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous and indecent manner.

(5) Every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring, or encouraging any children so to do.

(6) And by 5 Geo. IV. c. 83, s. 16, every person asking alms under a certificate, or other instrument prohibited by the Act.

The only certificates of magistrates still legal are:—

Certificates granted by visiting justices, enabling persons discharged from gaols, &c., to receive alms or relief on their route to their place of settlement, under 5 Geo. IV. c. 83, s. 15.

Certificates granted by a justice to a soldier, sailor, or marine, duly discharged, stating the place to which he wishes to go, being his home or legal settlement; or granted to the wife of a non-commissioned officer or soldier ordered on foreign service, and not permitted to embark with him, under 43 Geo. III. c. 61, ss. 1, 2, saved by 5 Geo. IV. c. 83, ss. 15, 16.

Admiralty or War-office certificates, or passes, granted as heretofore to discharged sailors, soldiers, or marines, or to the families of such persons serving abroad, or lately deceased, under 43 Geo. III. c. 61, s. 4, saved by 5 Geo. IV. c. 83, s. 15, have the same effect as the former.

In these three cases, the asking or having relief is legal; but loitering, &c., by a party discharged from prison makes him a rogue and vagabond.—5 *Geo. IV.* c. 83, s. 15.

(7) Every person relieved in a workhouse, and refusing or neglecting while therein to perform the task of four hours' work prescribed by the guardians of the parish or union, being suited to his age, strength, and capacity, or wilfully destroying or injuring his own clothes, or damaging any property of the guardians.

(8) Every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby it becomes chargeable to any parish or union.

(9) Every poor person returning and becoming chargeable in the asylum of any district, after removal from any parish in such district, shall be deemed to have returned and become chargeable, without certificate to the parish whence he has been legally removed.

Secondly. *Rogues and Vagabonds.*—The following are, by 5 Geo. IV. c. 83, s. 4, to be deemed as 'rogues and vagabonds,' whom it is lawful for any justice of the peace to commit (being convicted before him by the confession of the offender, or by the evidence on oath of one or more credible witness or witnesses), to the house of correction, and there to be kept

to hard labor for any time not exceeding three calendar months, subject as in the case of idle and disorderly persons, to an appeal to the sessions, viz.:

(1) Every person committing any of the offences hereinbefore mentioned, after having been convicted as an idle and disorderly person.

(2) Every person pretending or professing to tell fortunes, or using any subtle craft, means, or device by palmistry, or otherwise to deceive and impose on any of Her Majesty's subjects.

(3) Every person wandering abroad, or lodging in any barn or outhouse, or in any deserted or unoccupied buildings, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself or herself.

(4) Every person unlawfully exposing to view in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition; or wilfully exposing, or causing to be exposed to public view, in the window or other part of any shop or other building situate in any street, road, highway or public place, any obscene print, picture, or other indecent exhibition.

(5) Every person wilfully, openly, lewdly, and obscenely exposing his person in any street, road, or public highway, or in the view thereof, or in any place of public resort, with intent to insult any female.

(6) Every person wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms.

(7) Every person going about as gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence.

(8) Every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she or they or any of them shall become chargeable to any parish, township, or place.

(9) Every person playing or betting in any street, road, highway, or other open or public place, at or with any table or instrument of gaming, at any game or pretended game of chance.

(10) Every person having in his or her custody or possession, any pick-lock, key, crow, jack-bit, or other implement, with intent feloniously to break into any dwelling-house, warehouse, coach-house, stable, or outbuilding, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him or her any instrument with intent to commit any felonious act.

(11) Every person being found in or upon any dwelling-house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose.

(12) Every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse, near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony.

(13) Every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer, so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended.

(14) And by 5 Geo. IV. c. 83, s. 15, persons discharged from prisons, to whom certificates or instruments have been delivered by the visiting justices, enabling them to have or receive alms or relief on the route to their places of settlement, but acting contrary to the directions of the certificate, or loitering on, or deviating from their route.

Thirdly. *Incorrigible Rogues.*—The following persons are by 5 Geo. IV. c. 83, s. 5, to be deemed 'incorrigible rogues' under the Act:—

(1) Every person breaking or escaping out of any place of legal confinement, before the expiration of the term for which he or she shall have been committed or ordered to be confined by virtue of this Act.

(2) Every person committing any offence against this Act, which shall subject him or her to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be and duly convicted thereof.

(3) And every person apprehended as a rogue and vagabond, and violently resisting any constable or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended.

As to these it is enacted, 'that it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses), to the house of correction, there to remain until the next general or quarter-sessions of the peace; and every such offender, who shall be so committed to the house of correction, shall be there kept to hard labor during the period of his or her imprisonment.' And further, it is enacted, 'that when any incorrigible rogue shall have been committed to the house of correction, there to remain until the next general or quarter-sessions, it shall be lawful for the justices of the peace there assembled to examine into the circumstances of the

case, and to order, if they think fit, that such offender be imprisoned in the house of correction, and be there kept to hard labor for any time not exceeding one year from the time of making such order; and to order further, if they think fit, that such offender (not being a female) be punished by whipping, at such time during his imprisonment, and at such place within their jurisdiction, as, according to the nature of the offence, they in their discretion shall deem expedient.'

Valec, Valect, or **Vadelet,** a young gentleman; also a servitor or gentleman of the chamber.

Valentia, the value or price of anything.

Valesheria, the proving by the kindred of the slain, one on the father's side, and another on that of the mother, that a man was a Welshman.

Valor beneficiorum, the value of every ecclesiastical benefice and preferment, according to which the first fruits and tenths are collected and paid. It is commonly called the *King's books*, by which the clergy are at present rated.

Valor maritagii (*the value of marriage*). See TENURE.

Valuable consideration. See CONSIDERATION.

Value, a relative term. The value of a thing means the quantity of some other thing, or of things in general, which it exchanges for. The values of all things can never, therefore, rise or fall simultaneously. There is no such thing as a general rise or a general fall of values. Every rise of value supposes a fall, and every fall a rise.

The temporary or market value of a thing depends on the demand and supply; rising as the demand rises, and falling as the supply rises. The demand, however, varies with the value, being generally greater when the thing is cheap than when it is dear; and the value always adjusts itself in such a manner that the demand is equal to the supply.

Besides their temporary value, things have also a permanent, or as it may be called a natural value, to which the market value, after every variation, always tends to return; and the oscillations compensate for one another, so that on the average, commodities exchange at about their natural value.

The natural value of some things is a scarcity value, but most things naturally exchange for one another, in the ratio of their cost of production, or at what may be termed their cost value.

The word 'value,' when used without adjunct, always means, in political economy, value in exchange; or as it has been called by Adam Smith and his successors, exchangeable value, a phrase which no amount of authority that can be quoted for it can make other than bad English. Mr. De Quincey substitutes the term exchange-value, which is unexceptionable. 1 *Mill's Pol. Eco.* 528, 578.

The word 'value,' it is to be observed, has two different meanings, and sometimes expresses the utility of some particular object, and sometimes the power of purchasing other goods which the possession of that object conveys. The one may be called 'value in use;' the other 'value in exchange.' The things which have the greatest value in use have frequently little or no value in exchange; and, on the contrary, those which have the greatest value in exchange have frequently little or no value in use. Nothing is more useful than water; but it will purchase scarce anything; scarce anything can be had in exchange for it. A diamond, on the contrary, has scarce any value in use; but a very great quantity of other goods may frequently be had in exchange for it.—1 *Smi. Wealth of Nat.* 37.

Value received, a phrase generally inserted in bills of exchange, but which is not necessary, since value is implied in every bill, as much as if expressed *in totidem verbis.*—*White* v. *Ledwick*, 4 *Doug.* 247; *Chit. on Bills*, 110.

Valuer, a person whose business is to appraise, or set a value upon property.

Valvasors, or **Vidames,** an obsolete title of dignity next to a peer.—2 *Inst.* 667.

Vana est illa potentia quæ nunquam venit in actum.—2 *Co.* 51.—(Vain is that power which never comes into play.)

Vancouver's Island. See 12 & 13 *Vict.* c. 48; 21 & 22 *Vict.* c. 99, s. 6.

Van Diemen's Land. See TASMANIA.

Vang [Sax.], to stand for one at the font.—*Blount.*

Vani timores sunt æstimandi, qui non cadunt in constantem virum.—7 *Co.* 27.—(Those fears are to be counted vain which affect not a resolute man.)

Vantarius, a precursor.

Variance, difference; variation.

The courts are now very liberal in permitting variances in proceedings to be amended, especially where parties will suffer no prejudice.

Vassal [fr. *vassallo*, Ital., a dim. of *vassus*, low Lat. Wachter refers it to the Gallic *gwas*, a servant], one who holds of a superior lord; a subject; a dependent; a tenant or feudatory.

Vassalage, the state of a vassal; tenure at will; slavery.

Vasseleria, the tenure or holding of a vassal.

Vasto, a writ against tenants for term of life or years; committing waste.—*F. N. B.* 55.

Vastum, a waste or common lying open to the cattle of all tenants who have a right of commoning.

Vastum forestæ vel bosci, that part of a forest or wood wherein the trees and under-

wood were so destroyed, that it lay in a manner waste and barren.—*Paroch. Antiq.* 351.

Vauderie, sorcery; witchcraft; the profession of the Vaudois.—3 *Hall. M. A.* c. ix., pt. 2, p. 386 n.

Vavasor [a diminutive of *vassal*], a vassal of a vassal; a mesne tenant, one who held a fee of a vassal.—*Encyc. Lond.*; 1 *Hall. M. A.* c. ii., pt. 2, p. 194.

Vavasory, the lands that a vavasor held.

Vavasour, one who, himself holding of a superior lord, has others holding under him; a person *magnæ dignitatis*, so called *tanquam* Vas *sortitum ad valetudinem.*—*Camden*; 1 *Reeves*, c. v., p. 268.

Veal-money. The tenants of the manor of Bradford, in the county of Wilts, pay a yearly rent by this name to their lord, in lieu of veal paid formerly in kind.—*Bract.*

Vectigal judiciarium, fines paid to the Crown to defray the expenses of maintaining courts of justice.—3 *Salk.* 33.

Vectigal, origine ipsâ, jus Cæsarum et regum patrimoniale est.—*Dav.* 12.—(Tribute, in its origin, is the patrimonial right of emperors and kings.)

Vejours [*visores*, Lat.], persons sent by a court to take a view of any place in question, for the better decision of the right thereto; also, persons appointed to view the result of an offence.—*O. N. B.* 112.

Veltraria, the office of dog-leader or courser.

Veltrarius [fr. *welter*, Germ.], one who leads greyhounds.—*Blount.*

Venaria, beasts caught in the woods by hunting.

Venatio, hunting.

Vendee, one to whom anything is sold.

Vendens eandem rem duobus falsarius est. Jenk. Cent. 107.—(He is a fraudulent man who sells the same thing to two persons.)

Vender, or **Vendor**, a seller.

Any seller or mortgagor of land, or of any chattels, real or personal, or choses in action conveyed or assigned to a purchaser, or the solicitor or agent of any such seller or mortgagor, who shall after the passing of this Act (13th August, 1859) conceal any settlement, deed, will, or other instrument material to the title, or any incumbrance from the purchaser, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall be guilty of a misdemeanor, and being found guilty shall be liable, at the discretion of the court, to suffer such punishment, by fine or imprisonment for any time not exceeding two years, with or without hard labor, or by both, as the court shall award, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, for any loss sustained by them or either or any of them in consequence of the settlement, deed, will, or other instruments or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree, and in estimating such damages, where the estate shall be recovered from such purchaser, or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them or either or any of them in improvements on the land; but no prosecution for any offence included in this section against any sellor or mortgagor, or any solicitor or agent, shall be commenced without the sanction of Her Majesty's Attorney-General, or in case that office be vacant of Her Majesty's Solicitor-General; and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted as the Attorney-General or the Solicitor-General (as the case may be) shall direct.—22 & 23 *Vict.* c. 35, s. 24. By 23 & 24 Vict. c. 38, s. 8, it is enacted that the above section shall be read and construed as if the word 'or mortgagee' had followed the word 'purchaser' in every place where the latter word is introduced in the said section. As to the law of vendor and purchaser, see *Lord St. Leonards' Vendors and Purchasers.*

Vendible, saleable, marketable.

Vendition, sale, the act of selling.

Venditioni exponas, a judicial writ addressed to the sheriff, commanding him to expose to sale goods which he has already taken into his hands, to satisfy a judgment-creditor. *Reg. Judic.* 33. After delivery of this writ, the sheriff is bound to sell the goods, and have the money in court on the return-day of the writ. 1 *Chit. Arch. Prac. by Pren.* 666.

Vendue, a public sale or auction.

Vendue-master, an auctioneer.

Venella, a narrow or straight way.

Venia, a kneeling or low prostration on the ground by penitents.

Veniæ facilitas incentivum est delinquendi.—3 *Inst.* 236.—(Facility of pardon is an incentive to crime.)

Venia ætatis, a privilege granted by a prince or sovereign, in virtue of which a person is entitled to act, *sui juris*, as if he were of full age.—*Story's Confl. of Laws*, 74.

Venire facias, a judicial writ awarded to the sheriff to summon a jury for the trial of a cause, but abolished by C. L. P. A. 1852, s. 104. It is the first process in outlawry, when a person charged with a misdemeanor absconds. 4 *Step. Com.* 467, 473.

Venire facias tot matronas, a writ to summon a jury of matrons to execute the writ *de ventre inspiciendo.*

Venire facias de novo, a second writ to summon another jury for a new trial.

The *venire de novo* was the old common law mode of proceeding to a second trial, and differed materially from granting a new trial, inasmuch as it was awarded from some defect appearing upon the face of the record, while a new trial was granted for matter entirely extrinsic. Where a verdict could have been amended, a *venire de novo* was never awarded. If awarded, the party succeeding at the second trial was not entitled to the costs of the first. It is now superseded by a trial *de novo*.—2 *Chit. Arch. Prac. by Pren.* 1536.

Venison, deer.

Venter, womb.

Ventre inspiciendo. See DE VENTRE INSPICIENDO.

Venue [fr. *vicinetum*, *visnetum*, Lat.], a neighboring place; the place whence a jury are to come for trial of causes.

Local actions must be brought in the county in which the cause of action arose; but transitory actions in any county at the plaintiff's option.

No venue shall be changed without a special order of the court or a judge, unless by consent of the parties.—*H. T.* 1853, r. 18.

The committee of judges to whom the question was referred, as to the practice to be adopted in consequence of the above rule, have reported:

First. 'That in their opinion it is more convenient, as a general rule, that the application to change the venue by rule or summons may be made before issue joined, provided that this shall not prejudice any party from applying, after issue is joined, to lay the venue in another county, if it shall appear that it may be more conveniently tried in such county.'

Secondly. 'That a defendant, on his affidavit to obtain the rule *nisi* to change the venue, or in support of a summons for that purpose before issue joined, should state all the circumstances on which he means to rely as the ground for the change of venue, but that he may, if he pleases, only rely on the fact that the cause of action arose in the county to which he seeks to have the venue changed, which ground shall be deemed sufficient, unless the plaintiff shows that the cause may be more conveniently tried in the county in which it was originally laid, or other good reason why the venue should not be changed.'—2 *Chit. Arch. Prac. by Pren.* 1339.

The court or a judge may, on the application of either party, order that the trial of an ejectment shall take place in any county or place other than that in which the venue is laid, and such order being suggested on the record, the trial may be had accordingly.—*C. L. P. A.* 1852, s. 182.

In criminal cases, the rule of the common law is that the venue shall be co-extensive with the jurisdiction of the court. By the common law the grand jury could not indict or present any offence which did not arise within the county or the precincts for which they were returned, but their jurisdiction has been extended by several modern statutes. It is now provided by 14 & 15 Vict. c. 100, s. 23, that the name of the county, city, or other jurisdiction, shall be stated in the margin of the indictment, and that the name so stated shall be taken to be the venue of all the facts stated in the body of such indictment, unless the contrary shall expressly appear; but in cases where local description is necessary, this provision does not dispense with such description, and by s. 24 it is declared that no indictment shall be held insufficient for want of a proper or perfect venue. Local description will still be necessary in the following offences:—Nuisance to highways, keeping disorderly houses, arson, burglary, house-breaking, stealing in a dwelling-house, forcible entry, being armed at night in a close for the purpose of killing game, &c., and certain offences against 14 & 15 Vict. c. 19.

As to the venue in proceedings against persons for anything done in pursuance of the Larceny Act, see s. 113 of 24 & 25 *Vict.* c. 96, or of the Malicious Injuries to Property Act, see s. 71 of 24 & 25 *Vict.* c. 97, or of the Coin Act, see s. 33 of 24 & 25 *Vict.* c. 99.

Veray, true.

Verba accipienda sunt cum effectu—ut sortiantur effectum.—Bacon.—(Words are to be received with effect—so that they may produce that effect.)

Verba æquivoca, ac in dubio sensu posita, intelliguntur digniore et potentiore sensu.—6 *Co.* 20.—(Words equivocal, and placed in a doubtful sense, are to be taken in their more worthy and effective sense.)

Verba aliquid operari debent—debent intelligi ut aliquid operentur.—8 *Co.* 94.—(Words ought to have some operation; they ought to be interpreted in such a way as to have some operation.)

Verba chartarum fortius accipiuntur contra proferentem.—Co. Litt. 36.—(The words of charters are to be received more strongly against the grantor.)

Verba currentis monetæ, tempus solutionis designat.—Dav. 20.—(The words 'current money' designate current at the time of payment.)

Verba dicta de personâ intelligi debent de conditione personæ.—2 *Rol. Rep.* 72.—(Words spoken of the person are to be understood of the condition of the person.)

Verba generalia generaliter sunt intelligenda. 3 *Inst.* 76.—(General words are to be generally understood.)

Verba generalia restringuntur ad habilitatem

rei vel aptitudinem personæ.—*Bacon.*—(General words must be narrowed to the nature of the subject or the aptitude of the person.)

Verba illata in esse videntur.—(Words referred to are considered to be incorporated.)

Verba intentioni, non è contra, debent inservire.—8 *Co.* 94.—(Words ought to be made subservient to the intent, not contrary to it.)

Verba ita sunt intelligenda, ut res magis valeat quam pereat.—*Bacon.*—(Words are to be so understood as that the subject matter may be rather preserved than destroyed.)

Verba posteriora, propter certitudinem addita, ad priora quæ certitudine indigent sunt referenda.—*Wing.*—(Subsequent words, added for the purpose of certainty, are to be referred to preceding words which need certainty.)

Verba relata hoc maximè operantur per referentiam ut in eis inesse videntur.—*Co. Litt.* 359. (Words to which reference is made in an instrument have this especial operation that they are regarded as inserted in the clause referring to them.)

Verba semper accipienda sunt in mitiori sensu. 4 *Co.* 17.—(Words are always to be taken in their milder sense.)

Verbal note, a memorandum or note, in diplomacy, not signed, sent when an affair has continued a long time without any reply, in order to avoid the appearance of an urgency which, perhaps, is not required; and, on the other hand, to guard against the supposition that it is forgotten, or that there is no intention of not prosecuting it any further.)

Verderor, an officer in the royal forest, whose office is properly to look to the vert, and see it well maintained; and he is sworn to keep the assizes of the forest, and view, receive, and enrol the attachments, and presentments of trespasses of vert and venison, &c.—*Manw.* 332.

Verdict [fr. *vere dictum*, Lat.], the determination of a jury declared to a judge.

The verdict is either general or special. A general verdict is given, *vivâ voce*, by the jury, thus, 'we find for the plaintiff, damages ——, costs ——,' or, if for the defendant, then, 'we find for the defendant.' If there be several issues, the verdict may be distributed, some issues being found for the plaintiff and others for the defendant. A verdict must comprehend the whole issues submitted to a jury in the particular cause, otherwise the judgment founded upon it may be reversed. A special verdict must state the facts proved at the trial, and not merely the evidence given to prove those facts, otherwise it will be insufficient, and the court will award a trial *de novo*.—1 *Chit. Arch. Prac. by Pren.* 448, *et seq.*

Verdicts in criminal cases may be either general, as guilty or not guilty; or special, setting forth all the circumstances, and praying the judgment of the court, whether, upon the facts stated, there exists a crime in law.—4 *Step. Com.* 518.

Veredictum, quasi dictum veritatis: ut judicium quasi juris dictum.—*Co. Litt.* 226.—(The verdict is, as it were, the dictum of truth: as the judgment is the dictum of law.)

Verge, or **Virge,** the compass of the Queen's court, which bounds the jurisdiction of the lord steward of the household; it seems to have been twelve miles about.—*Brit.* 68. A quantity of land from fifteen to thirty acres.—28 *Edw. I.* Also, a stick, or rod, whereby one is admitted tenant to a copyhold estate.—*O. N. B.* 17.

Vergelt, the Saxon fine for a crime. See WERGILD.

Vergers [*portatores virgæ*, Lat.; *bedeau d'église*, Fr.], those who carry white wands before the judges, or before church dignitaries.

Verification, confirmation by evidence. As a formal conclusion of a plea it is rendered unnecessary by *C.* L. P. A. 1852, s. 67.

Veritas, à quocunque dicitur, à Deo est.—4 *Inst.* 153.—(Truth, by whomsoever pronounced, is from God.)

Veritas demonstrationis tollit errorem nominis. 1 *Ld. Raym.* 303.—(The truth of the demonstration removes the error of the name.)

Veritas nihil veretur nisi abscondi.—9 *Co.* 20. (Truth fears nothing but concealment.)

Veritas nimium altercando amittitur.—*Hob.* 344.—(By too much altercation truth is lost.)

Veritas, quæ minime defensatur, opprimitur; et qui non improbat, approbat.—3 *Inst.* 27.—(Truth which is not sufficiently defended, is oppressed; and he who does not disapprove, approves.)

Veritatem qui non liberè pronunciat, proditor est veritatis.—4 *Inst. Epil.*—(He who does not freely speak the truth, is a betrayer of truth.)

Verna, a slave born in his master's house.—*Civ. Law.*

Versus [Lat.], abbrev. *v.* (*against*).

Vert [fr. *verd*, Fr.; *viridis*, Lat.], otherwise called *greenhue*, everything that bears a green leaf within a forest that may cover a deer; but especially great and thick coverts.

Manwood (part 2, p. 33) divides vert into overt-vert and nether-vert; the *overt-vert* is that which is termed *haut-boys*, and *nether-vert*, *sub-boys*; and into *special vert*, which is, all trees growing within the forest that bear fruit, to feed deer, because the destroying of it is more grievously punished than of any other vert.

Also, that power which a man has, by royal grant, to cut green-wood in a forest.

Also green color, called *Venus* in the arms of princes, and *Emerald* in those of peers, and expressed in engravings by lines in bend.—*Heraldic term.*

Very lord and very tenant [*verus dominus et verus tenens*, Lat.], they that are immediate lord and tenant one to another.

Vest, to place in possession; to make possessor of; to take an interest in property when a named period or event occurs.

Vesta, the crop on the ground.

Vested in interest, a legal term applied to a present fixed right of future enjoyment, as reversions, vested remainders, such executory devises, future uses, conditional limitations, and other future interests as are not referred to, or made to depend on, a period or event that is uncertain.

Vested legacy. See LEGACY.

Vested in possession, a legal term applied to a right of present enjoyment actually existing.

Vested remainder, an expectant estate, which is limited or transmitted to a person who is capable of receiving the possession, should the particular estate happen to determine; as a limitation to A. for life, remainder to B. and his heirs; here, as B. is in existence, he is capable (or his heirs, if he die) of taking the possession whenever A's death may occur. A vested estate may take effect though the preceding estate be defeated, as when an infant makes a lease for life with a remainder over, and on majority he disagree to the estate for life, yet the remainder is good, having been duly vested by a good title.—*Fearne, C. R.* 308.

The person who is entitled to a vested remainder having a present vested right of future enjoyment, i. e. an estate *in præsenti*, to take effect in possession and pernancy of the profits *in futuro*, can transfer, alien, and charge it much in the same manner as an estate in possession.—2 *Cru. Dig.* 204.

Vesting order. The Court of Chancery has the power of granting an order passing the legal estate in lieu of a conveyance, but such order must be stamped, as if it were a deed of conveyance, pursuant to 13 & 14 Vict. c. 60, and 15 & 16 Vict. c. 55. Also commissioners appointed by several modern statutes have the powers, by vesting order, to transfer legal estates without the necessity of a deed of transfer.

Also before the abolition of the Insolvent Court, an order of that court, transferring an insolvent's property to the provisional assignee.

Vestry, or **Vestiary,** a place or room adjoining to a church, where the vestments of the minister are kept; also, a parochial assembly, commonly convened in the vestry, to transact the parish business.

A custom has obtained in large and populous parishes of yearly choosing a select number of the chief and most respectable parishioners to represent and manage the concerns of the parish for that year. They are called a *select vestry*.

Vestry clerk, an officer appointed to attend vestries, and take an account of their proceedings, &c.

Vestura, a crop of grass or corn.

Vesture, a garment; metaphorically applied to a possession or seisin.

Vetera Statuta, the ancient statutes, commencing with *Magna Charta*, and ending with those of Edward II., including also some which, because it is doubtful to which of the three reigns of Hen. III., Edw. I. or Edw. II. to assign them, are termed *incerti temporis*.—2 *Reeves*, c. viii., p. 85, and c. xii., p. 354.

Vetitum namium, or **Repetitum namium,** a second or reciprocal distress, in lieu of the first, which has been eloigned.

Veto, a prohibition, or the right of forbidding.

Vexata quæstio [Lat.], an undetermined point.

Vexatious suit, one brought without probable cause, for the purpose of annoyance or oppression. As to vexatious indictments, see 22 & 23 *Vict.* c. 17.

Via, the right to use a way for any purpose. *Cum. C. L.* 83.

Viability, a capability of living after birth; extra uterine life.

Viæ servitus (*servitude of way*), a right of road over another's land, or rather a Scottish tenure, by which such right accrues against the possessor of land.

Via Regia, the highway or common road, called the Queen's way, because under her protection. It was sometimes called *via militaris*.—*Bract.* l. 4.

Via trita est tutissima.—10 *Co.* 142.—(The beaten road is the safest.)

Vicarius non habet vicarium.—(A delegate cannot have a delegate.)

Vicar, one who performs the functions of another; a substitute. Also, the incumbent of an appropriated or impropriated benefice, as distinguished from the incumbent of a non-appropriated benefice, who is called a rector. See 3 *Step. Com.* 19.

Vicarage, the benefice of a vicar.

Vicarage teinds, small tithes.

Vicarial tithes, petty or small tithes payable to the vicar.

Vicario, &c. an ancient writ for a spiritual person imprisoned, upon forfeiture of a recognizance, &c.—*Reg. Org.* 147.

Vice-Admiral, an under-admiral at sea, or admiral on the coasts; a naval officer of the second rank.

Vice-Admiralty Courts, tribunals established in Her Majesty's possessions beyond the seas, with jurisdiction over maritime causes, including those relating to prize.

The Vice-Admiralty Courts Act, 1863 (26 Vict. c. 24), entitled 'An Act to facilitate the appointment of Admirals and of Officers in Vice-Admiralty Courts in Her Majesty's possessions abroad, and to confirm the past proceedings, to extend the jurisdiction and to amend the practice of those courts,' repeals 2 & 3 Wm. IV. c. 51,

and other Acts. It enacts that in any British possession where the office of vice-admiral shall become vacant, the governor of such possession shall be ex-officio vice-admiral thereof until a notification is received that a formal appointment to the office has been made by the Admiralty (s. 3). In any British possession where the office of judge of a vice-admiralty court shall become vacant, the chief justice and principal judicial officer of such possession, or the person lawfully authorized to act as such, shall be ex-officio judge of the vice-admiralty court until a notification is received in the possession that a formal appointment has been made by the Admiralty (s. 4). The 5th sec. makes provision for a vacancy in the office of registrar or marshal. The 7th sec. reserves the right of the admiralty to appoint any vice-admiral, or any judge, registrar, marshal, or other officer of any vice-admiralty court as heretofore by warrant from the Admiralty and by letters patent issued under the seal of the High Court of Admiralty in England. Sec. 10 enacts that the matters in respect of which the vice-admiralty courts shall have jurisdiction are as follows:—

(1) Claims for seaman's wages.

(2) Claims for master's wages and for his disbursements on account of the ship.

(3) Claims in respect of pilotage.

(4) Claims in respect of salvage of any ship or of life or goods therefrom.

(5) Claims in respect of towage.

(6) Claims for damage done by any ship.

(7) Claims in respect of bottomry or respondentia bonds.

(8) Claims in respect of any mortgage where the ship has been sold by a decree of the vice-admiralty court, and the proceeds are under its control.

(9) Claims between the owners of any ship registered in the possession in which the court is established touching the ownership, possession, employment, or earnings of such ship.

(10) Claims for necessaries supplied in the possession in which the court is established to any ship of which no owner or part owner is domiciled within the possession at the time of the necessaries being supplied.

(11) Claims in respect of the building, equipping, or repairing, within any British possession, of any ship of which no owner or part owner is domiciled within the possession at the time of the work being done.

The 11th sec. enacts that the vice-admiralty courts shall also have jurisdiction—

(1) In all cases of breach of the regulations and instructions relating to Her Majesty's navy at sea.

(2) In all matters arising out of droits of admiralty.

Nothing contained in this Act shall be construed to take away or restrict the jurisdiction conferred upon any vice-admiralty court by any Act of Parliament in respect of seizures for breach of the Revenue Customs Trade or Navigation Laws, or of the laws relating to the abolition of the slave trade, or to the capture and destruction of pirates or piratical vessels, or any other jurisdiction now lawfully exercised by any such court, or any jurisdiction now lawfully exercised by any other court within Her Majesty's dominions (sec. 12).

The jurisdiction of the vice-admiralty court, except where it is expressly confined by this act to matters arising within the possession in which the court is established may be exercised whether the cause or right of action has arisen within or beyond the limits of such possession (sec. 13).

Provisions are then made respecting the framing of rules and tables of fees (s. 14 to 18) and for the revision of taxations of costs in the vice-admiralty courts by the High Court of Admiralty (s. 19); power is given to registrars to administer oaths (s. 20); the mode of proceeding in cross suits of damage by collision is amended (s. 21); an appeal is given from vice-admiralty courts to Her Majesty in council (s. 22); the time for appeal is limited to six months from the date of the decree or order appealed from (s. 23); and previous Acts relating to vice-admiralty courts are repealed, save as regards Her Majesty's possessions in India, but regulations and tables of fees now in force under the 2 & 3 Wm. IV. c. 51, are to continue in force until repealed or altered under this Act. A schedule to the Act contains a list of the existing vice-admiralty courts to which the Act applies. They are:—

Antigua
Bahamas
Barbadoes
Bermuda
British Columbia
British Guiana
British Honduras
Cape of Good Hope
Ceylon
Dominica
Falkland Islands
Gambia River
Gibraltar
Gold Coast
Grenada
Hong Kong
Jamaica
Labuan
Lagos
Lower Canada, otherwise Quebec
Malta
Mauritius
Montserrat
Natal
Nevis
New Brunswick
Newfoundland
New South Wales
New Zealand
Nova Scotia, otherwise Halifax
Prince Edward Island
Queensland
St. Christopher
St. Helena
St. Lucia
St. Vincent
Sierra Leone
South Australia
Tasmania, formerly called Van Diemen's Land
Tobago
Trinidad
Vancouver's Island
Victoria
Virgin Islands, otherwise Tortola
Western Australia

Vice-Chamberlain, a great officer next under the Lord Chamberlain, who, in his absence, has the rule and control of all officers appertaining to that part of the royal household which is called the chamber above stairs.

Vice-Chancellor [fr. *vicecancellarius*, Lat.], a sub-chancellor.

Vice-Chancellors in Equity. There are three: the Vice-Chancellor of England, appointed by 53 Geo. III. c. 24, and two juniors, appointed by 5 Vict. c. 5, s. 19. Each of these sits separately from the lord chancellor and lords justices, to whom an appeal lies from their decisions. See 14 & 15 *Vict.* c. 4, and 15 & 16 *Vict.* c. 80, ss. 52–58.

Vice-Chancellor of the Universities. See CHANCELLOR OF THE UNIVERSITIES.

Vice-comes, a viscount; a sheriff.

Vicecomes dicitur quod vicem comitis suppleat. Co. Litt. 168.—('Vicecomes' (*sheriff*), is so called, because he supplies the place of the 'comes' (*earl*).)

Vice-comes non misit breve [Lat.] (*the sheriff has not sent the writ*). This continuance is abolished by r. 31, H. T. 1853.

Vice-Constable of England, an ancient officer in the time of the fourth Edward.

Vice-consul, one who acts for a consul; a sheriff.

Vice-dominus, a sheriff.—*Ingulphus.*

Vice-dominus episcopi, the vicar-general, or commissary of a bishop.—*Blount.*

Vice-gerent, a deputy or lieutenant.

Vice-marshal, an officer who was appointed to assist the Earl Marshal.

Vice-roy, the sovereign's lord-lieutenant over a kingdom, such as Ireland.

Vice-treasurer. See UNDER-TREASURER.

Vicinage [fr. *voisinage*, Fr.], neighbourhood, or near dwelling; places adjoining.

Vicini viciniora præsumuntur scire.—4 *Inst.* 173.—(Persons living in the neighbourhood are presumed to know the neighbourhood.)

Vicious intromission, a meddling with the moveables of a deceased, without confirmation or probate of his will, or other probable title.—*Scotch phrase.*

Vicis et venellis mundandis, an ancient writ against the mayor or bailiff of a town, &c. for the clean keeping of their streets and lanes. *Reg. Orig.* 267.

Vicountiel, or **Vicontiel,** anything that belongs to the sheriff, as *vicontiel writs*, i. e. such as are triable in the sheriff's court. As to vicontiel rents, see 3 & 4 *Wm. IV.* c. 99, ss. 12, 13, which places them under the management of the commissioners of the woods and forests.

Vicountiel jurisdiction, that jurisdiction which belongs to the officers of a county, as sheriffs, coroners, &c.

Victoria Colony. See 13 & 14 Vict. c. 59; 18 & 19 Vict. cc. 55, 56; and 22 & 23 Vict. c. 12.

Victoria Park. See 14 & 15 Vict. c. 46.

Victualling houses. See PUBLIC HOUSES.

Vidame, a vavasor, which see.

Videbis ea sæpe committi quæ sæpe vindicantur.—3 *Inst. Epil.*—(You will see these things frequently committed which are frequently punished.)

Videlicet (*to wit*). See SCILICET.

Vidimus, an inspeximus, which see.—*Barr. on Stat.* 5.

Viduitatis professio, the making a solemn profession to live a sole and chaste woman.

Viduity, widowhood.

Vi et armis [Lat.] (*with force and arms*), words inserted in pleadings to express a forcible and violent act.

View, an inspection of property in controversy, or of a place, where a crime has been committed, by the jury previously to the trial.

A writ of view shall not be necessary or used, but, whether the view is to be had by a common or special jury, it shall be sufficient to obtain a rule of the court or judge's order, directing a view to be had; and the proceedings upon the rule for a view shall be the same as the proceedings heretofore had under a writ of view; and the sheriff, upon request, shall deliver to either party the names of the viewers, and shall also return their names to the associate for the purpose of their being called as jurymen upon the trial.—*C. L. P. A.* 1852, s. 114.

The rule for a view may in all cases be drawn up by the officer of the court on the application of the party, without a motion for that purpose.—*H. T.* 1853, r. 48.

Upon any application for a view, there shall be an affidavit, stating the place at which the view is to be made, and the distance thereof from the office of the under-sheriff, and the sum to be deposited in the hands of the under-sheriff shall be 10*l.* in the case of a common jury, and 16*l.* in case of a special jury, if such distance do not exceed five miles; and 15*l.* in the case of a common jury, and 21*l.* in case of a special jury, if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the attorney of the party who obtained the view; and if such sum shall not be sufficient to pay such expenses, the deficiency shall forthwith be paid by such attorney to the under-sheriff. And the under-sheriff shall pay and account for the money so deposited, according to the given scale (r. 49). Where a view has been had, the jurors who had it are to be called first upon the trial; and then other jurors must be called to make a complete jury.—1 *Chit. Arch. Prac. by Pren.* 371.

View of frankpledge. See LEET.

Vifgage, vivum vadium, which see.

Vigil, the eve or next day before any solemn feast.

Vigilantibus non dormientibus jura subveniunt. *Wing.* 692.—(Laws come to the assistance of the vigilant, not of the sleepy.)

Vi laicâ removendâ, a writ that lies where two persons contend for a church, and one of them enters into it with a great number of laymen, and holds out the other *vi et armis*; then he that is holden out shall have this writ addressed to the sheriff, that he remove the lay force; but the sheriff ought not to remove the incumbent out of the church, whether he is there by right or wrong, but only the force.—*F. N. B.* 54.

Vill, or **Village**, a manor; a parish; the outpart of a parish.

The following is the difference between a mansion, a village, and a manor; namely, a mansion may be of one or more houses, but it must be of one dwelling house, and none near to it; for if other houses are contiguous, it is a village; and a manor may consist of several villages, or one alone.—*Fleta*, l. 6, c. li.

Villa est ex pluribus mansionibus vicinata et collata ex pluribus vicinis, et sub appellatione villarum continentur burgi et civitates.—Co. Litt. 115.—(Vill is a neighborhood of many mansions, a collection of many neighbors, and under the term of vills, boroughs and cities are contained.)

Villa regia, a manor held by the Crown.

Villain or **Villein** [fr. *vilis*, Lat.], a man of base or servile condition; a bondman or servant; one who held by a base service.—1 *Hall, M. A.* c. ii. pt. 2, p. 199.

Villanis regis subtractis reducendis, a writ that lay for the bringing back of the king's bondmen, that had been carried away by others out of his manors, whereto they belonged.—*Reg. Orig.* 87.

Villein in gross, one annexed to the person of the lord, and transferable by deed from one owner to another.

Villein regardant, one annexed to the manor or land.

Villein services, base, but certain and demined services.

Villein socage, a holding of the king; a privileged sort of villenage.

Villenage, a base tenure.

There are two sorts:—1st, *pure*, where a man holds upon terms of doing whatsoever is commanded of him; and 2nd, *privileged*, otherwise called *villein socage*, which see. See also TENURE.

Villenous judgment [*villanum judicium*, Lat.], a judgment which deprived one of his *liberam legem*, whereby he was discredited and disabled as a juror or witness; forfeited his goods and chattels, and lands for life; wasted the lands, razed the houses, rooted up the trees, and committed his body to prison. It has become obsolete.—4 *Bl. Com.* 136.

Vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ, non ad sumendam vindictam, sed ad propulsandam injuriam.—Co. Litt. 162. (It is lawful to repel force by force, but let it be done with the moderation of blameless defence; not to take revenge, but to repel injury.)

Vinagium [*tributum à vino*, Lat.], a payment of a certain quantity of wine, instead of rent for a vineyard.—2 *Mon. Ang.* 980.

Vinculo matrimonii, *Divorce à.* See A VINCULO MATRIMONII and MARRIAGE.

Vindex, a defender.—*Civ. Law.*

Vindicatio, a real action claiming property by its owner.—*Civ. Law.*

Vindicatory part of laws, the sanction of the laws, whereby it is signified what evil or penalty shall be incurred by such as commit any public wrongs, and transgress or neglect their duty.

Viol [old law Fr.], rape.—*Barr. on Stat.* 139.

Violation of safe conducts, an offence against the law of nations.—4 *Step. Com.* 297.

Violation of women. See RAPE.

Violent presumption, a strong presumption.

Violenta præsumptio aliquando est plena probatio.—Co. Litt. 6 *b.*—(Violent presumption is some times full proof.)

Violent profits, double value of a tenement within a burgh, and the highest rent for lands in the country, recoverable against a tenant for refusing to remove.—*Scotch phrase.*

Viperina est expositio quæ corrodit viscera textûs.—11 *Co.* 34.—(It is a bad exposition which destroys the vitals of the text.)

Vir et uxor censentur in lege una persona.—Jenk. Cent. 27.—(Husband and wife are considered one person in law.)

Vir et uxor sunt quasi unica persona, quia caro et sanguis una: res licet sit propria uxoris, vir tamen ejus custos, cum sit caput mulieris.—Co. Litt. 112.—(Man and wife are, as it were, one person, because only one flesh and blood; although the property may be the wife's, the husband is keeper of it, since he is the head of the wife.)

Virga, a rod or ensign of office.—*Cowel.*

Virgate, a yard-land.

Virge, *Tenant by*, a species of copyholder, who holds by the virge or rod.

Vir militans Deo non implicetur secularibus negotiis.—Co. Litt. 70.—(A man fighting for God ought not to be involved in secular business.)

Viridario eligendo, a writ for the choice of a verderer in the forest.—*Reg. Orig.* 177.

Virilia, the privy members of a man, to cut off which was felony by the common law,

though the party consented to it.—*Bract.* l. 3, p. 144.

Vis [Lat.], any kind of force, violence, or disturbance to person or property. It was a *vis armata*, i. e. *vis cum armis*, or *vis simplex*, i. e. *vis sine armis*.—1 *Reeves*, c. vi., p. 322.

Visa, a register; the mode of authentication of an act.

Viscount or **Vicount** [fr. *vicecomes*, Lat.], an arbitrary title of honor, without any shadow of office pertaining to it, created by Henry VI. 2 *Inst.* 5. See *Barr. on Stat.* 409. A peer of the fourth order, between earl and baron.

Visitation, judicial visit or perambulation.

Visitation books of heralds, compilations, when progresses were solemnly and regularly made into every part of the kingdom, to inquire into the state of families, to register marriages and descents, which were verified to the heralds upon oath. They are allowed to be good evidence of pedigrees.

Visitor, an inspector of a college or corporation, or hospital. The Court of Chancery exercises the right of visitation on behalf of the Crown. As to visitors of lunatic asylums, see 16 & 17 *Vict.* c. 97, s. 22; 8 & 9 *Vict.* c. 100, ss. 61, 62; and 25 & 26 *Vict.* c. 111, s. 30.

Visitor of manners, the regarder's office in the forest.—*Manw.* 195.

Vis legibus est inimica.—3 *Inst.* 176.—(Violence is inimical to the laws.)

Vis major, inevitable accident, irresistible force.

By inevitable accident, commonly called the act of God, is meant any accident produced by any physical cause, which is irresistible; such as a loss by lightning or storm, by the perils of the sea, by inundation or earthquake, or by sudden death or illness.

By irresistible force is meant such an interposition of human agency as is, from its nature and powers, absolutely uncontrollable.—*Story's Bailments*, 29.

Visne [fr. *visnetum*, Lat.], a neighbourhood.

Visus, view or inspection.

Vitilitigate, to litigate cavillously.

Vitium clerici nocere non debet.—*Jenk. Cent.* 23.—(A clerical error ought not to hurt.)

Vitium est quod fugi debet, ne si rationem non invenias, mox legem sine ratione esse clames.—*Elles. Postn.* 86.—(It is a fault which ought to be avoided, that if you cannot discover the reason, you should presently exclaim that the law is without reason.)

Viva pecunia [Lat.], cattle, which obtained this name from being received during the Saxon period as money upon most occasions, at certain regulated prices.

Vivary or **Vivarye** [fr. *vivarium*, Lat.], a place where animals are preserved; a park, warren, piscary, &c.—2 *Inst.* 100.

Vivâ voce (*by word of mouth*).

Vivum vadium, Vifgage or **Living pledge**, when a person borrows money of another, and grants to him an estate to hold till the rents and profits shall repay the sum borrowed, with interest. The estate is conditioned to be void as soon as the sum is realised. See WELSH MORTGAGE.

Vix ullâ lex fieri potest quæ omnibus commoda sit, sed si majori parti prospiciat utilis est.—*Plow.* 369.—(Scarcely any law can be made which is beneficial to all; but it is useful if it benefit the greater majority.)

Vocatio in jus, a citation to law.—*Civil Law.*

Vociferatio, an outcry; hue and cry.

Voidance, the act of emptying; ejection from a benefice.

Void and **Voidable.** There is this difference between these two words: *void* means that an instrument or transaction is so nugatory and ineffectual that nothing can cure it; *voidable*, when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. Thus, while acceptance of rent will make good a voidable lease, it will not affirm a void lease.

The Court of Chancery has drawn this distinction between voidable and void contracts: with regard to the former, they will be decreed to be delivered up, since their retention is liable to be applied to improper purposes, such as future litigation, when lapse of time may have weakened or destroyed the means of defence; or since their existence uncancelled may cloud a title, or diminish its value and security; but as to void instruments, the illegality of which appears upon their face, equity does not interpose its authority, since their production at any period of time will plainly establish their nullity.

Voir dire [*veritatem dicere*, Lat.], examining a witness before he gives evidence in the cause, as to whether he be competent or interested in the cause or not. Lord Kenyon said that objections to the competency of witnesses never come too late, but may be made in any stage of the cause.—*Stone* v. *Blackburne*, 1 *Esp.* 37. Witnesses are not now incompetent on the ground of interest or infamy.—6 & 7 *Vict.* c. 85.

Voiture, carriage, transportation by carriage.

Volenti non fit injuria.—*Plow.* 501.—(An injury is not done to the willing.)

Volumus (*we will*), the first word of a clause in the royal writs, of protection and letters-patent.

Voluntarius dæmon, a drunkard.—*Co. Litt.* 247 *a.*

Voluntary, acting without compulsion; doing by design. When applied to a conveyance, it means that it is made merely on a *good*, and not

on a *valuable* consideration. See FRAUDULENT CONVEYANCES.

Voluntary answer, one filed by a defendant to a bill in equity, without being called upon to answer by the plaintiff.

Voluntary deposit, such as arises from the mere consent and agreement of the parties.—*Story's Bailment*, 47.

Voluntary jurisdiction, one exercised in matters admitting of no opposition, and by any judge at any time and in any place.—*Scotch phrase.*

Voluntary oath, an oath administered in a case for which the law has not provided. See 5. & 6 *Wm. IV.* c. 62.

Voluntary redemption, the receipt of his money by the wadsetter (mortgagee), who then voluntarily renounces.—*Scotch phrase.*

Voluntary waste, that which is active or wilful.

Voluntas donatoris in charta aoni sui manifestè expressa observetur.—Co. Litt. 21.—(The will of the donor manifestly expressed in his deed of gift is to be observed.)

Voluntas in delictis, non exitus spectatur.—2 Inst. 57.—(In crimes the will, and not the consequence, is looked to.)

Voluntas reputatur pro facto.—3 Inst. 69.—(The intention is to be taken for the deed.)

Voluntas testatoris est ambulatoria usque ad extremum vitæ exitum.—4 Co. 61.—(The will of a testator is ambulatory until death.)

Voluntas testatoris habet interpretationem latam et benignam.—Jenk. Cent. 260.—(The intention of a testator has a broad and benignant interpretation.)

Voluntas ultima testatoris est perimplenda secundum veram intentionem suam.—Co. Litt. 322.—(The last will of the testator is to be fulfilled according to his true intention.)

Volunteer, a person who receives a voluntary conveyance.

Also, a person who has voluntarily joined a corps raised either for home or foreign service; or for the purpose of being trained to act with the regular troops and the militia and yeomanry in defending the country in the event of invasion. The name of the Volunteer force is now generally applied to the body raised for the latter purpose in Great Britain. The laws relating to the Volunteer force in Great Britain have been consolidated and amended by the Volunteer Act 1863 (26 & 27 Vict. c. 65), which repealed the statutes on the subject previously in force. This Act is divided into seven parts:—

Part 1. The organisation of the volunteer force.
Part 2. Actual military service.
Part 3. Discipline.
Part 4. Rules and property of corps.
Part 5. Acquisition of land for ranges.
Part 6. Exemptions.
Part 7. Miscellaneous provisions.

As to the raising and establishing a reserve Volunteer force of seamen, called Royal Naval Volunteers, see 22 & 23 *Vict.* c. 40; also 24 & 25 *Vict.* c. 129, enabling Her Majesty to accept the services of officers of the merchant service as reserve officers to the royal navy. As to the Royal Naval Coast Volunteers, see 16 & 17 *Vict.* c. 73, amended by 26 *Vict.* c. 5.

Vote, suffrage, voice given, and numbered.

Voter, a constituent, one who has the right of giving his voice or suffrage.

Votum, a vow or promise. *Dies votorum,* the wedding-day.—*Fleta*, l. 4.

Vouch, to give testimony, to obtest.

Vouche [fr. *voco*, Lat.], to call out, to warrant lands.

Vouchee, the person vouched in a writ of right.

Voucher, a witness, testimony, acquittance, or receipt.

Vraic, seaweed. It is used in great quantities by the inhabitants of Jersey and Guernsey for manure, and also for fuel by the poorer classes. In *Benest* v. *Pipon*, on appeal from Jersey to the Privy Council, it was ruled that the lord of a manor cannot establish a claim to the exclusive right of cutting seaweed on rocks situate below low-water mark, except by a grant from the Crown, or by such long and undisturbed enjoyment of it as to give him a title by prescription.—1 *Knapp's P. C. Rep.* p. 60, A.D. 1829.

Vulgar or **Popular errors,** erroneous notions. The following are instances:—

(1) That a funeral procession passing over private grounds creates a public right of way.

(2) That it is lawful to arrest and detain a dead body.

(3) That first cousins may intermarry, and that second cousins may not: whereas they may both marry with each other.

(4) That a surgeon or butcher cannot be sworn as a juryman.

(5) That all persons born at sea claim a right of settlement in Stepney parish.

(6) That a lease for more than ninety-nine years constitutes a freehold.

(7) That a husband is punishable for his wife's criminal acts.

(8) That to disinherit a child the sum of one shilling must be bequeathed.

(9) That the old statutes have prohibited the planting of vineyards; or the use of sawing-mills.

(10) That it is penal to open a coal-mine, or to kill a crow within five miles of London, or to shoot with a wind-gun, or to carry a dark lanthorn.

(11) That the sovereign signs the death-

warrant (as it is called) for the execution of a criminal.

(12) That there is a statute which obliges the owners of asses to crop their ears, lest the length of them should frighten the horses which they meet on the road.

(13) That a woman by marrying a man under the gallows will save him from execution.

(14) That any one may be put into the Crown-office, for no cause whatever, or the most trifling injury.

(15) That there was not a land-tax before the reign of William III.

(16) That a man who marries a woman in debt, by taking her from the hands of the priest clothed only in her shift will not be liable to her engagements. See SELLING A WIFE, and CHASTISEMENT OF A WIFE.

(17) That it costs only thirteen-pence-halfpenny to be hanged.

Vulgaris opinio est duplex, viz. *orta inter graves et discretos, quæ multum veritatis habet, et opinio orta inter leves et vulgares homines absque specie veritatis.*—4 *Co.* 107.—(Common opinion is of two kinds, viz. that which arises among grave and discreet men, which has much truth in it, and that which arises among light and common men, without any appearance of truth.)

Vulgaris purgatio, *Judicium Dei*, which see.

W.

Wadset, a mortgage.—*Scotch term.*

Wadset improper, when the mortgagor pays the public burdens, the wadsetter (mortgagee) having his annual rents secured.

Wadset proper, when the wadsetter (mortgagee), takes his hazard of the rents of the land for satisfaction of his annual rent, and himself pays all public burdens.

Wadsetter, a mortgagee.

Waftors, conductors of vessels at sea.

Wage [fr. *vador*, Lat.; *gage*, Fr.], the giving of a security for the performance of anything.

Wager, *Feigned issue on a.* See FEIGNED ISSUE.

Wager of battel. See BATTEL.

Wager of law [fr. *vadatio legis*, Lat.], a proceeding which consisted in a defendant's discharging himself from the claim, on his own oath, bringing with him at the same time into court eleven of his neighbors to swear that they believed his denial to be true. It was abolished by 3 & 4 *Wm. IV.* c. 42, s. 13.

Wagering policies, those effected for gambling purposes, which are void by 14 Geo. III. c. 48. See 19 *Geo. III.* c. 37. See DOUBLE INSURANCE.

Wagers. See GAMING.

It is well established at common law, that a wager is a legal contract, which the courts are bound to enforce, although it be in respect of a matter which is trifling, or in which the parties have no interest; but if it be on a subject which is illegal, or which offends against public policy, it is void. And wagers which tend to affect the feelings and interests of third parties, or lead to indecent exposures and examinations, or are, in any manner, *contra bonos mores*, are void.—*Story's Contracts*, 127. But by 8 & 9 *Vict.* c. 109, ss. 17–19 are void.

Wages, the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him.

An infant can recover wages under 50*l.* in the County Court, without a next friend.—9 & 10 *Vict.* c. 95, s. 64.

As to the futility of laws for their regulation, see 3 *Hall. M. A.* c. viii., pt. 3, p. 178; and 1 *Mill's Pol. Eco.* c. xi., p. 409, *et seq.*

Waggessum, a doubtful word, perhaps Mussel Ouze. See *Re Alston's estate*, 5 *W. R.* 189.

Waggonage, money paid for carriage in a waggon.

Waif or **Waift, Weif** or **Weft** [*waiviatum*, law Lat.], goods found but claimed by nobody; that of which every one waives the claim. Also goods stolen and waived, or thrown away by the thief in his flight, for fear of being apprehended. These are given to the sovereign by the law, as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him.—*Cro. Eliz.* 694.

Wainable, land that may be ploughed, manured or tilled.—*Chart. Antiq.*

Wainagium or **Wanagium,** the countenance of a villein; that which is necessary for the cultivation of land.—*Barr. on Stat.* 12; 4 *Step. Com.* 530. See CONTENEMENT.

Wain-bote, timber for waggons or carts.

Waiting-clerks *in Chancery.* Their offices were abolished by 5 & 6 Vict. c. 103.

Waive, to forsake; to put a woman out of the protection of the law. See OUTLAWRY.

Waiver, the passing by of a thing, or a declining or refusal to accept it; also, declining to take advantage of irregularities in proceedings.

Wakeman [*quasi*, watchman], the chief magistrate of Ripon, in Yorkshire.—*Camden.*

Wakening, a citation narrating that a complainer has raised a summons which he had let sleep for a year and a day, concluding that all persons cited on the first should compear, hear, and see the aforesaid action called, awakened, and debated, till sentence be given.—*Scotch term.*

Wales, a principality in the west of the island of Great Britain. After Edward I. conquered Wales, the line of their ancient princes was abo-

lished, and the King of England's eldest son was created their titular prince, and the territory of Wales was then entirely annexed to the British Crown. The 27 Hen. VIII. c. 26, confirmed by 34 & 35 Hen. VIII. c. 36, gave the utmost advancement to their civil prosperity, by admitting them to a thorough communion of laws with the subjects of England. By 20 Geo. II. c. 42, it is declared that where England only is mentioned in any Act of Parliament, it shall be deemed to comprehend the dominion of Wales and town of Berwick-upon-Tweed. By 1 Wm. IV. c. 70, the jurisdiction of the court of Great Sessions was abolished, and assizes are now held there as in England. See 5 & 6 *Vict.* c. 32. By 2 Wm. IV. c. 45, three of its counties respectively send two members to the House of Commons, and each of the remaining counties one. By 8 & 9 Vict. c. 11, the manner of assigning sheriffs in Wales is regulated by and assimilated to that of England. See 1 *Step. Com.* 85. The 26 & 27 Vict. c. 82, empowers the Bishops of Welsh dioceses to facilitate the making provision for English services in certain parishes in Wales.

Wales, *Prince and Princess of.* See PRINCE AND PRINCESS.

Wales, *Statute of,* 12 Edw. I. A.D. 1284.—2 *Reeves,* c. ix., p. 95.

Waleschery, the being a Welshman.

Waliscus [*servus,* Lat.], a servant, or any other ministerial officer.

Walkers, foresters, who have the care of a certain space of ground assigned to them.

Waltham Black Act, 9 Geo. I. c. 22. As to setting fire to houses, mills, &c. see BLACK ACT.

Waltham Forest. See 12 & 13 *Vict.* c. 81.

Wanlass, an ancient customary tenure of lands, i. e. to drive deer to a stand that the lord may have a shot.—*Blount's Tenures,* 140.

Wanton and furious driving, an offence against public health.

By 24 & 25 Vict. c. 100, s. 35, it is provided that if any person having the charge of any carriage or vehicle shall, by wanton or furious driving, or racing or other wilful misconduct or neglect, do or cause to be done any bodily harm to any person whatsoever, he shall be guilty of a misdemeanor, and be imprisoned, with or without hard labor, for any term not exceeding two years. In addition to, or in lieu of, such punishment, the court may, if it thinks fit, under s. 71, fine the offender, or require him to enter into his own recognizances, and to find sureties both or either for keeping the peace and being of good behaviour. This Act, however, must be taken as declaratory only of the common law, in the cases to which it refers, for at common law it is a misdemeanor, and may even amount to manslaughter or murder, for any person to drive or ride so wantonly and furiously as to endanger the passengers on the highway.—4 *Step. Com.* 363.

Wapentake, or Wapentachium, a hundred, as, upon a meeting for that purpose, they touched each other's weapons in token of their fidelity and allegiance. Others think that it was ten hundreds or boroughs.—*Encyc. Lond.; Ellis's Domesday,* 182.

War, a contention by force; a fighting between two kings, princes, or parties, in vindication of what they conceive to be their just rights. The sovereign has the sole prerogative of making war or peace.

War, *Articles of,* see ARTICLES OF WAR.

War, *levying against the sovereign,* a species of treason. See TREASON.

Ward, the state of a child under guardianship. A *ward of court* is an infant under the protection of the Court of Chancery. See INFANT. Also, the district of a city, town, parish, or borough, see 5 & 6 *Wm. IV.* c. 76; and 6 & 7 *Wm. IV.* c. 103. Also see WATCH AND WARD.

Warda, the custody of a town or castle, which the inhabitants were bound to keep at their own charge.—*Mon. Ang.*

Wardage, money paid and contributed to watch and ward.—*Domesday.*

Warden, guardian or keeper. The Lord Warden of the Cinque Ports is prohibited from recommending to those places members of Parliament, by 2 W. & M. sess. 1, c. 7. As to wardens of the society of Apothecaries, see 55 *Geo. III.* c. 194.

Ward-holding, the ancient military tenure in Scotland. Abolished by 20 Geo. II. c. 50.

Wardmote, a court held in every ward in London.

The wardmote inquest has power to inquire into and present all defaults concerning the watch and police doing their duty, to see that engines, &c., are provided against fire, that persons selling ale and beer be honest and suffer no disorders, nor permit gaming, &c., that they sell in lawful measures; searches are to be made for beggars, vagrants, and idle persons, &c., who shall be punished.

Ward-penny, wardage, which see.

Wards and Liveries, *Court of,* a court erected by Henry VIII. and abolished by 12 Car. II. c. 24.

Wardship, pupillage, guardianship; an incident to tenure in socage. See TENURE.

Wardship in chivalry, an incident to the tenure of knight-service. See *Ibid.*

Wardship in copyholds, the lord is guardian of his infant-tenant by special custom.

Wardstaff, a watchman's staff.

Wardwit, the being quit of giving money for the keeping of wards.

Warectare, to plough up land designed for wheat in the spring, in order to let it lie fallow

for better improvement, which in Kent is called summer-land.

Warehousing system, the allowing of goods imported to be deposited in public warehouses, at a reasonable rent, without payment of the duties on importation if they are re-exported; or if they are ultimately withdrawn for home consumption, without payment of such duties until they are so removed, or a purchaser found for them.—2 *Mill's Pol. Eco.* 444; 2 *Step. Com.* 587; 16 & 17 *Vict.* c. 107, ss. 85–100. As to warehousing ports, see s. 10. See also 23 & 24 *Vict.* c. 36.

Wargus, a banished rogue.

Warncistura, garniture, furniture, provision, &c.

Warning of a caveat, a notice to a person who has entered a *caveat* in the Probate Court to appear and set forth his interest.

Warnoth, an ancient custom, that if any tenant holding of the castle of Dover failed in paying his rent at the day, he should forfeit double, and for his second failure treble; and the lands so held are called *terræ cultæ et terræ de warnoth.—Mon. Angl.* ii. 589.

Warrandice, warranty.— *Scotch term.*

Warrant, a precept under hand and seal, to some officer to arrest an offender, to be dealt with according to due course of law; also, a writ conferring some right or authority, a citation or summons.

Warrantizare est defendere et acquietare tenentem, qui warrantam vocavit, in seisinâ suâ; et tenens de re warranti excambium habebit ad valentiam.— Co. Litt. 365.—(To warrant is to defend and insure in peace the tenant who calls for warranty in his seisin; and the tenant in warranty will have an exchange in proportion to its value.)

Warranty is abolished.—3 & 4 Wm. IV. cc. 27, 74.

Warrantus potest excipere quod querens non tenet terram de quâ petit warrantiam, et quod donum fuit insufficiens.—Hob. 21.—(A warranter may except, that the complainant does not hold the land of which he seeks the warranty, and that the gift was insufficient.)

Warrant of Attorney, a written authority addressed to an attorney or attorneys of the court in which it is intended that a judgment shall be entered up, authorizing them, or one of them, to appear for the party executing it, and receive a declaration for him in an action brought or to be brought against him, at the suit of a person therein mentioned, and thereupon to confess the same, or to suffer judgment to pass by default; it also authorizes the attorney or attorneys to execute a release of errors touching the judgment so to be entered up. The instrument must then be under seal, which is not absolutely necessary where it merely authorizes a judgment to be confessed. The law is, that a release of errors must be by deed, and an attorney to execute a deed must, as we have seen, always be appointed by an instrument of as high a nature. A warrant of attorney may be executed as a security for the performance of any agreement between the parties; but it does not extinguish an original debt, or affect the right to sue upon it, unless judgment have been signed, for until this is done it is merely a collateral security. If an infant or *feme covert,* or other incapacitated person, execute a warrant of attorney jointly with others it can only be set aside as against such infant, *feme covert,* or incapacitated person. It is usual to make the warrant subject to be defeated on the performance of certain conditions, and when this is the case, they are set forth in an agreement, hence called the defeasance. No particular form of defeasance is necessary; but it should be clear and complete, for parol evidence to extend its term cannot be admitted.—*By the Practice Rules of the Common Law Courts, H. T.* 1853, r. 27. Every attorney or other person who shall prepare any warrant of attorney to confess judgment which is to be subject to any defeasance shall cause such defeasance to be written on the same paper or parchment on which the warrant is written, or cause a memorandum in writing to be made on such warrant, containing the substance and effect of such defeasance. By 1 & 2 Vict. c. 110, s. 9, after reciting that it is expedient that provision should be made for giving every person executing a warrant of attorney to confess judgment or a *cognovit actionem,* due information of the nature and effect thereof, it is enacted, that from and after the 1st of October, 1838, no warrrant of attorney to confess judgment in any *personal* action or *cognovit actionem,* given by any person, shall be of any force, unless there shall be present some attorney of one of the superior courts on behalf of such person, expressly named by him and attending at his request, to inform him of the nature and effect of such warrant or *cognovit* before the same is executed, which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney. And the 10th section enacts, that a warrant of attorney, or *cognovit actionem,* not executed in manner aforesaid, shall not be rendered valid by proof that the person executing the same did, in fact, understand the nature and effect thereof, or was fully informed of the same. These provisions do not extend to warrants of attorney given by insolvent debtors to enter up judgment for the amount of debts in their schedule (sec. 87). The defendant's attorney must not be the plaintiff's attorney, or his agent, or his clerk; he must be wholly un-

connected with the opposite side. The same attorney may act for all the defendants. If a defendant be an attorney, of course he acts for himself. An insufficient attestation renders the document utterly void.

The death of either party is generally an implied revocation of the warrant, but the court may order judgment to be entered up after the death of the plaintiff, if the warrant authorize it to be done, by the plaintiff's representatives. If one or more of several plaintiffs die, judgment may be signed by the survivors, though the warrant be silent on the point. But the warrant cannot authorize the signing of judgment against the defendant's executors after his death; such a clause would be void, for the warrant then stands revoked. If one of several joint defendants die, the warrant is wholly revoked; but if they be joint and several, judgment may be signed against the survivors. If a *feme sole* give a warrant of attorney, and afterwards marry, the court will allow the judgment to be entered up against the husband and wife. If a warrant of attorney be given to a *feme sole*, and she afterwards marry, the judgment will be allowed to be entered up in the name of the husband and wife; but a warrant to a *feme covert* is utterly void. If the warrant of attorney be obtained by fraud, duress, or misrepresentation, or upon an illegal, or immoral consideration, the court will order it to be delivered up to be cancelled, and will set aside all proceedings had upon it, and so, if a material alteration be made in it after execution, and without the defendant's consent, and even when made with his consent, it must be again executed and attested, otherwise it will be invalid. The warrant may be good in part and bad in part, when the court will sustain it *quoad* the good part. If the fact of the consideration be doubtful the court may direct an issue to try it. By 3 Geo. IV. c. 39, ss. 1, 2, the warrant of attorney, or a true copy thereof, and of the attestation thereof, and the defeasance and indorsements thereon, and an affidavit of the time of the execution of such warrant of attorney, must be filed with the master within twenty-one days after the day of its execution, to render such warrant of attorney, or any judgment or execution thereon, valid as against the assignees of the defendant, if he should become bankrupt, unless judgment be signed and execution issued within the twenty-one days. If the defeasance be not written on the warrant, it is void as against assignees of bankrupts (sec. 4); but not as against any other person. The 7 Geo. IV. c. 57, s. 33, and 1 & 2 Vict. c. 110, s. 60, extended these provisions in favor of the creditors of an insolvent debtor. If a defendant become bankrupt before judgment it will be useless to proceed, because, in order to render any execution on a judgment founded on a warrant of attorney valid, so as to entitle the execution creditor to retain the proceeds of it against the assignees, it is essential not only that the execution should have been perfected both by seizure and sale of the bankrupt's goods before the date of the filing of the petition for adjudication; but also that such seizure and sale should have taken place at a time when the execution-creditor had no notice of an act of bankruptcy committed by the bankrupt. See 12 & 13 *Vict.* c. 112, ss. 135, 136, as to bankrupts; and 1 & 2 *Vict.* c. 110, s. 61, as to insolvents. The 6 & 7 Vict. c. 66, prevents frauds upon creditors by secret warrants of attorney, and provides that in addition to the book directed to be kept by 3 Geo. IV. c. 39, s. 5, and which might be inspected for sixpence, another book or index shall be kept, containing the names, additions, and descriptions of the respective defendants, or persons giving such warrants of attorney, or a *cognovit actionem*, but containing no further particulars thereof; which book may be inspected by any person on payment of one shilling, in addition to the aforesaid sixpence. The Common Law Rules of Practice, 25 & 26, provide that no judgment shall be signed upon any *cognovit*, or any warrant of attorney, without such *cognovit* or warrant being delivered to and filed by the master, who is thereby ordered to file the same in the order in which it is received. Leave to enter up judgment on a warrant of attorney above one and under ten years old, is to be obtained by order of a judge made *ex parte*, and if ten years old or more, upon a summons to show cause. See 1 *Chit. Arch. Prac. by Pren.* 938, *et seq.*

Warrantee, a person to whom a warranty is made.

Warrantia chartæ, a writ, where one was enfeoffed of lands with warranty, and then he was sued or impleaded in assize or other action in which he could not vouch or call to warranty. *F. N. B.* 134. Abolished by 3 & 4 Wm. IV. c. 27.

Warrantia diei, an ancient writ, where one having a day assigned personally to appear in court to any action, is in the meantime employed in the royal service, so that he cannot come on the day appointed; it was addressed to the justices to this end, that they neither take nor record him in default for that time.—*F. N. B.* 17.

Warrantor, a person who warrants; the heir of one's husband.

Warranty, a guaranty or security; also a promise or covenant by deed by the bargainor for himself and his heirs, to warrant and secure the bargainee and his heirs against all persons for the enjoying of the thing granted.—2 *Bl. Com.* c. xx.

Warranty of lands is altogether superseded

in practice by 3 & 4 Wm. IV. cc. 27, 74.

The general rule of law applicable to all sales of goods is, that the buyer buys at his own risk; *caveat emptor*; unless the vendor give an express warranty, or unless the law imply a warranty from the nature of the thing sold, and the circumstances of the sale; or unless the vendor have been guilty of a fraudulent representation or concealment in regard to the things sold.

Express Warranty.—Every affirmation made by the vendor at the time of the sale in relation to the goods, amounts to a warranty, provided it appear in evidence to be so intended. Where an express warranty is couched in technical terms, it is to be interpreted according to their technical signification, unless they be manifestly used in a different sense, and differently understood by the buyer. A general warranty does not extend to patent defects which are apparent upon due inspection, or to defects which are at the time known to the buyer.

Implied Warranty.—A warranty is implied in five cases:—(1) A warranty of title will be presumed when the goods sold are, at the time of the sale, in the possession of the vendor or of a third person, unless the contrary be then expressed; (2) when an examination of goods is, from their nature or situation at the time of the sale, impracticable, a warranty will be implied that they are merchantable; (3) upon an executory contract of sale, where goods are to be manufactured, or to be procured for a particular use or purpose, a warranty will be implied that they are reasonably fit for such purpose or use, as far as goods of such a kind can be; (4) a warranty will be implied against all latent defects in two cases: 1st, when the seller knew that the buyer did not rely on his own judgment, but on that of the seller, who knew at the time, or might have known, the existence of the defects; 2nd, where from the situation of the parties (as in the case of a manufacturer or producer), the seller might have provided against the existence of defects; or where a warranty may be presumed from the very nature of the transaction; (5) where goods are sold by sample, a warranty is implied that the bulk corresponds to the sample in nature and quality.—*Story's Contracts*, 329.

Warren [fr. *waerande*, Dut.; *guerenne*, Fr.], a franchise or place privileged by prescription or grant from the Crown, for the keeping of beasts or fowls of warren.—1 *Inst.* 233.

Warscot, a contribution usually made towards armour in the time of the Saxons.

Warth, a customary payment for castle-guard.

Wash, a shallow part of a river or arm of the sea.

Washhouses, *Public.* See PUBLIC BATHS.

Washing-horn [fr. *corner l'eau*, Fr.], the sounding of a horn for washing before dinner. The custom is still observed in the Temple.

Waste [fr. *vastum*, Lat.], any spoil or destruction in houses, gardens, trees, &c. to the prejudice of the expectant in fee. It is either (1) legal, subdivided into (*a*) *voluntary* or *commissive*, or (*b*) *permissive* or *omissive* (which is not however enjoinable [see *Powys* v. *Blagrave*, 2 *Eq. Rep.* 395 (1854), affirmed on appeal, 2 *Ib.* 1204 (1854)]); and (2) *equitable*, which comprehends acts not deemed waste at the common law. The prayer of the bill in Chancery should be to stay waste, either threatened or which the party is in the act of committing, and for an account of such waste as may have been already done. The most ordinary instance in which an injunction is granted is to restrain the committing of waste by a tenant for life or for years, upon the application of the owner of the inheritance. A mortgagee in possession will be restrained from cutting down timber, and so will a mortgagor in possession; for as the whole estate is the security for the money advanced, the mortgagor ought not to be suffered to diminish it; but he may cut underwood at seasonable times and of a proper growth. Trustees to preserve contingent remainders may, and it is their duty to enjoin a tenant for life from committing waste to the prejudice of the *cestui que* trust in remainder. Equitable waste being an unconscious abuse of the privilege of non-impeachability for waste at common law, a tenant for life without impeachment of waste, and a tenant-in-tail after possibility of issue extinct, will be restrained from committing wilful, destructive, malicious, extravagant, or humorous waste, such as pulling down houses, cutting timber of too young a growth, or trees planted for ornament, or for shelter of premises; for, though in some cases *fortior est dispositio legis quam hominis*, yet that shall not extend to encumber or spoil estates.—*Vane* v. *Lord Barnard*, 2 *Vern.* 738 (1716).

Wastors, thieves.

Watch and Ward. Ward [*custodia*, Lat.] is chiefly applied to the day time, in order to apprehend rioters and robbers on the highways. Watch [fr. *wacht* or *wacta*, Teut.] is applicable to the night only, and begins at the time when ward ends. By the Statute of Winchester the high constable is to keep watch and ward within his jurisdiction.—1 *Bl. Com.* 356.

As to levying borough rates and watch rates, see 3 & 4 *Wm. IV.* c. 90; 5 & 6 *Wm. IV.* c. 76; 6 & 7 *Wm. IV.* c. 104; 7 *Wm. IV.* and 1 *Vict.* cc. 78, 81; 2 & 3 *Vict.* c. 28; 3 & 4 *Vict.* cc. 28, 88; 8 & 9 *Vict.* c. 110; 12 & 13 *Vict.* c. 65; 15 & 16 *Vict.* c. 81; and 17 & 18 *Vict.* 71.

Watchmen, constables; guardians of the peace by night.

They may arrest all offenders, and particularly night walkers, and commit them to custody till the morning.—13 *Edw. I.* c. 4.

Water, in the language of the law, a species of land (solecism though it be).—2 *Bl. Com.* 18.

An action cannot be brought to recover possession of a pool or other piece of water by the name of water only, but it must be brought for the land that lies at the bottom, e.g. 'twenty acres of land covered with water.'—*Brownl.* 142. See POOL.

By granting a certain water, though the right of fishing passes, yet the soil does not. Water being a movable wandering thing, there can only be a temporary transient usufructuary property therein. 'Water' does not include the land on which it stands; unless perhaps in the case of salt pits or springs, where the interest of each owner is measured by ballaries or buckets of brine.—*Burt. Comp.* pl. (550).

Water-bailiff, an officer in port-towns, whose duty is to search ships.

Watercourse, a species of incorporeal hereditament, being a right which one has to the benefit of the flow of a river or stream, such right commonly referring to a stream passing through one's own land, and the banks of which belong either to himself on both sides, or to himself on one side, and to his neighbor on the other, in which latter case (unless the stream be navigable, for then the bed of it, so far at least as the tide of the sea flows, presumably belongs to the Crown) the proprietor of each bank is considered as *primâ facie* the proprietor also of half the land covered by the stream, i. e. *usque medium filum aquæ.*

A prescriptive *primâ facie* right to watercourses and ways is gained by twenty years' uninterrupted enjoyment, and an indefeasible right after forty years; and when the land over which such rights as these are claimed has been held for term of life, or a term exceeding three years, such term shall be excluded from the computation of the forty years, in the event of the person who may be entitled in reversion resisting the claim within three years after the term determines.—2 & 3 *Wm. IV.* c. 71. See *Gale on Easements, by Willes.*

Water-gage, a sea-wall or bank to restrain the current and overflowing of the water; also an instrument to measure water.

Water-gang, a trench or course to carry a stream of water.

Water-gavil, a rent paid for fishing in, or other benefit received from, some river.

Water-measure, a greater measure than the Winchester, formerly used for selling coals in the pool, &c.—22 *Car. II.* c. 11.

Watermen. See THAMES WATERMEN.

Water-ordeal. See COLD-WATER-ORDEAL and HOT-WATER-ORDEAL.

Waterscape, an aqueduct or passage for water.

Water supply to metropolis. See 15 & 16 *Vict.* c. 84.

Waterworks Clauses Acts, 1847 and 1863, 10 & 11 Vict. c. 17; 26 & 27 Vict. c. 93.

Waveson, goods swimming upon the waves after a shipwreck.

Waxscot [fr. *cerarium,* Lat.], duty anciently paid twice a year towards the charge of wax candles in churches.—*Spelm.*

Way [fr. *wæg,* Sax.; *weigh,* Dut.; *vig* or *wig,* M. Goth.], road made for passengers.

There are three kinds of ways:—1st, a footway (*iter*); 2nd, a park and prime way, which is both a horse and footway (*actus*); 3rd, a cart way (*via* or *aditus*), which is called *via regia,* if it be common to all men; and *communis strata,* if it belong to only some town or private person.—*Co. Litt.* 56 *a.*

All ways are divided into highways and private ways. A right of way strictly means a private way, i. e. a privilege which an individual or a particular description of persons may have of going over another's ground. Such a right is an incoporeal hereditament.

A highway is a public passage for the sovereign and all her subjects, and it is commonly called the Queen's public highway. Besides the ordinary highways, turnpike roads have been created, and regulated by specific Acts of Parliament. See TURNPIKE-ROADS. Highways generally become so by what is called a dedication of them to the public by the owner of the soil, but the public may also acquire the use of a highway by Act of Parliament.

As highways are for public service, if they are so out of repair that the usual track is impassable, it is allowed for the general good, that people should be entitled to pass, by going out of the track, even upon the land of the owners of the adjoining closes; but this privilege is exclusively confined to highways; for as private ways are all presumed to have originated in grants from the owner of the soil, the want of repair, amounting to what is called in law a founderous state, does not authorize passengers to go out of the way upon the adjacent land.

The inhabitants of a parish are *primâ facie* bound to repair a highway of common right; unless by prescription they can throw the burden on particular persons by reason of their tenure; and if the inhabitants of a township, bound by prescription to repair, be expressly exempted by an Act of Parliament from repairing the roads to be made within the township, it falls on the rest of the parish.

By the General Highway Act, 5 & 6 Wm. IV. c. 50, power is given of stopping up and diverting highways, and the mode of proceeding

to effect this object is pointed out. Parties grieved have a right of appeal to the sessions.

Bridges are public highways. See BRIDGE.

A navigable river is esteemed to be a highway; and if the water, which is the highway, change its course and flow upon the land of another, the highway extends over the place where the water newly flows, in like manner as it existed over the ancient course, so that the owner may not disturb it. With respect to navigable rivers there is this difference, however, between them and highways, that the right to the soil of a navigable river is not, by presumption of law, in the owners of the adjoining lands.

Ferries may be said to be common highways, as they are a common passage over rivers. They differ, however, in some measure, as they are the private property of individuals, who may maintain an action for the disturbance of their rights.

A private right of way may be claimed by prescription and immemorial usage; thus, where the inhabitants of a particular hamlet, or the owners or occupiers of a particular close or farm, have immemorially been used to cross a particular piece of land, a right of way is created by the immemorial usage, which supposes a grant. By 2 & 3 Wm. IV. c. 71, s. 2, it is enacted, that no claim by custom, prescription, or grant to any way or other easement, or to any watercourse, or the use of any water which has been enjoyed twenty years without interruption, shall be defeated by showing the commencement of the right within the time of legal memory; and where the right shall have existed forty years, it shall be absolute and indefeasible, unless it appear to have been enjoyed by license, by deed, or writing. The right mush be proved by user down to the time of the commencement of the action; and therefore, if there be no proof of user for the last four or five years, it is insufficient. Unity of possession operates as an extinguishment of a right by way of prescription.

A private right of way may also be grounded on a special permission; as when the owner of lands grants to another a liberty of passing over his grounds, to go to church, market, or the like, in which case the gift or grant is particular and confined to the grantee alone; it dies with the person; the grantee cannot assign it, or justify taking another person in his company.

A right of way may also arise by act and operation of law; for if a man grant a piece of ground in the middle of his field, he at the same time tacitly and impliedly gives a way to come at it, and the grantee may cross the grantor's land without being a trespasser. A way of necessity is limited by the necessity which created it; and when such necessity ceases, the right of way also ceases.

Disturbance of ways happens when a person, who has a right of way over another's grounds, by grant or prescription, is obstructed by inclosures or other obstacles, or by ploughing across it, by which means he cannot enjoy the right of way, or at least not in so commodious a manner as he might have done. The remedy is usually by action on the case for damages. A right of way is often contested in an action of trespass. The remedy for the want of repair or obstruction to public highways is by indictment.—*Woodf. Land. and Ten.* 597; 2 *Selw. N. P.* 1315; *Gale on Easements, by Willes.*

Way-bill, a writing in which is set down the names of passengers who are carried in a public conveyance, or the description of goods sent with a common carrier by land.

Way-going crops. See AWAY-GOING CROPS.

Waynagium, implements of husbandry.—1 *Reeves*, c. v., p. 268.

Ways and Means, *Committee of.* As the Committee of Supply in the House of Commons relates to the expenditure of the nation, so the functions and duties of a Committee of Ways and Means have reference to the funds by which such expenditure is to be sustained. Loans, duties, taxes, tolls, and every kind of means for raising revenue, are submitted to a Committee of Ways and Means (which is always one of the whole House). The propositions of Government on these subjects are reduced to the form of resolutions, considered, decided on, and, such as are agreed to, reported to the House. Those which may be there adopted are embodied into bills, and in due course become law. As in the case of supply, the Lords may reject, but cannot modify, neither can their lordships insert pecuniary penalties in any bill whatever.—*Dod's Par. Comp.*

Weald, Wald, Walt [Sax.], a wood or grove.

Wealreaf, the robbing of a dead man in his grave.

Wealth, all useful or agreeable things which possess exchangeable value, or, in other words, all useful or agreeable things except those which can be obtained in the quantity desired, without labor or sacrifice.—1 *Mill's Pol. Eco.* 10. 'Wealth,' says Hobbes, 'is power!'

Wear, or **Weir,** a great dam or fence made across a river, or against water, formed of stakes interlaced by twigs of osier, and accommodated for the taking of fish, or to convey a stream to a mill.

Wed [Sax.], a covenant or agreement.—*Cowel.*

Wedbedrip, the customary service which inferior tenants paid to their lords in cutting down their corn, or doing other harvest duties.

Wedding-rings. As to the assaying and marking of gold wedding rings, see 18 & 19 *Vict.* c. 60, s. 1.

Weighage, a toll or duty paid for weighing merchandise.

Weights and Measures, instruments for reducing the quantity and price of merchandise to a certainty, that there may be the less room for deceit and imposition. See AVOIRDUPOIS, and TROY WEIGHT.

The adjustment of weights and measures is a prerogative of the Crown. See 5 *Geo. IV.* c. 74; 6 *Geo. IV.* c. 12; 5 & 6 *Wm. IV.* c. 63; 16 & 17 *Vict.* c. 29; 18 & 19 *Vict.* c. 72; 22 & 23 *Vict.* c. 56; 23 & 24 *Vict.* c. 146; 24 & 25 *Vict.* c. 79; 24 & 25 *Vict.* c. 75, s. 6 (as to the appointment of inspectors of weights and measures in municipal boroughs); and 25 & 26 *Vict.* c. 76, as to Ireland. See also 2 *Step. Com.* 537.

Weights of Auncel. See AUNCEL WEIGHT.

Welch mortgage [now rare], a conveyance of an estate redeemable at any time by the mortgagor, on payment of the loan; the rents and profits of the estate being received in the meantime by the mortgagee, in satisfaction of interest, subject however to an account in Chancery. There is no covenant for the repayment of the loan, and the mortgagee cannot compel either redemption or foreclosure. A Welch mortgage differs from a *vivum vadium* or vif-gage, which is a conveyance of property to the creditor and his heirs, until out of the rents and profits of the estate he has satisfied the debt with interest: it was so called because neither debt nor estate was lost. The distinction between these securities is, that in the vif-gage the profits are applied in periodical reduction of the debt, while in the Welch mortgage they are applied in satisfaction of the interest, the principal remaining undiminished. In neither, however, is the estate ever forfeited.

Wend, a certain quantity or circuit of land.

Were [*capitis æstimatio*], a pecuniary compensation for an injury. See WITE.

Werelada, a purging from a crime by the oaths of several persons, according to the degree and quality of the accused.

Wergild, Weregild, Weregildum [fr. *wer*, man, and *geld*, satisfaction, Ang.-Sax.], the price of homicide or other enormous offences, paid partly to the Crown for the loss of a subject, partly to the lord whose vassal he was, and partly to the party injured or the next of kin of the party slain. This is the earliest award of damages in our law.—4 *Bl. Com.* 188. Obsolete Saxon custom.

West India Colonies. Appeals from their Courts, see 13 & 14 *Vict.* c. 15.

West Indian Incumbered Estates Acts, 17 & 18 Vict. c. 117, amended by 21 & 22 Vict. c. 96, and 25 & 26 Vict. c. 45.

West Indies. As to the relief of certain colonies and plantations, see 2 & 3 *Wm. IV.* c. 125; 5 & 6 *Wm. IV.* c. 51; 3 & 4 *Vict.* c. 40; 7 & 8 *Vict.* c. 17; 8 & 9 *Vict.* c. 50; 11 & 12 *Vict.* c. 38; and 19 & 20 *Vict.* c. 35. As to the extension of the time for repayment of a loan by the W. I. Relief Commissioners to Dominica, see 23 & 24 *Vict.* c. 57. As to the settlement of a loan due from Jamaica to the Imperial Government, see 25 & 26 *Vict.* c. 55. As to the sale of incumbered estates, see 17 & 18 *Vict.* c. 117, amended by 21 & 22 *Vict.* c. 96, and 25 & 26 *Vict.* c. 45. As to regulating prisons, see 1 & 2 *Vict.* c. 67. As to increasing the number of bishoprics, see 5 & 6 *Vict.* c. 4. As to the extending the laws of Antigua to Barbuda, see 22 & 23 *Vict.* c. 13.

Westminster, a city by express creation of Henry VIII. It was dissolved as a see and restored to the bishopric of London by Edward VI. and turned into a collegiate church, subject to a dean, by Queen Elizabeth.

Westminster the First, 3 Edw. I. A.D. 1275. This statute, which deserves the name of a Code rather than an Act of Parliament, is methodically divided into fifty-one chapters. Without extending the exemption of churchmen from civil jurisdiction, it protects the property of the church from the violence and spoliation of the king and the nobles, to which it had been exposed. It provides for freedom of popular elections, then a matter of much moment, as sheriffs, coroners, and conservators of the peace were still chosen by the freeholders in the county court, and attempts had been made unduly to influence the election of knights of the shire, almost from the time when the order was instituted. It contains a strong declaration to enforce the enactment of Magna Charta against excessive fines, which might operate as perpetual imprisonment. It enumerates and corrects the great abuses of tenures, particularly with regard to the marriage of wards. It regulates the levying of tolls, which were imposed in an arbitrary manner, not only by the barons, but by cities and boroughs. It corrects and restrains the powers of the king's escheator and other officers under the Crown. It amends the criminal law, putting the crime of rape on the footing to which it has been lately restored, as a most grievous, but not a capital offence. It embraces the subject of procedure, both in civil and criminal matters, introducing many regulations with a view to render it cheaper, more simple, and more expeditious.—*Lord Campbell's Lives of the Chancellors*, v. i., p. 167; 2 *Reeves*, c. ix., p. 107.

Westminster the Second, 13 Edw. I. st. 1, A.D. 1285; otherwise called the Statute *De donis conditionalibus*; 2 *Reeves*, c. x., p. 163.

Westminster the Third, 18 Edw. I. st. 1, A.D. 1290; otherwise called the Statute *Quia emptores terrarum.*

Westmoreland, the shrievalty of, was here-

ditary in the family of the Earl of Thanet, and descended to females as well as males. Anne, Countess of Pembroke, exercised this office in person, and, at the assizes at Appleby, sat with the judges on the bench.—*Co. Litt.* 326 n. After the death of the Earl of Thanet, in 1849, without issue, an Act was passed abolishing all hereditary claims and titles to the office, and empowering Her Majesty to appoint as in other counties. See 13 & 14 *Vict.* c. 30.

West-Saxon-lage, the laws of the West Saxons.

Whale, a royal fish, the head being the King's property, and the tail the Queen's.—2 *Step. Com.* 465, 559.

Wharf, a broad plain place, near some creek or haven, to lay goods and wares on, that are brought to or from the water.

There are two kinds:—1st, *legal*, which are certain wharfs in all seaports, appointed by commission from the Court of Exchequer, or legalised by Act of Parliament; 2nd, *sufferance*, which are places where certain goods may be landed and shipped, by special sufferance granted by the Crown for that purpose.

Wharfage, money paid for landing goods at a wharf, or for shipping and taking goods into a boat or barge thence.

Wharfinger, he that owns or keeps a wharf.

pa **Wheelage,** duty or toll paid for carts, &c. ssing over certain ground.

Whereas, a word which implies a recital of a past fact. The word *whereas*, when it renders the deed senseless or repugnant, may be struck out as impertinent, and shall not vitiate a deed in other respects sensible. See *Platt on Covts.* 35.

Whichwood Forest. As to disafforesting which, see 16 & 17 *Vict.* c. 36, and 19 & 20 *Vict.* c. 32.

Whig, *sour milk.* The name was applied in Scotland, A.D. 1648, to those violent covenanters who opposed the Duke of Hamilton's invasion of England in order to restore Charles the First.

The appellation of Whig and Tory to political factions was first heard of in A.D. 1679, and though as senseless as any cant terms that could be devised, they became instantly as familiar in use as they have since continued.—2 *Hall. Const. Hist.* c. xii., p. 442 n, and p. 439.

Whig and Tory differed mainly in this, that to a Tory the constitution, inasmuch as it was the constitution, was an ultimate point, beyond which he never looked, and from which he thought it altogether impossible to swerve; whereas a Whig deemed all forms of government subordinate to the public good, and, therefore, liable to change when they should cease to promote their object. Within those bounds, which he, as well as his antagonist, meant not to transgress, and rejecting all unnecessary innovation, the Whig had a natural tendency to political improvement; the Tory an aversion to it. The one loved to descant on liberty and the rights of mankind, the other, on the mischiefs of sedition and the rights of kings. Though both admitted a common principle—the maintenance of the constitution—yet, this made the privileges of the subject, that the Crown's prerogative, his peculiar care. Hence, it seemed likely, that through passion and circumstance, the Tory might aid in establishing despotism, or the Whig in subverting monarchy. The former was generally hostile to the liberty of the press and the freedom of inquiry, especially in religion; the latter, their friend. The principle of the one, in short, was amelioration, of the other, conservation.

The cardinal principle of toryism was, that the king ought to exercise all his lawful prerogatives without the interference, or unsolicited advice, even of parliament, much less of the people.

'And though,' remarks Hallam (3 *Const. Hist.* v. iii. c. 16, p. 201), 'I cannot reckon these old appellations by any means characteristic of our political factions in the nineteenth century, the names Whig and Tory are often well applied to individuals.'

Whipper-in, the name given to one who sends for the members of his party when a division is expected in either House of Parliament.

Whipping, a punishment inflicted for many of the smaller offences.

The punishment of whipping was inflicted at common law on persons of inferior condition, guilty of petty larceny and other smaller offences. But it seems that, in the earliest periods, by the usage of the Star Chamber, it was never inflicted on a gentleman.

By 1 Geo. IV. c. 57, judgment shall in no case be given that any female, convicted of any offence, shall be whipped either publicly or privately.

The Criminal Law Consolidation Acts, 1861, (24 and 25 Vict. cc. 96, 97, 98, 99, and 100) authorize the punishment of whipping to be inflicted upon males below the age of 16 who have been convicted of various offences therein specified. When the court passes a sentence of whipping it must specify the number of strokes and the instrument with which they are to be inflicted, and the whipping must be private, and only inflicted once. The 25 Vict. c. 18, enacts that where the punishment of whipping is awarded for any offence by order of one or more justice or justices, made in exercise of his or their power of summary conviction, the order awarding such punishment shall specify the number of strokes to be inflicted and the instrument to

be used in the infliction of them, and, in the case of an offender whose age does not exceed 14 years, the number of strokes shall not exceed twelve, and the instrument used shall be a birch rod; and that no offender shall be whipped more than once for the same offence. It also enacts that in Scotland no offender above 16 years of age shall be whipped for theft or for crime committed against person or property (s. 2).

The 26 and 27 Vict. c. 44, an Act for the further security of Her Majesty's subjects from personal violence, after *reciting* that it is provided by 24 and 25 Vict. c. 96, s. 43, that whosoever shall, being armed with any offensive weapon or instrument, rob or assault with intent to rob any person, or shall together with one or more other person or persons rob or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before or after such robbery shall wound, beat, strike, or use any other personal violence to any person; and by 24 and 25 Vict. c. 100, s. 21, that whosoever shall by any means attempt to choke, suffocate, or strangle, or by any means calculated to choke, suffocate, or strangle, attempt to render any person insensible; unconscious, or incapable of resistance with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any such cases to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or for any term not less than 3 years; or to be imprisoned for any term not exceeding 2 years, with or without hard labor, and with or without solitary confinement; *enacts* that when any person is convicted of a crime under either of the said sections the court may, in addition to the punishment awarded by the said sections, direct that the offender, if a male, be once, twice, or thrice privately whipped. Provided: 1. That if the offender be under the age of 16 the number of strokes at each whipping shall not exceed 25, and the instrument used shall be a birch rod; 2. In the case of other offenders the number of strokes at each whipping shall not exceed 50; 3. That the court in its sentence shall specify the number of strokes to be inflicted and the instrument to be used. In no case is the whipping to take place after the expiration of six months from the sentence, and if the offender be sentenced to penal servitude, it is to be inflicted before he is removed to a convict prison with a view to his undergoing penal servitude.

Whitehart-silver, a mulct on certain lands in or near to the forest of Whitehart, paid into the Exchequer, imposed by Henry III. upon Thomas de la Linda, for killing a beautiful white hart which that king before had spared in hunting.—*Cambd. Brit.* 150.

White Friars, a place in London between the Temple and Blackfriars, which was formerly a sanctuary, and therefore privileged from arrest.

White meats, milk, butter, cheese, eggs, and any composition of them.

White rents [*reditus albi*, Lat.], payments received in silver or white money.

White spurs, a kind of esquires.

Whitsuntide, the feast of Pentecost, being the fiftieth day after Easter, and the first of the four cross quarter-days of the year.

It was styled Whit-Sunday, partly because of those vast diffusions of light and knowledge which were then shed upon the apostles in order to the enlightening of the world; but principally from the white garments which they that were baptised at this time put on. Though Mr. Hamon L'Estrange conjectures that it is derived from the French word *huict*, which signifies eight, and then Whit Sunday will be *Huict-Sunday*, i. e. the Eighth Sunday, viz. from Easter; and to make his opinion the more probable, he observes, that the octave of any feast is in the Latin called *utas*, which he derives from the French word *huictas*. In a Latin letter I have by me, of the famous Gerard Langbain, I find another account of the original of this word, which he says he met with accidentally in a Bodleian manuscript. He observes from thence, that it was a custom among our ancestors upon this day to give all the milk of their ewes and kine to the poor for the love of God, in order to qualify themselves to receive the gift of the Holy Ghost: which milk being then (as it is still in some counties) called *white meat*, &c. therefore this day, from that custom, took the name of Whit-Sunday.—See *Wheat. Com. Pr.* 237.

Whitsun farthings, pentecostals, which see.

Whittlewood Forest. As to disafforesting this forest, see 16 & 17 *Vict.* c. 42.

Whole blood, being related by both the father's and mother's side; derived from the same couple of ancestors.

Wic, a place on the sea-shore on the bank of a river.

Wica, a country house or farm.

Wichencrif, witchcraft.

Widow [fr. *widwa*, Sax.; *weduwe*, Dut.; *weddw*, Wel.; *vidua*, Lat.], a woman whose husband is dead.

Widow-bench, the share of her husband's estate, which a widow is allowed besides her jointure.

Widower, one whose wife is dead.

Widow-hunter, one who courts widows for a jointure.

Widow's chamber. In London, the widow

of a freeman was, by the custom of the city, entitled to her apparel and the furniture of her bed-chamber. See 19 & 20 *Vict.* c. 94.

Widow's terce, the right which a wife has after her husband's death to a third of all the rents he died infeft of during life.—*Scotch phrase.*

Wife [*wif*, Sax.; *wiff*, Dut.; *wyf*, Icel.; *uxor*, Lat.], a woman that has a husband. See HUSBAND AND WIFE.

Wife's equity. See EQUITY TO A WIFE'S SETTLEMENT.

Wigreve, the overseer of a wood.

Wild animals, or animals *feræ naturæ*, animals of an untameable disposition. See FERÆ NATURÆ.

Wild's Case, Rule in. A devise to B. and his children or issue, B. having no issue at the time of the devise, gives him an estate-tail; but if he have issue at the time, B. and his children take joint estates for life.—6 *Co.* 16 *b*; *Tud. L. C.* 542.

This case does not apply to personalty. See *Audsley* v. *Horn*, 7 *W. R.* 125, affirmed on, app. 8, *W. R.* 150; 2 *Wms. Exs.* 984; 2 *Jarm. Wills.* 327.

Will, 'the legal declaration of a man's intentions, which he wills to be performed after his death' (see 2 *Bl. Com.* 499). It is said by Lord Coke that 'in law most commonly *ultima voluntas in scriptis* is used when lands or tenements are devised, and *testamentum* when it concerneth chattels' (*Co. Litt.* 111 *a*). Swinburne defines a last will and testament to be 'the just sentence of our will touching what we would have done after our death.' The law with respect to wills is now regulated by 7 Wm. IV. and 1 Vict. c. 26, commonly called the Wills Act.

The *first* section enacts, that the word 'will' shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of the 12 Car. II. c. 24, or of 14 & 15 Car. II. (Ireland), and to any other testamentary disposition, and also defines the meaning of the words 'real estate' and 'personal estate' as used in the Act.

The *second* section repeals the following Acts relating to wills:—32 Hen. VIII. c. 1; 34 & 35 Hen. VIII. c. 5; 10 Car. I. sess. 2, c. 2; ss. 5, 6, 12, 19, 20, 21, and 22 of the 29 Car. II. c. 3, commonly called the Statute of Frauds, and of the 7 Wm. III. c. 12 (the Irish Statute of Frauds); s. 14 of 4 & 5 Anne, c. 16, and of 6 Anne, c. 10 (Ireland); s. 9 of 14 Geo. II. c. 20; 25 Geo. II. c. 6 (except as to the colonies); 25 Geo. II. c. 11, and 55 Geo. III. c. 192. These Acts are repealed, *except* so far as they relate to any wills or estates *pur autre vie* to which this Act does not extend. The statutes on this subject which remain in force are the 12 Car. II. c. 24, ss. 8, 9, 10, relative to the appointment of testamentary guardians by parents; the Statute of Charitable Uses and Fraudulent Devises, and the Registry Acts, relating to those matters that are not within the scope of this Act, and the 11 Geo. IV. & 1 Wm. IV. c. 20, as to the execution and attestation of wills and letters of attorney of seamen, marines, and petty officers of the navy, and non-commissioned officers of marines.

The *third* section, termed the 'general enabling clause,' enacts that it shall be lawful for every person to devise, bequeath, or dispose of real estate, and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and the power given shall extend to all real estate of the nature of customary freehold or tenant-right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or that being entitled as heir, devisee, or otherwise, to be admitted thereto, he shall not have been admitted, or that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will, or that the same in consequence of there being a custom that a will, or a surrender to the use of a will, should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the powers contained in this Act, if this Act had not been made; also all estates *pur autre vie*, all contingent interests, and all rights of entry and property acquired even *subsequently* to the execution of his will.

The *fourth* section provides for the payment of the stamp-duties, fines and fees, which would have been paid or payable in respect of the surrender, where there was a custom to surrender to the use of the will; and further provides, inasmuch as a devise before admittance is authorized by the Act, that the devisee shall not be admitted until he has paid the dues which his testator would have been liable to pay on admittance, as well as the dues on his own admittance.

The *fifth* section enacts, that when any real estate of the nature of customary freehold or tenant-right, or customary or copyhold, shall be disposed of by will, so much of the will as shall contain such disposition shall be entered on the court-rolls of the manor or reputed manor of which it is holden; but as to any declaration of trust contained in such will it shall be sufficient to state in the entry on the court rolls, that such real estate is subject to the trusts declared by such will; and the lord shall be entitled to the same fine, heriot, dues,

duties and services from the devisee as would have been due from the customary heir, in case of the descent of the same real estate, and shall have the same remedy for enforcing such fine, &c. as he would have against the customary heir in case of a descent.

The *sixth* section enacts, that if no disposition by will be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee-simple; and in the case of there being no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant-right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant, and if it come to the executor or administrator either by reason of a special occupancy, or by virtue of this Act, it shall be assets in his hands, and shall be applied and distributed in the same manner as the personal estate of the testator or intestate. See SPECIAL OCCUPANCY.

These sections enact what property is disposable by will, but inasmuch as the old law is applicable where the will was made before January 1st, 1838, and has not since been republished or revived by any codicil executed as required by the Wills Act, it is necessary to state wherein the new law differs from the old.

Personal chattels, then, of every kind, and leaseholds for years, were always disposable by will. The same may be said generally of freeholds, customary freeholds, and copyholds; with the exception (now repealed) of the legal estate in such customary freeholds as were not directly devisable. Customary estates and copyholds were not under the old law devisable, without surrender to the use of the will, or without admittance of the devisor, except when the estate was equitable, or came to the devisor by descent, but under the new law they may be devised (The rights of the lord are preserved by the fourth section, and the fifth provides for the registration of wills affecting copyholds; under the old law a mere recital on the admittance was all that was necessary). Rights of action and of entry which could not have been devised under the old law are now devisable. Contingent estates and possibilities of every kind are now devisable; they were not devisable under the old law, with the exception of estates contingent as to the *person*, e. g. a joint-tenant's chance of survivorship, and an expectant heir's chance of inheritance. Estates *pur autre vie* of every kind, except estates *quasi* in tail are now devisable, but under the old law no such estates were devisable unless by special custom, except estates *pur autre vie* in copyholds not specially limited.

Formerly no real estate which the testator had not at the date of the will would pass by it without republication, although personal property would, if the words of the will were sufficiently comprehensive. But now the power of disposing by will is extended to all such real as well as personal estate as the testator may be entitled to at the time of his death (see sect. 24).

An estate-tail, or an estate *quasi* in tail, i. e. an estate limited to a person, and the heirs of his body, so long as another person or persons named shall live, cannot be devised.

As to the persons who may make wills, the *seventh* section enacts, that no will made by any person under the age of twenty-one years shall be valid. Under the old law, an infant of the age of fourteen years, if a male, or of twelve years, if a female, could make a valid will of personalty, although not of realty. Infants could also by will execute powers simply collateral, i. e. not coupled with an interest, and appoint guardians of their children.

At common law, idiots, lunatics (except during lucid intervals), persons imbecile from disease, old age, or drunkenness, are incapable of making a will. One who is born deaf and dumb is presumed by the law to be an idiot; but such presumption may be rebutted; and if it can be proved that he understands the nature of the act, and desires to make a will, he may declare his will by signs and tokens. In the case of a blind testator, it is necessary to prove his knowledge and approval of the contents of the will he has executed. Wills made under mistake, or obtained by fraud, or by undue influence, are inoperative. See MISTAKE, FRAUD, UNDUE INFLUENCE.

Traitors and felons are incapable of making testaments from the time of their conviction, except as to trust property. A *felo de se* cannot make a will of personalty, although he may devise lands. Outlaws are incapable of making wills of personalty so long as the outlawry continues; but he who is outlawed in a personal action may devise his lands. An alien friend may make a will of personalty, but not of realty. An alien enemy, unless he has obtained the King's license to reside in this country, is incapable of making any will. See EXECUTION OF WILLS, and PUBLICATION.

By section *eight* no will made by any married woman shall be valid, *except* such a will as might have been made by a married woman before the passing of this Act.

A married woman, as a general rule, is incapable of devising lands and of making a testament of personalty without her husband's consent. The husband may, however, by waiving his right to be his wife's administrator, empower her to make a will of personalty, but

he may revoke his assent at any time before probate, and it is therefore necessary to prove his assent when probate is prayed. His assent only gives validity to the wife's will if he survives her.

To this general rule there are some exceptions. A married woman may, by special custom, devise her copyholds. She may also make a will in pursuance of an ante-nuptial agreement, or of a post-nuptial agreement for consideration, or by virtue of a power; and she may dispose of personalty actually given and settled, or agreed to be given and settled to her separate use, whether it be in possession or in reversion, and this rule extends to savings out of her personal property. In these cases probate can be obtained without the husband's assent, limited to the property of which the testatrix had power to dispose.

A wife who has obtained a protection order for her property, on the ground of her husband's desertion, or who has been judicially separated from her husband, may dispose of her property in all respects as if she were a *feme sole* (20 & 21 Vict. c. 85, ss. 21 & 25).

A married woman, who is an executrix, may make a will for the mere purpose of devolving her representative character on another, even without her husband's assent. The Act will probably not be held to dispense with the surrender to the use of the will of a married woman, as to lands which she may devise by special custom, inasmuch as a surrender implied an examination of the married woman by the steward, touching her free will and intention. If the husband have abjured the realm, or been banished, the wife's disability ceases both as to real and personal estate.

The *fourteenth* section enacts, that if any person, who shall attest the execution of a will, shall, at the time of the execution, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid.

The *fifteenth* section enacts, that if any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, &c., shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person, so attesting, shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, &c.

The *sixteenth* section enacts, that in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged, shall attest the execution of such will, such creditor shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

The *seventeenth* section enacts, that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

The *ninth* section directs the mode in which wills are to be executed. It enacts, 'that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary.' Some doubts having arisen as to the meaning of the words 'foot or end thereof' in this sec. the 15 Vict. c. 24, was passed which enacts, 'that every will shall, so far only as regards the position of the signature of the testator or of the person signing for him as aforesaid, be deemed to be valid within the said enactment as explained by this Act, if the signature shall be so placed at or after or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will, and that no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause, or of the clause of attestation, or shall follow or be after or under the clause of attestation, either with or without a blank space intervening, or shall follow or be after or under or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same

paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment, but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.'

The *eleventh* section excepts from the rule that all wills must be in writing, wills of personal estate made by soldiers in actual military service, or seamen at sea. This exception includes military and naval officers of all ranks.

Nuncupative wills were formerly valid; but the statute of frauds (29 Car. II. c. 3) laid them under many restrictions (except when made by soldiers and sailors), of which Blackstone gives the following summary: 'The statute enacts: (1) That no written will shall be revoked or altered by a subsequent nuncupative one, except the same be in the lifetime of the testator reduced to writing and read over to him, and approved, and unless the same be proved to have been so done by the oaths of three witnesses at the least, who by statute 4 & 5 Anne, c. 16, must be such as are admissible upon trials at common law. (2) That no nuncupative will shall in any wise be good where the estate bequeathed exceeds 30*l*., unless proved by three such witnesses present at the making thereof (the Roman law requiring seven), and unless they or some of them were specially required to bear witness thereto by the testator himself, and unless it was made in his last sickness, in his own habitation or dwelling-house, or where he had been previously resident ten days at the least, except he be surprised with sickness on a journey, or from home, and dies without returning to his dwelling. (3) That no nuncupative will shall be proved till fourteen days after the death of the testator, nor till process hath first issued to call in the widow or next of kin to contest it, if they think proper. Thus hath the legislature provided against any frauds in setting up nuncupative wills, by so numerous a train of requisites, that the thing itself has fallen into disuse, and is hardly ever heard of, but in the only instance where favor ought to be shown to it, when the testator is surprised by sudden and violent sickness' (2 *Black. Com.* 500.)

Before the passing of the Wills Act no solemnities of any kind were necessary to make a valid will of personal estate. The signature and attestation required by the Statute of Frauds to render valid a devise of lands were not essential to the validity of wills of personalty. We have already mentioned the restrictions placed upon the making of nuncupative wills. It was not necessary that a will in writing should be either signed or sealed by the testator, whether it was in his own handwriting or in that of another man. As to wills of realty, it was enacted by 29 Car. II. c. 3 (*Statute of Frauds*), that all devises of lands and tenements should not only be in writing, but should also be signed by the party so devising the same, or by some other person in his presence and by his express direction, and should be witnessed and subscribed in the presence of the person devising by three or more credible witnesses, or else the devise should be entirely void, and the land should descend to the heir-at-law.

With regard to the revocation of wills, it is enacted by the *eighteenth* section 'that every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin under the Statute of Distributions;' by the *nineteenth* section, 'that no will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances;' by the *twentieth* section, 'that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same;' and by the *twenty-third* section, 'that no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.'

Under the old law wills might be revoked either expressly or by implication. An implied revocation might be effected by a change of circumstances, such as the marriage of the testator and the birth of a child capable of benefiting by the revocation, or by alterations of or attempted dealings with the property; but the presumption of revocation which arose from such change of circumstances was capable of being rebutted by evidence of an intention to adhere to the will. Wills were also revoked by destruction, cancellation, &c. with intention to revoke.

The *twenty-first* section relates to obliterа-

tions, interlineations, and other alterations in wills, and enacts, 'that no obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will, but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.'

The *thirteenth* section enacts, 'that every will executed in manner hereinbefore required shall be valid without any other publication thereof.'

With regard to the revival of a revoked will, the *twenty-second* section enacts, 'that no will, or codicil, or any part thereof, which shall be in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.'

As to the time from which a will speaks, the *twenty-fourth* section enacts, 'that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.'

Formerly a will spoke and took effect as to personal property from the date of the death of the testator, except where specific legacies were given, and as to freehold property from the date of the will.

No alteration is made by the twenty-fourth section in the old rules of construction with regard to the persons to whom property is given by will; those rules are that legacies and bequests to persons named or described in the will speak and take effect as to such persons from the date of the execution, but legacies and bequests to classes of persons speak and take effect as to such classes from the date of the death of the testator, unless a contrary intention appear.

As a general rule, gifts to persons fail by their death in the testator's lifetime, notwithstanding a declaration that they shall not lapse, but to this rule there are the following exceptions:—In the case of gifts in joint-tenancy to several, of whom one at least survives the testator; in the case of a gift to a person in tail, or *quasi* in tail, who leaves issue who would be inheritable under such entail surviving the testator; and also in the case of a gift of an absolute or transmissible interest to a child or other issue of the testator, who leaves issue surviving the testator. The question then occurs, for whose benefit do such gifts lapse? A share in the residue lapses according to the nature of the property for the benefit of the real or personal representatives of the testator. A specific gift lapses for the benefit of the residuary devisee or legatee (ss. 25, 32 & 33). Under the old law, a specific gift of freehold or copyhold estate lapsed for the benefit of the heir, but a mere charge on the land lapsed for the benefit of the residuary or specific devisee of that land; a specific gift of personalty lapsed for the benefit of the residuary legatee. See LAPSED DEVISE and LAPSED LEGACY.

As to the construction of a general devise of lands, the *twenty-sixth* section enacts, 'that a devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary copyhold and leasehold estates of the testator, or his customary copyhold and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.' Under the old law such a devise was construed to include freeholds and copyholds; if there were no copyholds or freeholds to satisfy the devise, it then extended to leaseholds.

As to the expressions necessary to execute a general power, the *twenty-seventh* section enacts, that a devise or bequest in general terms, of real or personal property, shall be construed to include any property coming within the description, which the testator may have power to appoint in any manner he may think proper, unless a contrary intention shall appear. Under the old law it was necessary that such a devise or bequest should refer either to the power or to the specific property which was the subject of it, in order that it might have that effect.

As to the devise of a fee, the *twenty-eighth* section enacts, 'that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee-simple, or other the whole estate or interest which the testator had power to

dispose of by will in such real estate, unless a contrary intention shall appear by the will.' Under the old law only a life estate passed, unless words were used to show an intention to pass the fee.

A general bequest of personalty, including leaseholds, without words of limitation, passed the whole interest before the Wills Act, which has made no alteration in this rule.

The *twenty-ninth* section enacts, 'that in any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate-tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate-tail to such person, or issue, or otherwise; provided, that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate, by a preceding gift to such issue.' The construction of this section is that such words mean a failure of issue *at the death* of the ancestor named, unless a contrary intention appear; whereas, under the old law, they meant an *indefinite* failure of issue, unless expressions or circumstances indicated a contrary intention.

As to the estate of trustees under a general devise the *thirtieth* section enacts, that 'where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee-simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.'

The *thirty-first* section enacts, that 'where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee-simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.'

It will have been remarked how very nearly the conditions or postulates necessary to bring these two clauses into operation are identical. They differ but in these four respects. The first clause embraces all real estates, *except* presentations, the second contains no such exception. The first extends to devises to executors, the second does not, though this is a nominal difference. The first permits *implied* limitations to prevent its operation, the second does not. The second does not apply where the beneficial interest is given to a person for life, and the trustee has no duty which may extend beyond the life of that person; the first does apply to such a case, being irrespective of all trusts, *except* such as may raise an implication of estate against it. But what do they effect when in action? They give the fee to the trustee, while, under the old state of things, such an estate passed as was commensurate with the trusts.

As to what wills and estates *pur autre vie* are within this Act, the *thirty-fourth* section enacts, 'that this Act shall not extend to any will made *before* 1st January, 1838, and that every will re-executed or republished, or revived by any codicil, shall for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and that this Act shall not extend to any estate *pur autre vie* of any person who shall die *before* 1st January, 1838.'

The *thirty-fifth* section enacts, that this Act shall not extend to Scotland. See 15 *Vict.* c. 24.

Will, *Estate at.* This estate entitles the grantee or lessee to the possession of land during the pleasure of both the grantor and himself, yet it creates no sure or durable right, and is bounded by no definite limits as to duration. It must be at the reciprocal will of both parties (for if it be at the will of the lessor only, it is a lease for life), and the dissent of either determines it. The grantee cannot transfer the estate to another, although after he has entered into possession he may accept a release of the inheritance from the grantor, for there exists a privity between them. It must end at the death of either party, for death deprives a person of the power of having any will. If a lessee for years accept an estate at will in the property leased, his term of years would in law be surrendered.

An estate at will is created either by the stipulation or express agreement of the parties, or by construction of law.

For the furtherance of justice, and in order to encourage agriculture by securing to the

farmer the just right of reaping that which he has sown, the courts of law will construe an estate at will created by parol into a tenancy for a year, or from year to year, provided such a construction would not work a forfeiture or be not productive of any wrong or injury, and there be no Act of Parliament which declares such estate shall be an estate at will.

Mr. Preston says (*Est.* p. 668, 1st edit.), 'The judges have been thought to express themselves of late years as if there might not be a tenancy at will. However, they are not to be understood as advancing any such indefinite position. All they mean to say, and all that can be inferred from what they have said when their expressions are referred to the subject matter, is that there shall not be a tenancy at will by construction, or, in other words, they declare the law to be that as often as there is a demise without any limitation of time it shall be construed a demise for one year, and afterwards from year to year at the election of the parties; and as to these tenancies by construction, it is clear that unless a notice to quit shall be given at the end of the first half-year, the tenant may hold for a second year, and so on from year to year until a notice to quit is given to him for half a year before the end of the current year: and the judges are not to be understood to say that there may not at this day be a demise at will.'

The Statute of Frauds (29 Car. II. c. 3, s. 1) enacts that a lease by parol for a longer term than three years, shall have the force and effect of an estate at will only. The courts have decided that such an estate at will shall be a tenancy from year to year. The grounds of this determination appear to be that the object of the statute was principally to render invalid any parol agreement for a lease for a longer term than three years; and as the constructive tenancy from year to year, arising from the mere possession at an annual rent, was not then established, the statute could only refer to a tenancy at will when it avoided the actual agreement between the parties: but after the tenancy from year to year was raised by implication of law by the acts of the parties, the courts did not feel that they violated the intention of the statute by giving the same effect to the possession and payment of rent by a person who entered under a parol lease void by the statute, which they would have done had the same circumstances occurred unconnected with such parol lease, and they therefore felt themselves bound by the prior decisions to put the same construction upon those circumstances as evidence to infer an agreement for a tenancy from year to year, notwithstanding the agreement between the parties, which in consequence of the statute could not be taken into consideration. They do not, therefore, give any effect to a parol lease which the statute has rendered null, but merely presume, consistently with their decisions in other cases, an agreement for a different kind of tenancy where the facts of the case will warrant that construction. And it should seem that in conformity with these principles, they would construe a possession taken under a parol lease void by the statute as a strict tenancy at will where no act is done by the lessor by acceptance of rent or otherwise, to raise by implication a tenancy from year to year, but where such acts take place that tenancy will be implied.

Notwithstanding this construction of the courts, estates at will still exist and arise in the following cases:—

(1) Where there is an express letting by will.

(2) Where the raising a tenancy from year to year by implication alone would make a forfeiture: for a mere construction of law cannot be allowed where it will work an injury.

(3) A mortgagor in possession of the mortgaged property, without any express agreement as to the period of possession, and with the mortgagee's consent, is but a tenant-at-will to the mortgagee, but he is not entitled to emblements, for they go in discharge of the loan, and he may be ejected by the mortgagee without any previous determination of the will.

(4) A beneficiary or *cestui que trust* in possession of the estate, with the consent or acquiescence of the trustee, is constructively a tenant-at-will to his trustee, in order to preserve as well the interest of the *cestui que* trust as the estate of the trustee.

(5) An entry upon property by a person under an agreement to purchase or take a lease of it, with the consent of the vendor or lessor raises a tenancy-at-will between the parties until the agreement be carried into execution and completed.

(6) If a person make a feoffment and deliver the deed without giving livery of seisin, and the feoffee enter, he is constructively a tenant-at-will.

A tenant-at-will is entitled to emblements where his estate is determined by the lessor or by his death, and his personal representatives are entitled to it where the estate is determined by his own death; but if the lessee forfeit or determine the estate himself he is not then entitled to them. It is to be remarked that a tenant from year to year has not the same advantage if his tenancy expire before the harvest, as he must yield up possession at the regular expiration of the notice to quit without any reference to the then state of the crops. He is not bound to maintain or repair the premises, but is liable for wilful waste.

We have seen that either party may determine this estate. The lessor can do so by an

express declaration that the lessee shall hold no longer, which should either be made on the land or notice of it served upon the lessee. But if he exercise any right of ownership, unless it be with the lessee's consent, inconsistent with the enjoyment of the estate, as entering upon the land, cutting down trees demised, making a transfer or lease for years to commence immediately the estate will be determined. So also if the lessee commit an act of desertion or do anything inconsistent with his estate, as assigning it to another person or committing waste; but a verbal declaration that he will hold the lands no longer does not determine his estate unless he waive at the same time the possession. Neither party can determine this estate at a time when it would be beneficial to the other, and six months' notice must be given before bringing an action of ejectment.

If a tenant-at-will rendering rent quarterly determine his will in the middle of a quarter he must pay a quarter's rent.

If the lessor determine this estate, the lessee shall have reasonable ingress and egress to take away his goods and chattels. This is simply common justice. See *Woodfall's Landlord and Tenant*, 175.

Willa, the relation between a master or patron and his freed-man, and the relation between two persons who had made a reciprocal testamentary contract.—*Mac. Moo. Law*, 34 n.

Winchester, the standard measure which was originally kept at Winchester. It is abolished by 5 & 6 Wm. IV. c. 63.

Windas, or **Windlass**, Wanlass, which see.

Winding-up Acts. See 7 & 8 *Vict.* c. 111; 11 & 12 *Vict.* c. 45; 12 & 13 *Vict.* c. 108; 13 & 14 *Vict.* c. 83; 19 & 20 *Vict.* c. 47; 20 & 21 *Vict.* cc. 49, 78; repealed by 25 & 26 *Vict.* c. 89.

Window Tax, a tax on windows, levied on houses which contained more than six windows, and were worth more than five pounds *per annum*; established by 7 Wm. III. c. 18. The 14 & 15 Vict. c. 36, substituted for this tax a tax on inhabited houses.

Windsor Castle (bakehouse), 25 & 26 Vict. c. 51.

Windsor Forest, a royal forest founded by Henry VIII.

Wine, *adulteration of*, an offence against public health, formerly punished with the forfeiture of 100*l.* if done by the wholesale merchant, and 40*l.* if done by the vintner or retail trader.—12 *Car. II.* c. 25, s. 11. The penalty in both cases was increased to 300*l.* by 1 *W. & M.* st. 1, c. 34, s. 20. The former statute is repealed by 26 & 27 Vict. c. 125. See 23 & 24 *Vict.* c. 84; and ADULTERATION.

Wine Licenses, *the granting of*, see 23 *Vict.* c. 27, and 23 & 24 *Vict.* c. 107.

Winter circuit, an occasional circuit appointed for the trial of prisoners.

Winter heyning, the season between 11th November and 23rd April, which is excepted from the liberty of commoning in certain forests.—23 *Car. II.* c. 3.

Wisbuy, ordinances of, a code of maritime jurisprudence compiled at this place in the isle of Gothland, principally from the law of Oleron, in the year 1400, for the governance of the Baltic traders. See 3 *Hall. M. A.* c. ix., pt. 2, p. 334.

Wista, half a hide of land, or sixty acres.

Wit, *to* [*scilicet*, Lat.], to know, that is to say, namely.

Witam, the purgation from an offence by the oath of the requisite number of witnesses.

Witchcraft, conjuration.

No prosecution shall for the future be carried on against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with any such offence; but all persons pretending to use the same shall be punishable by imprisonment.—9 *Geo. II.* c. 5; 5 *Geo. IV.* c. 83, s. 4. See 1 *Harris's Life of Lord Hardwicke*, 281.

Wite [Sax.], a punishment, pain, penalty, mulct, or criminal fine.

The *Wite* was a penalty paid to the Crown by a murderer. The *were* was the fine a murderer had to pay to the family or relatives of the deceased, and the *wite* was the fine paid to the magistrate who presided over the district where the murder was perpetrated. Thus, the *wite* was the satisfaction to be rendered to the community for the public wrong which had been committed, as the *were* was to the family for their private injury.—*Bosworth's Anglo-Saxon Dict.*

Witekden, a taxation of the West Saxons, imposed by the public council of the kingdom.

Witena-gemot, or **Wittena-gemote** [fr. *witta*, Sax., a wise man, and *gemot*, a synod or council, *conventus sapientum*, Lat.], a convention or general assembly of great and wise men, to advise and assist the sovereign in the time of the Saxons, answering to our parliament.—2 *Hall. Mid. A.* c. viii., pt. 1, p. 279. See PARLIAMENT.

Witens, the chiefs of the Saxon lords or thanes, their nobles and wise men.

Withdrawal of juror, when a jury cannot agree upon a verdict, one of them is often withdrawn by consent of the litigants, so as to put an end to the proceedings, each party paying his own costs.

Withernam [fr. *wieder*, Sax., other, and *naam*, a taking], reprisals. See LETTERS OF MARQUE; REPLEVIN; CAPIAS IN WITHERNAM.

Withersake, an apostate or perfidious renegado.

Without impeachment of waste. See ABSQUE IMPETITIONE VASTI.

Without prejudice, a phrase used in negotiations of compromise, or offers to settle differences *causâ pacis*, in order to guard against any waiver of right should they be ineffectual and go off.

Without recourse to me [*sans recours*], a phrase used by an agent who endorses a bill or note for his principal, which protects him from liability.—*Chit. on Bills*, 166.

Without reserve. When property is thus announced to be sold, a puffer ought not to be appointed.—*St. Leon. V. & P.* 8.

Witness, one who gives evidence in a cause. See EVIDENCE.

Wittena-gemote. See WITENA-GEMOT.

Wold [Sax.], a down, or open country.

Wolfeshead, or **Wolferhefod** [Sax.], the condition of such as were outlawed in the time of the Saxons, who if they could not be taken alive to be brought to justice might be slain, and their heads brought to the king; for they were no more accounted of than a wolf's head. *Bract.* l. 3.

Woman [A. S., *wif-man*, *man* being a general term to include each sex, the name *wif-man* was given to the female from her employment at the woof.—*Rich. Dict.*], the female of human kind. The mention of a male in a statute usually includes the female. By 13 & 14 Vict. c. 21, s: 4, which applies to all Acts passed in subsequent sessions, words importing the masculine gender shall include females unless the contrary is expressly provided. As to the employment of women, see 7 & 8 *Vict.* c. 15; 23 & 24 *Vict.* c. 78; 25 *Vict.* c. 8; and 26 & 27 *Vict.* c 38.

Wong [Sax.], a field.—*Spelm.*

Wood-corn, a certain quantity of grain paid by the tenants of some manors to the lord for the liberty to pick up dried or broken wood.

Wood-geld, the cutting of wood within the forest, or rather the money paid for the same.

Woodmote, the forty-days' court, which see.

Wood-Plea-Court, a court held twice in the year in the forest of Clun in Shropshire, for determining all matters of wood and agistments.

Woodwards, officers of the forest, whose duty consists in looking after the wood and vert and venison, and preventing offences relating to the same.—*Manw.* 189.

Woolmer Forest, as to disafforesting it, see 18 & 19 *Vict.* c. 46.

Woolsack, the seat of the Lord Chancellor in the House of Lords. When, in the reign of Elizabeth, an Act of Parliament was passed to prevent the exportation of wool, to keep in mind this source of our national wealth woolsacks were placed in the House of Lords, whereon the judges sat.

Words. See DEFAMATION.

Workhouses, municipal institutions for the support and maintenance of paupers. See POOR LAWS.

Worship, a title of respect applied to a magistrate.

Worship (*titles of*). See PRECEDENCE.

Wort, or **Worth** [fr. *weorth*, Sax.], a curtilage or country farm.

Worthine of land, a certain quantity of land so called in the manor of Kingsland in Hereford; the tenants are called worthies.

Wound, any lesion of the body, whether a cut, bruise, contusion, fracture, dislocation, or burn. In surgery it is confined to a solution of continuity in any part of the body suddenly caused by anything that cuts or tears with a division of the skin.

The judicial questions which arise in cases of wounding (which is an aggravated species of battery) where death ensues are:—How far has the person who caused the injury contributed to the death of the deceased, or to the lesion of one or other of the functions of the body? And to what is a certain wound to be referred?

Circumstances as well as accident have a considerable effect on wounds:—

(1) The constitution and age of the patient, and his antecedent as well as co-existent maladies may exercise a baneful influence on the injury received.

(2) The passions of the patient, and his negligence or delay, or that of his attendants, may render slight wounds dangerous, or dangerous wounds mortal.

(3) Insalubrity of the atmosphere.

(4) The ignorance or negligence of the surgeon may aggravate or endanger the condition of a wounded patient.—*Beck's Med. Jur.* c. xv. See MAYHEM.

Wreccum maris significat illa bona quæ naufragio ad terram pelluntur.—(A wreck of the sea signifies those goods which are driven to shore from a shipwreck.)

Wreck, such goods as after a shipwreck are cast upon the land by the sea, and left there within some county, for they are not wrecks so long as they remain at sea in the jurisdiction of the Admiralty.—2 *Inst.* 167. If any live thing escape, or if proof can be made of the property of any of the goods or lading, which come to shore, they shall not be forfeited to the Crown as wreck. The sheriff of the county is bound to keep the goods a year and a day, that if any man can prove a property in them, either in his own right or by right of representation, they shall be restored to him without delay; but if no such property be proved within that time, they shall then go to the Crown. If the goods be of a perishable nature, the sheriff may sell them, and the money shall be liable in their stead.—1 *Bl. Com.* 292; *Stat. West.* 1*st*, 3 *Edw. I.* c. 4. And see 17 & 18 *Vict.* c. 104,

pl. viii. ss. 432–457, 471–479, 500; 17 & 18 *Vict.* c. 120; and 18 & 19 *Vict.* c. 91, ss. 19, 20.

This revenue of wrecks is frequently granted to lords of manors as a royal franchise. It is a branch of the coroner's office to inquire concerning shipwrecks and certify whether wreck or not, and who is in possession of the goods.

The offence of plundering or stealing any part of vessels wrecked, stranded, or cast on shore, or any goods, &c. belonging to such vessel, is a felony (24 & 25 Vict. c. 96, s. 64). Persons in possession of shipwrecked goods, who cannot satisfy a justice that they came by them lawfully, are liable to be imprisoned or to forfeit a sum not exceeding 20*l.* beyond the value of such goods (s. 65). A similar punishment is attached to the offence of offering or exposing shipwrecked goods for sale which have been unlawfully taken, or shall reasonably be suspected so to have been taken from a wreck, if the person offering or exposing them for sale do not satisfy a justice that he came by them lawfully (s. 66). The offence of unlawfully and maliciously destroying any part of a wreck, or any goods, &c. belonging to it, is a felony (24 & 25 Vict. c. 97, s. 49).

As to impeding a person saving his own or another's life from a wreck, see 24 & 25 *Vict.* c. 100, s. 17.

As to assaulting a magistrate, officer, &c., engaged in preserving a wreck or goods cast on shore, see s. 37.

Wreck-free, exemption from the forfeiture of ship-wrecked goods and vessels, which the Cinque Ports enjoy by a charter of Edward I.

Writ [fr. *breve*, Lat.], a judicial process, by which any one is summoned as an offender; a legal instrument to enforce obedience to the orders and sentences of the courts. For the particular writs see their distinctive names, as assistance, capias, &c.

The 3 & 4 Wm. IV. c. 27, abolished a great number of writs. It enacted (s. 36), that 'no writ of right patent, writ of right *quia dominus remisit curiam*, writ of right *in capite*, writ of right in London, writ of right close, writ of right *de rationabili parte*, writ of right of advowson, writ of right upon disclaimer, writ *de rationabilibus divisis*, writ of right of ward, writ *de consuetudinibus et servitiis*, writ of *cessavit*, writ of escheat, writ of *quo jure*, writ of *secta de molendinum*, writ *de essendo quietum de theolonio*, writ of *ne injuste vexes*, writ of *mesne*, writ of *quod permittat*, writ of *formedon in descender* in remainder, or in reverter, writ of assize of *novel disseisin*, nuisance, *darrein* presentment, *juris utrum* or *mort d'ancestor*, writ of entry *sur disseisin* in the *quibus*, in the *per*, in the *per* and *cui*, or in the *post*, writ of entry *sur* intrusion, writ of entry *sur* alienation, *dum fuit non compos mentis*, *dum fuit infra ætatem*, *dum fuit in prisonâ*, *ad communem legem*, *in casu proviso*, *in consimili casu*, *cui in vitâ*, *sur cui in vitâ*, *cui ante divortium*, or *sur cui ante divortium*, writ of entry *sur* abatement, writ of entry *quare ejecit infra terminum*, or *ad terminum qui præteriit*, or *causâ matrimonii prælocuti*, writ of *aiel*, *besaiel*, *tresaiel*, *cosinage*, or *nuper obiit*, writ of waste, writ of partition, writ of *disceit*, writ of *quod ei deforceat*, writ of covenant real, writ of *warrantia chartæ*, writ of *curia claudenda*, or writ *per quæ servitia*, and no other action real or mixed (except a writ of right of dower, or writ of dower *unde nihil habet*, or a *quare impedit*, or an ejectment), and no plaint in the nature of any such writ or action, except a plaint for freebench or dower, shall be brought after the 31st day of December, 1834.'

Writer to the Signet, abbrev. W. S., also called *clerk to the signet*, a Scottish attorney-at-law, who is chiefly employed in civil trials before the Court of Session; he likewise prepares the warrants of all charters of lands flowing from the Crown; all summonses for citing parties to appear in the Court of Session, all diligences for affecting the person or estate of a debtor, or for compelling implement of the decrees of the Supreme Court.

Writer of the Tallies, an officer of the Exchequer, who acts as clerk to the auditor of the receipt, who writes upon the tallies the tellers' bills.

Writings obligatory, bonds. See Bond.

Writs *for the election of members of parliament.* The Speaker of the House of Commons is empowered to issue warrants, during any recess of the house, for making out new writs in the room of members accepting certain offices. See 24 *Geo. III.* c. 26; 56 *Geo. III.* c. 144; 21 & 22 *Vict.* c. 110; and 26 *Vict.* c. 20.

Wrong, the privation of right, an injury, a designed or known detriment.

Wrongous imprisonment, false imprisonment.—*Scotch phrase.*

Wynton, *Statute of*, 13 Edw. I. st. 2, A.D. 1285.

Wyte. See Wite.

X.

Xanthus, for *sanctus*, sacred.—*Spelm.*

Xenodoceum, or **Xenodocheum**, an inn, an hospital.

Xenodochy [fr. ξενοδοχία, Gk.], reception of strangers; hospitality.—*Encyc. Lond.*

Xylon [fr. ξύλον, Gk.], a punishment among the Greeks, answering to our stocks.

Y.

Yard [fr. *geard*, Sax.], an enclosed space of ground, generally attached to a dwelling-house, &c.; also a measure of three feet, or thirty-six inches in length.

Yardland [*virgata terræ*, Lat.], a quantity of land differing in extent in different parts of the country.—*Cowel.*

Yconomus [fr. *œconomus*, Lat.], an advocate, patron, or defender.—See *Du Çange.*

Year [fr. *gear*, Sax.], the period in which the revolution of the earth round the sun is completed. Generally, when a statute speaks of a year, it must be considered as twelve calendar and not lunar months.—*Bishop of Peterborough* v. *Catesby*, *Cro. Jac.* 166.

The year is either astronomical, ecclesiastical, or regnal, beginning on the 1st of January, or 25th of March; or the day of the Queen's accession.—*Dug. Chron. Jur. Pref.* 2. See CALENDAR.

The division of the year into term and vacation has been the joint work of the church and necessity. The cultivation of the earth, and the collection of its fruits, necessarily require a time of leisure from all attendance on civil affairs; and the laws of the Church had, at various times, assigned certain seasons of the year to an observance of religious peace, during which time all legal strife was strictly interdicted. What remained of the year not disposed of in this manner, was allowed for the administration of justice. The Anglo-Saxons had been governed by these two reasons, in distinguishing the periods of vacation and term; the latter they called *dies pacis regis*; the former *dies pacis Dei et sanctæ ecclesiæ.* The particular portions of time which the Saxons had allowed to these two seasons were adhered to by the Normans, together with other Saxon usages.—1 *Reeves*, c. iv., p. 191.

Year-books, or **Books of years and terms**, reports, in a regular series, from the time of King Edward II. to Henry VIII. which were taken by the prothonotaries or chief scribes of the courts, at the expense of the Crown, and published annually; hence their denomination. The year-books are rather curious from their antiquity than valuable for their contents, which are undigested and loosely revised.—*Hale's Hist.* p. 198; 2 *Reeves*, 357; 4 *Ibid.* 414.

Year and Day [*annus et dies*, Lat.], a time that determines a right or works a prescription in many cases.

Year, Day, and Waste [*annus, dies, et vastum*, Lat.], a part of the royal prerogative, whereby the Crown had, for a year and a day, the profits of lands and tenements of those that were attainted of petit treason or felony, whosoever was lord of the manor whereto the lands or tenements belonged; and the right to cause waste to be made on the tenements, by destroying the houses, ploughing up the meadows and pastures, rooting up the woods, &c. (unless the lord of the fee agreed for the redemption of such waste), afterwards restoring them to the lord of the fee.—*Staund. Prærog.* 44.

This prerogative was abolished by the 54 Geo. III. c. 145. See ESCHEAT.

Year to year, *Tenancy from.*

This estate arises either expressly, as when land is let from year to year, or by a general parol demise, without any determinate interest, but reserving the payment of an annual rent; or impliedly, as when property is occupied generally under a rent payable yearly, half-yearly, or quarterly; or, when an occupier, under an agreement for lease at a certain rent, pays rent; or when a tenant holds over, after the expiration of his term, without having entered into any new contract, and paid rent (for before paying rent only a tenancy on sufferance arises).

A demise by a tenant from year to year to another, also to hold from year to year, is in legal operation a demise from year to year during the continuance of the original demise to the intermediate landlord. When a tenant goes into possession of property under a void lease, a tenancy from year to year is created. If a mortgagee accept a person as his tenant, to whom the mortgagor has granted a lease for years after the mortgage, that makes him only tenant from year to year to the mortgagee.

This tenancy consists, in the first instance, of a certain term from one year, which, upon the expiration of the first half-year, unless notice be given by one of the parties to the other of his contrary intention, becomes an equally assured term of two years, reckoning from the commencement of the tenancy; and thus a new year is continually added to the term, as often as the half-year's previous notice which would secure its expiration is omitted to be given. In short, a tenancy from year to year is considered as re-commencing every year.

The distinction taken between a tenant from year to year, and a tenant for a term of years, is rather a distinction in words than in substance, for they both possess the same advantages, the estates partaking of nearly the same attributes.

The qualities that distinguish it from proper terms for years, and from estates at will, are that it may now be raised by construction of law alone, instead of an estate at will in every instance where a possession is taken with the consent of the legal owner, and where an annual rent has been paid, but without there having been any conveyance or agreement conferring a legal interest; and that, whether it arises from express agreement, or by implication of law, it may, unless surrendered or determined by a

regular notice to quit, subsist for an indefinite period, if the estate of the lessor will allow of it, or for the whole term of his estate, where it is of a limited duration, unaffected by the death either of the lessor or lessee, or by a conveyance of their estate by either of them; and the assigns, or real or personal representatives, of the former, according to the quantity of his estate, and the assignee, or personal representatives, of the latter, still continue the tenancy upon the original terms, and subject to the same conditions which the law, or the express agreement of the parties, has attached to it. But it is liable at any time to be determined by a notice to quit, from either party, which, where there is no agreement, or where the agreement is silent on that point, must be at least *half a year's* (*and not merely six months'*) notice, requiring from the tenant, or offering on his part, to give up possession at the expiration of the year, computing from the time when the tenancy commenced. And a parol notice is sufficient, unless the agreement requires it to be in writing (per *Lord Ellenborough*, C.-J. in *Doe* v. *Crick*, 5 *Esp. N. P. C.* 197); but for the sake of evidence it is always advisable to give a written notice. And where the commencement of the tenancy is not known, and the lessor cannot, from the objection of the tenant to the notice, or any other cause, avail himself of the periods of the payment of the rent as presumptive evidence of the commencement of it, a notice from him requiring the tenant to quit, at the expiration of the current year of the tenancy, which shall expire next after the end of half a year from the date of the notice, will be sufficient. But it seems advisable in such a case to give the notice on one of the quarter days on which the rent is payable, and not to bring an ejectment before the expiration of a year and a quarter from the date of the notice, in order to be certain that the year of tenancy has expired.

The incidents of this estate are these: —

(1) The owner may assign or underlet the property unless expressly restricted.

(2) He is entitled to emblements when his estate ends by the happening of an uncertain event over which he has no control.

(3) He is liable for injuries arising from voluntary negligence.

(4) He is bound to fair and tenantable, but not to substantial and lasting, repairs.

Years, *Estate for*. See TERM FOR YEARS.

Yeme [fr. *hiems*, Lat.], winter.—*Cowel.*

Yeoman, Yeman, or **Yoman** [fr. *guma*, Sax.; *gomman*, Theotisc.], a man of a small estate in land; a farmer, a gentleman farmer; also, a 40*s.* freeholder not advanced to the rank of a gentleman; the highest order among the plebeians.—2 *Inst.* 668.

Yeomanry, the collected body of yeomen.

Yeomanry Cavalry, a denomination given to those troops of horse which were levied in the late war among the gentlemen and yeomen of the country, upon the same principle as the Volunteer companies. See 23 *Vict.* c. 13.

Yeomen of the Guard, properly called yeomen of the guard of the royal household; a body of men of the best rank under the gentry, and of a larger stature than ordinary, every one being required to be six feet high.—*Encyc. Lond.* As to their establishment, see 2 *Hall. Const. Hist.* c. ix., p. 131.

Yeven, or **Yeoven**, given; dated.—*Cowel.*

Yielding and Paying, the reddendum clause in a lease.

Yokelet [fr. *jocelet*, Sax.], a little farm, requiring but a yoke of oxen to till it.

York, *Province of*. Its special customs are abolished by 19 & 20 Vict. c. 94.

Yorkshire Registry Acts, 2 & 3 Anne, c. 4; 5 Anne, c. 18; 6 Anne, c. 35; and 8 Geo. II. c. 6.

York, *Statute of*, 12 Edw. II. st. 1, A.D. 1318. 2 *Reeves*, c. xii., p. 299.

Yule [fr. *jul*, Su. Goth.; *jule*, Dan.; *jol*, Icel.; *gehul*, *geola*, *geol*, Sax.], the times of Christmas and Lammas. Obsolete.

Z.

Zemindar [fr. two words signifying earth, land, and holder or keeper], land-keeper. An officer who under the Mahommedan government was charged with the financial superintendence of the lands of a district, the protection of the cultivators, and the realization of the government's share of its produce, either in money or kind.—*Indian.*

Zemindarry, the office and jurisdiction of zemindar.—*Ibid.*

Zenana, that part of a house which is set apart for women.—*Ibid.*

Zetetick [fr. ζητέω, Gk.], proceeding by enquiry.—*Encyc. Lond.*

Zigari, rogues and vagabonds in the middle ages; from Zigi, now Circassia.

Zillah, side-part, district, division. A local division of a country having reference to personal jurisdiction.—*Indian.*

Zillah Court, local or divisional court.—*Ibid.*

Zoll-verein, a union between Prussia and other German States for uniformity of customs. It began in 1819 by the union of Schwarzburg-Sondershausen, and now includes Prussia, Saxony, Bavaria, Wurtemberg, Baden, Hesse-Cassel, Brunswick, and Mecklenburg-Strelitz, and all intermediate principalities.

Zygostates [fr. ζυγοστάτης, Gk.], the clerk of a market, who examines the weights and measures; a scalesman.—*Spelm.*

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